

DECISION-MAKER:	COUNCIL		
SUBJECT:	GAMBLING ACT 2005 LARGE CASINO – FINAL PROCEDURE NOTE AND EVALUATION CRITERIA FOR STAGE 2		
DATE OF DECISION:	20 MARCH 2013		
REPORT OF:	HEAD OF LEGAL, HR AND DEMOCRATIC SERVICES		
<u>CONTACT DETAILS</u>			
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STATEMENT OF CONFIDENTIALITY
None

BRIEF SUMMARY

A draft procedure note and evaluation criteria for use during the large casino licensing process was considered by Council at its January 2013 meeting. These documents have been the subject of a non-statutory consultation, and are now before Council for final approval.

RECOMMENDATIONS:

- (i) That Council note the representations received in relation to the draft procedure note and evaluation criteria, and the amendments made as a result;
- (ii) That Council approve the final draft procedure note and evaluation criteria for use at Stage 2 of the large casino licensing process, subject to any final amendments, authority for which is to be delegated to the Head of Legal, HR and Democratic Services.

REASONS FOR REPORT RECOMMENDATIONS

1. It is necessary for the Council to evaluate any applications for a large casino in a lawful, fair and reasonable manner and for potential applicants to understand the criteria before applying. It is appropriate before adopting the criteria for the trade and public to have the opportunity to comment on and suggest revisions to the Council.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

2. To not undertake a short consultation prior to adoption of the criteria may risk a judicial challenge by applicants.

DETAIL (Including consultation carried out)

3. The Gambling Act 2005 (the Act) significantly changed the legislation governing the licensing of casinos. The Act, associated regulations and a Code of Practice describe the process to be followed before a large casino premises licence can be issued.
4. In order to comply with its legal obligations and in order to ensure that the process is lawful, fair and transparent, the Council has developed a procedure note and evaluation criteria setting out the procedure the Council will follow and detailing how applications will be assessed.
5. A draft procedure note and evaluation criteria were considered by Council at its meeting of 16 January 2013, and approved for a brief non-statutory consultation with the public and trade. Council also agreed to delegate authority to the Head of Legal, HR and Democratic Services to make any necessary minor alterations to the draft documents prior to consultation to ensure they were as fit for purpose as possible before the consultation began.
6. The procedure note released for consultation is essentially the same as that considered by Council in January, aside from a small number of minor amendments.
7. The evaluation criteria underwent a further final review in consultation with Leading Counsel prior to being released for consultation in order to ensure that the document was legally sound and offered a proper scoring methodology. While retaining the overall substance of the initial draft, amendments were made to the evaluation criteria to improve clarity and ensure each head of benefit was appropriately structured to maximise the benefits to the Council's area as a result of the process.
8. Specifically, the amendments to each head of benefit contained within the evaluation criteria can be summarised as follows:
 - (i) Location:

This criterion was widened to incorporate and consolidate all aspects of physical regeneration contained within the original draft, rather than spreading various aspects across heads of benefits. The new head of benefit is entitled 'Regenerative Impact' and explicitly encourages applicants to submit proposals which address physical regeneration, tourism and employment opportunities while also encouraging financial contributions directed to achieving these objectives.
 - (ii) Problem Gambling:

On further review, it was considered that there should be more flexibility in the scoring mechanism to encourage applicants to devise innovative and proactive measures to combat problem gambling. Rather than a pass/fail system with no additional points available to applicants who go the extra mile, the evaluation criteria were amended to require applicants to reach the minimum standard with additional points for exceeding this standard.

(iii) Financial:

The initial draft rewarded applicants for proposing financial contributions to the Council, but did not take account of the possibility that this may effectively reduce the resources applicants could invest in the overall regeneration aims that are so central to the grant of a large casino licence. Therefore this head of benefit was amended to focus only on a financial contribution to the Council once initial regenerative objectives have been achieved.

9. The draft documents amended as described above, were posted on the Council's website, to the casino trade and forwarded directly to those organisations who had expressed an interest in this licensing procedure.

Representations received:

10. The consultation exercise resulted in four representations received from the following individuals and organisations, which are appended to this report.

Aspers Group Limited.

11. Aspers were generally supportive of the draft procedure note and evaluation criteria but raised some observations in relation to the evaluation criteria. The Aspers Group representation is attached at Appendix 1.
- (a) With regard to the first head of benefit (Regenerative Impact) it was submitted that there was no information or guidance within the document in relation to the calculation of Gross Value Added (GVA). It was noted that other Councils had provided significantly greater guidance as to the scoring and weighting of the various components of this head of benefit, such as employment, tourism, BREEAM, deliverability etc.
- (b) With regard to the financial head of benefit, it was submitted that the requirement to make a financial contribution to the Council from year four onwards would significantly reduce the initial regenerative impact available under the first head of benefit. It was also submitted that it was not clear how the Council would award points under this head, and accordingly a further explanation of how pro-rata scoring would operate would be beneficial.

As to the first of these points, it is considered that sufficient detail is given in the Evaluation Criteria and Scoring Matrix for applicants to be able to formulate their proposals; particularly given that the document is an emanation of the Council's Licensing Policy which also sets out the Council's aspirations. In drafting the document it has been necessary to draw a balance between principles which are too loosely expressed; thus giving inadequate direction as to that which is sought, and principles which are expressed too prescriptively, thus reducing the ability of the applicants to present imaginative proposals and Licensing Committees to make sensible judgments. While clearly there is a range of ways of drafting such documents, this document is considered to strike the balance properly in the case of Southampton.

As to the second point, Aspers would prefer there to be no separate financial contribution. However again, it is necessary to strike a balance between different objectives, both regenerative and financial, and by not requiring contributions for the first three years of operation, and by attributing a lower

score to this head than the principal, regenerative, head; it is considered that the balance has been appropriately struck. However, in light of Aspers' representation, and similar comments made by Rank Group and detailed below, an amendment to the Evaluation Criteria is recommended to extend this period by a further two years.

Aspers have also sought clarification as to how applicants will be scored in terms of their contributions. Aspers have queried whether the pro rata element of the calculation will be conducted according to the applicant's ranking or their contribution. It is clear from the document that the latter is intended. The pro-rata score will be calculated as a percentage of the highest score.

Therefore to take an example: if Applicant A makes the highest offer of £25,000 representing the capitalised value of GGV contributions over 25 years, and Applicant B offers £12,500; Applicant A will be awarded a full 125 points and Applicant B 62.5 points.

The calculation for Applicant B would therefore be: $(125 / a) * b = c$. Where a = value of the largest capital value bid; b = value of the current bid; and c = the Criterion 3 score. E.g. $(125/25,000) * 12,500 = 62.5$ points.

For the sake of absolute clarity it is recommended that the document is amended to make this clear.

12. Rank Group

The Rank Group representation is attached at Appendix 2 and makes a similar point to Aspers regarding the length of time which should elapse before financial contributions fall to be made. As set out above, it is proposed that this period is extended by two years.

Rank also seeks longer than two months to prepare their Stage 2 bids: three months rather than two. However, parties ought to have been preparing their proposals for some time, and therefore the realistic lead in period is longer than two months. That said, the Council wishes to afford every opportunity to Applicants to prepare their bids, and accordingly an amendment is recommended to the provisional timetable to allow three months for the submission of Stage 2 bids as requested.

13. Genting Casinos UK Limited

The Genting representation, which is attached at Appendix 3, makes the following main points:

- (a) That the reference at paragraph 7 of the Council's Procedure Note to an intention to develop Royal Pier, and that such a development may include a large casino, in conjunction with articles in the local press to this effect; give the impression that the successful application for the proposed large casino licence must necessarily identify that site for the casino;
- (b) That in light of an apparent preference for the Royal Pier site, the number of applications proposing viable alternative sites may be reduced, thereby depriving the Council of possible schemes that may offer greater benefits to the City;

- (c) That an apparent preference for the Royal Pier site may be at odds with guidance issued by the Gambling Commission which requires that applications must be determined according to criteria that are not pre-selected to favour a particular applicant or application;
- (d) That an application proposing an alternative location may generate greater physical regeneration than the proposed development at Royal Pier, on the basis that the casino would potentially only be a small part of a large development which would have already given rise to regeneration in that area.

In response to these points, the Council would reiterate that regardless of the location proposed by applicants, the evaluation of applications will be conducted strictly in accordance with the Evaluation Criteria. The Council's Licensing Committee are responsible for making the decision to award a licence, and will do so in a fair and objective manner. No Cabinet Member sits on the Licensing Committee.

The Council has been as transparent as possible throughout the licensing process to date, and has made its intentions for Royal Pier clear at every opportunity, including a statement contained within its Statement of Licensing Principles to which no objection was received. To conceal any such intention would be deemed to be unfair.

14. Director of Public Health

The Director of Public Health's representation is attached at Appendix 4. The main points in the document are:

- (i) that 125 points attributed to problem gambling out of 1,000 available means that applicants may win while providing the bare minimum of mitigating measures. It is suggested that 27.5% of the overall score should be allocated to this head.
- (ii) that the Gambling Commission's Ordinary Code provisions are required from applicants;
- (iii) that applicants should share data relating to their self-exclusion schemes;
- (iv) that applicants should collaborate with stakeholders including healthcare providers and public health;
- (v) comments are also made regarding Southampton's Statement of Principles.

As to the first point, it is considered that 125 points is a fair and reasonable attribution. Problem gambling is principally dealt with at Stage 1 and in the Licence Conditions and Codes of Practice.

As to the second point, it is suggested that a new sentence be added at the end of the first paragraph of Head 2:

"For these purposes, compliance with the both the Social Responsibility and Ordinary Code provisions of the Licence Conditions and Code of Practice will be regarded as part of the minimum requirement and ought to be demonstrated by applicants."

As to the third point, while applicants may elect to share such data it is not considered that this is a necessary requirement and may give rise to data protection.

As to the fourth point, it is suggested that the document should now read:

(2) A commitment to collaborate with local and national problem gambling groups and other stakeholders including healthcare providers and public health....”

As to the fifth point, it is not appropriate at this point in the process to reconsider the Statement of Principles.

15. A copy of the final amended versions of the procedure note and evaluation criteria is attached at Appendices 4 and 5 to this report. Amendments made as a result of representations received are highlighted with track changes.

RESOURCE IMPLICATIONS

Capital/Revenue

16. The large casino provides the Council with the opportunity to secure benefits for the City. The one-off set up costs incurred in the development of the revised policy and application pack, as well as the upcoming application process have been covered within the ring fenced Gambling Act budget managed by the Licensing Team. Any ongoing costs and annual revenue income from application and licence fees will also form part of the ring-fenced Gambling Act budget. This will include an application fee of £10,000 per applicant and annual premises licence fees should a licence be granted.

Property/Other

17. None. Any potential landholding interests of the Council are to be considered separately from the strict regulatory process

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

18. The Gambling Act 2005 and associated Regulations. Southampton is one of the eight local authority areas identified nationally by the Casino Advisory Panel to be given the authority to grant a large casino premises licence.
19. Applicants dissatisfied with the process have recourse by way of appeal to the Magistrates Court at the end of Stage 1 and Judicial Review of the decision made at the end of Stage 2.

Other Legal Implications:

20. The Gambling Act 2005 has three licensing objectives:
 - (a) preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime,
 - (b) ensuring that gambling is conducted in a fair and open way, and
 - (c) protecting children and other vulnerable persons from being harmed or exploited by gambling.

The licensing authority, in exercising their functions under the Act, shall aim to permit the use of premises for gambling in so far as it thinks it is reasonably consistent with the licensing objectives. The Council has produced a revised Policy with this in mind and has taken special consideration of the protection of children and vulnerable people.

POLICY FRAMEWORK IMPLICATIONS

21. The application pack, including the procedure note and evaluation criteria, is based upon the principles as described in the Gambling Act 2005 Statement of Licensing Policy. Applicants for the large casino are expected to read the Policy before making their application and the Council will refer to the Policy when making its decisions.

KEY DECISION? No

WARDS/COMMUNITIES AFFECTED:	None
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SUPPORTING DOCUMENTATION

Appendices

1.	Representation 1 – Aspers Group Limited
2.	Representation 2 – Rank Group
3.	Representation 3 – Genting Casinos UK Limited
4.	Representation 4 – Director of Public Health
5.	Final draft – Procedure Note
6.	Final draft – Evaluation Criteria

Documents In Members’ Rooms

1.	None.
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Equality Impact Assessment

Do the implications/subject of the report require an Equality Impact Assessment (EIA) to be carried out.	Yes
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Other Background Documents

Equality Impact Assessment and Other Background documents available for inspection at:

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
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1.	Equality Impact Assessment	
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