

Large Casino Licence
Licensing Team
Southampton & Eastleigh Licensing Partnership
PO Box 1767
Southampton
SO18 9LA

By Email : casino@southampton.gov.uk

2 June 2014

Your Ref:

Our Ref: JXH/A00001/0039

Dear Sir/Madam

**Southampton Large Casino Competition – Legal Issue – Delineation of
“Premises” on Plan accompanying Application**

We are representing a proposed applicant in the large casino competition in Southampton.

We have considerable experience of the casino competition process, having represented successful applicants in Newham, Milton Keynes and Leeds.

The purpose of this letter is to raise a technical legal issue which we are concerned has the potential to create legal argument at the hearing of the Stage 1 applications and, possibly, to delay the competition. We raise this issue now, well in advance of the deadline for the submission of applications, as we believe some timely guidance from the Council would be likely to result in a consistent approach by all of the applicants and therefore minimise, if not eliminate, these risks. We respectfully consider this to be in the interests of both the Council and all applicants.

In brief summary, the issue is as follows. We understand that the current preferred location for the large casino has been identified by the Council as the prominent waterfront site at Royal Pier and that the Council intends, if it has not done so already, to enter into an agreement with developers in relation to this site. Our client is in dialogue with the developers of the site and believes that the developers are, in turn, also in dialogue with other potential applicants. We therefore anticipate that applications, most likely applications for provisional statements, and accompanying plans will be submitted by a number of Stage 1 applicants in respect of the same site at Royal Pier. We appreciate, of course, that there may well also be applications in relation to other sites in the Southampton area. Our further understanding is that the site at Royal Pier will be for a mixed form of development and is likely to include a hotel, casino, restaurants and other leisure facilities. Further, the development will

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wholly or partly be on land which is yet to be reclaimed from the sea and, we understand, is unlikely to be completed before 2019.

Against this background, we believe it is highly unlikely that any of the applicants will be able to identify with precision and certainty where within the development the casino premises will ultimately be built. The final location of the casino may vary depending upon a significant number of imponderables such as construction issues, planning permission, commercial negotiations with anchor tenants and possible staging of the overall development. This gives rise to the practical difficulty for applicants in relation to Royal Pier (and quite possibly for applicants in relation to other Southampton sites) as to how to delineate the casino premises on the plan accompanying their application. Pursuant to paragraph 4(2) of the Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007, the plan must show, amongst other things, "the extent of the boundary or perimeter of the premises". Further, in relation to the application form itself, where the casino premises are in only a part of a building, as will almost certainly be the case in relation to Royal Pier, the applicant is required to describe the nature of the building, the number of floors within the building and the floor(s) on which the casino premises are to be located.

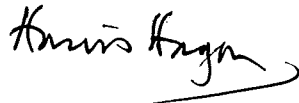
The delineation and description of the premises would not be a problem in the context of Royal Pier if the premises delineated in the plan accompanying an application for a provisional statement could change when a subsequent application for a premises licence is made in reliance on the provisional statement. However, this was not the view of the Leeds Licensing Committee in the context of one particular application. We do not propose to set out the lengthy legal arguments in that case in this letter, particularly as Phillip Kolvin QC was advising the Leeds Licensing Committee in that matter and will, we expect, also be advising the Southampton Licensing Committee. In short, the Leeds Licensing Committee took the view that the premises delineated on the plans accompanying a provisional statement application must be the "same premises" as those subsequently delineated on the plans accompanying the premises licence application. If the premises licence application is to be made in reliance on the provisional statement, it must be "on all fours" with the provisional statement application. Further, the Leeds Licensing Committee rejected the notion of an "in substance" test in relation to the description of the premises.

It is important to make clear that this legal issue was raised in stark form in Leeds, and it may well be that the Southampton Licensing Committee will take a different view of the law insofar as it relates to applications involving Royal Pier. Certainly, the Southampton Licensing Committee is not bound by the decision of the Leeds Licensing Committee. However, the legal uncertainty does present applicants in Southampton with a dilemma in preparing their applications. Specifically, applicants are faced with the choice of either red-lining the premises where they presently expect the casino at Royal Pier to be located on the basis of the best information available from the developers or red-lining the entire development, both of which carry a degree of legal risk (for applicants and council alike) on the reasoning of the Leeds Licensing Committee, as the premises are likely to vary between provisional statement and premises licence.

We would very much welcome guidance from Southampton Council on this legal issue as soon as possible so as to enable our client and other potential applicants to prepare their plans accordingly. Otherwise, the danger is that different applicants will take different approaches and the issue will be highlighted at the Stage 1 licence hearings when, in our experience, some applicants are keen to take every possible legal point against their competitors. We hope that the Council will find it helpful that we have raised this issue in advance of applications being submitted.

We look forward to hearing from you.

Yours faithfully

A handwritten signature in black ink, appearing to read "Harris Hagan", with a long horizontal flourish extending to the right.

Harris Hagan