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SOUTHAMPTON CITY COUNCIL  
LICENSING COMMITTEE  
MINUTES OF THE MEETING HELD ON 22 MARCH 2016

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Present: Councillors Tucker (Chair), Furnell (Vice-Chair), Galton, Jordan, McEwing, Painton, Parnell and Vassiliou

Apologies: Councillor Spicer

10. **APOLOGIES AND CHANGES IN MEMBERSHIP (IF ANY)**

The Committee noted that apologies had been received from Councillor Spicer.

11. **DISCLOSURE OF PERSONAL AND PECUNIARY INTERESTS**

Members stated that the interests declared at the 16 December 2014 and 9<sup>th</sup> and 30<sup>th</sup> April 2015 remained unchanged and thus reaffirmed the following and remained in the meeting during the consideration of the matter:

Councillors Galton, Vassiliou and Painton declared personal interests, in view of Councillor Galton's respective status as being a member of Mint Casino (now Genting) and having previously visited the Genting Casino and being a member of Grosvenor Leisureworld, Councillor Vassiliou's respective status as being a member of Grosvenor Leisureworld and Genting Casino and Councillor Painton's respective status as holding membership of Genting Casino.

Councillor Furnell, Jordan, McEwing and Parnell confirmed they had not visited any casinos.

In addition Councillor Tucker declared a personal interest as having previously attended a launch of Watermark Westquay event held by Hammerson.

12. **MINUTES OF THE PREVIOUS MEETING (INCLUDING MATTERS ARISING)**

**RESOLVED** that the minutes of the meeting held on 11<sup>th</sup> November 2015 be approved and signed as a correct record.

13. **EXCLUSION OF THE PRESS AND PUBLIC - CONFIDENTIAL PAPERS INCLUDED IN THE FOLLOWING ITEM**

**RESOLVED** that in accordance with the Council's Constitution, the press and public be excluded from the meeting in respect of the following item based on Categories based on categories 3, 5 and 7a of paragraph 10.4 of the Access to Information Procedure Rules. It is not in the public interest to disclose this because doing so would reveal information which is both commercially sensitive and detrimental to the business affairs of the Council.

14. **GAMBLING ACT 2015 AWARD OF LARGE CASINO LICENCE**

The Committee considered the confidential report of the Service Director, Legal and Governance, in accordance with the Local Government Act 1972 Section 100A(4),

requesting that the Licensing Committee determine which of the four applications for the Large Casino Licence provides the 'greatest benefit' to Southampton and which Applicant should be awarded the 'Provisional Statement'.

**RESOLVED:**

- (i) that the following decisions be approved and notified, as agreed at the meeting, to all applicants in writing after the meeting;
- (ii) the Committee has decided to grant the provisional statement to Aspers, whose quantitative score under the Evaluation Criteria and Scoring Matrix was very significantly above the second placed applicant, and whose bid the Committee qualitatively considered to be head and shoulders above the others; and
- (iii) accordingly, the applications by Global Gaming Ventures (Southampton) Limited, Grosvenor Casinos Limited and Kymeira Casinos Limited are rejected.

**DECISION**

**Introduction**

1. This is the decision of the Licensing Committee in relation to the application for a provisional statement for a large casino at Watermark West Quay.
2. The provisional decision to grant the application for a provisional statement, colloquially known as the "Stage 1 grant", was made on 4<sup>th</sup> September 2014. This decision, known as the "Stage 2 decision", is the final decision to grant a provisional statement, following a competition between the Stage 2 entrants, Aspers Universal Limited ("Aspers"), Kymeira Casino Limited ("Kymeira") which applied on the same site at the Royal Pier Waterfront Development), Grosvenor Casinos Limited ("Grosvenor") whose site is at Leisureworld, West Quay, and Global Gaming Ventures (Southampton) Limited ("GGV") which has applied at Watermark West Quay, Southampton.
3. The Committee wishes to thank all participants for the quality of their bids and their responsiveness and co-operation during what has been a long and exhaustive process.
4. Within the bounds of confidentiality, this decision sets out the reasons for the result just stated.

**The legal test**

5. The overriding legal test set out in Schedule 9 paragraph 5(3)(a) of the Gambling Act 2005 ("the Act") which requires the Committee *"to determine which of the competing applications would, in the authority's opinion, be likely if granted to result in the greatest benefit to the authority's area."*
6. In accordance with the Secretary of State's *Code of Practice for Determinations under Paragraphs 4 and 5 of the Schedule 9 to the Gambling Act 2005 relating to Large and Small Casinos* the Council as licensing authority published the principles they proposed to apply in making the Stage 2 determination, which were embodied in the Evaluation Criteria and Scoring Matrix.
7. As well as scoring the proposals according to the scoring mechanism set out in that document, the Committee has also asked itself which of the competing applications would be likely if granted to result in the greatest benefit to the authority's area. This produced the same conclusion. In both cases, the conclusion was unanimous.

## **Disregards**

8. Section 210 of the Act requires the Committee to disregard whether or not a proposal is likely to be permitted in accordance with the law relating to planning or building. The Committee confirms it has disregarded this consideration.
9. Section 153 of the Act states that the authority may not have regard to the expected demand for the facilities provided under the licence. The Committee is advised that the purpose of this provision was explicitly to reverse the position under previous betting and gaming legislation, under which absence of demand was a statutory criterion or indicator for refusal. Absence of demand is no longer a criterion for refusal, any more than presence of demand is a criterion for grant. The Committee has observed this requirement.
10. Nevertheless, in evaluating the likely benefit of a casino to the area the Committee is not obliged to pretend that there would be no demand. A casino with no visits would produce no benefit, whether in terms of employment, regeneration or direct financial contributions, which are all potentially material considerations mentioned in the Code of Practice nationally and the Evaluation Criteria and Scoring Matrix, which has long since been adopted as the scoring mechanism for this competition. Indeed, each applicant has rightly made reference to such matters in their applications. Each applicant has also made projections of visitation and spend and most have made financial offers related to spend. In most cases, their own projections have been accepted by the Advisory Panel.
11. In accordance with the Terms of Reference for this Competition for this Committee, the Committee has disregarded any pre-existing contract, arrangement or other relationship between the Council and any other person, including any contract for the sale or lease of land or any section 106 agreement.
12. To be explicit, the Committee has disregarded whether Southampton City Council has any interest in the sites involved. It has also disregarded whether Southampton City Council has or may have a corporate view or preference as to the sites the subject of this competition. Amongst the obvious reasons why it has adopted this position is that the Committee would expect the Council corporately to work to bring any site the subject of a grant in this competition to fruition. Specifically, as section 7 of the Procedure Note and also paragraph 15.12 of the Council's Statement of Principles under section 349 of the Act made clear, the Council has an interest in the Royal Pier Development. However, the Committee has not allowed that to influence its thinking as to the outcome of the competition. It has considered each application on its own individual merits. This is in any event made clear by paragraph 15.28 of the Council's Statement of Principles.
13. The Committee has noted some suggestion that the result of this competition has been predetermined or biased towards particular applicants or sites. The suggestion is untrue. The Committee emphasises that it has come to this judging process with an entirely open and neutral mind. It has also appointed an independent and expert advisory Panel to ensure that there is a free-standing, objective evaluation of the merits of the respective schemes.
14. In each case, draft Schedule 9 agreements were placed before the Committee at an advanced stage of drafting. In no case had the agreements been signed. However, in every case, the substantive offer made in the Schedule 9 agreement had long since been finalised. The Committee makes it clear that, while it has taken into account the substantive offer, in no case has the specific state of drafting of the Schedule 9 agreement influenced its decision in any way.

Following the Committee's consideration of the applications and the identification of the winner, the Schedule 9 agreement with the winner has been executed prior to this decision being issued.

### **The Advisory Panel**

15. The casino licensing competition is a unique experience for this Council, indeed for every Council granted the right by Parliament to issue large and small casino licences under the Act. Many of the issues to be considered under the Evaluation Criteria and Scoring Matrix lie well beyond the ordinary day to day work of the Licensing Committee. Accordingly, the Council appointed an expert Advisory Panel to ensure that the issues received independent, objective evaluation.
16. The Panel comprised experts in the fields of regeneration and planning, economic development, finance, problem gambling, public health, the gambling industry, the voluntary sector, public protection and community safety, leisure and legal. The Committee wishes to express its deep appreciation to the Panel for its advice and assistance.
17. The process undertaken by the Panel has included, but has not been limited, to the following:
  - July 2015: oral presentation by each application followed by questions and answers.
  - August 2015: identical request to each applicants for further information regarding any wider development going beyond the casino itself, the deliverability of the casino and the wider scheme and the mutual influence of the casino and the wider scheme.
  - October 2015: requests to applicants for further information on topic of problems gambling.
  - November 2015: invitations to provide "best and final offers".
  - January 2016: publication of first draft report for comment by applicants.
  - March 2016: publication of second draft reports for comment by applicants on scoring mechanisms.
  - March 2016: publication of final report together with a supplemental report providing further explanation about the process.
18. It appears to the Committee that this has been a thorough process, conscientiously undertaken by a body with relevant expertise.
19. The Committee has noted some criticism of the Panel's work. As to that, it has found as follows.
20. First, while it is clear that there was some error in presentation of the Panel's work in the first draft report, this error has been rectified and explained. The substantive consideration by the Panel is conspicuously clear. The Committee has not treated the Panel's reports like an examination paper but as a professional evaluation of the bids intended to assist the Committee. The Committee considers that the reports amply fulfil that requirement.
21. Second, while not every comment of every applicant on the first and second draft reports has been incorporated into the final report, the Committee has all of the correspondence and a clear picture of what is being said by each applicant. The inclusion or omission of comments by the Panel has made no difference to the consideration of the applications or the outcome of this competition.
22. Third, there has been some complaint of an absence of opportunity to comment on the final report. However, the scoring mechanism adopted by the Panel for Criterion 1 was clearly set out in the second draft report and all applicants were given an opportunity to comment upon the mechanism itself and its application

- in this case. Most took that opportunity. The published procedures have never included opportunity for a further round of comments following publication of the final report. Furthermore, the publication of the supplemental report appears chiefly to have been for the purpose of explaining the process which was followed, rather than to alter or qualify the substantive evaluations.
23. Fourth, the Committee has no doubt whatsoever that applicants have been given a full opportunity to make their case as to why they should be considered the party whose scheme is likely to result in the greatest benefit to Southampton and to receive their appropriate score upon application of the Evaluation Criteria and Scoring Matrix. Further, the Committee is fully satisfied that it has sufficient information before it now to make a decision.
  24. It is necessary to say a word about the role of the Advisory Panel.
  25. Paragraph 5.13 of the Procedure Note for this competition states: *“The function of the Advisory Panel is to evaluate the applications for the benefit of the Licensing Committee. The Advisory Panel is not a decision-making body and while the Licensing Committee will take the Panel’s evaluations into account, it is not bound to follow them.”*
  26. The Committee emphasises that the decision it has reached in this case is the Committee’s and the Committee’s alone. While it has taken the Panel’s evaluations into account, it has not considered itself bound to follow them. In order to reach its own conclusions, it has read the applications and other material placed before it, including the applicants’ own critique of the Panel’s draft reports.
  27. In the event, the Committee has agreed with the Panel’s evaluation, its approach to scoring and to the scores accorded. However, the Committee has decided to do this following its own evaluation of the merits of the applications.
- Consideration of individual criteria**
28. The Committee makes some general observations in relation to the three criteria in the Evaluation Criteria and Scoring Matrix, as follows.
  29. *Criterion 1.* The context for Criterion 1 is the legal test under Schedule 9 paragraph 5(3)(a) which requires consideration of what would be likely to result from the grant. In other words, the Committee has to consider the likely causal effects of the grant.
  30. Necessarily, when considering development schemes which have not yet broken ground, the Committee has to consider with some care whether the scheme is likely to materialise, since not all development proposals come to fruition. It must also consider the causal influence of the grant of the casino licence on the wider scheme, since if there is none then the scheme and its benefits will not result from grant of the casino licence.
  31. Of the 1000 points available to be awarded in this process, a full 750 falls under Criterion 1, which is entitled “Regenerative Impact.” This reflects the emphasis placed by the Council on the potential of the casino in terms of regeneration, including physical regeneration and tourism and employment opportunities. This emphasis is also reflected in paragraph 15.28 of the Statement of Principles, which refers to the importance placed on the ability of the proposal to deliver large scale physical regeneration and tourism potential.
  32. As important as the scope of the aspiration is its deliverability. The Committee has been careful to consider whether the scheme proffered is likely to be delivered, and has specifically considered the range of factors referred to in Criterion 1, including practicability, the applicant’s standing and track record of delivery, the contents of the legal agreement and any guarantor offered.

33. The Committee considers that the scoring mechanism adopted by the Panel to achieve a neutral and objective evaluation of the rival proposals under Criterion 1 is robust, sensible and defensible, as is the method of weighting between the casino itself and the wider schemes of which they form part. The Committee notes that no applicant has made a reasoned criticism of the mechanism and the Committee is content to adopt it.
34. *Criterion 2.* The Committee notes that this criterion requires applicants to demonstrate their proposals. A mere commitment to excellence, for example, would be likely to score lower than a detailed set of policies and procedures which demonstrate how excellence is to be attained.
35. *Criterion 3.* This has been evaluated in exactly the same way for each applicant. Applicants who can demonstrate that their proposal will come forward earlier than others' or who have offered sums from an earlier date have received full credit since their payments will be made over a longer period.

## **EVALUATION OF GLOBAL GAMING VENTURES (SOUTHAMPTON) LIMITED'S PROPOSALS**

### *Criterion 1*

The Committee accepts and adopts the description of GGV's proposal, as well as the scoring, in section 9 of the report. The Committee accepts that there is a very high likelihood of what would be a high quality casino being delivered. On the scoring approach adopted by the Panel and now this Committee, that element of the calculation carries one third of the marks under Criterion 1.

The larger part of the marks is awarded against the second part of the calculation, which is concerned with the wider scheme. The wider scheme is, in the Committee's view, bound to be delivered. Indeed Phase 1 of the scheme is in progress already. Phase 2 is a modest proposal, certainly relative to the other schemes in this competition. Further, even on GGV's own case, Phase 2 will be delivered with or without a casino. The only difference is some element of delay in the no-casino world.

The Committee understands that regeneration does not just mean buildings, and that there may be real benefit in a casino going on the Watermark West Quay site. But in what is a competitive exercise, those schemes which offer very large regenerative proposals, bringing into development sites which are previously unused or which amount to redevelopment of large sites, are likely to achieve preference, all other things being equal, over proposals which involve little more than the development of a casino and the benefits attendant upon such a development. Indeed, in the case of GGV the position is still weaker, for if the casino does not occupy the site it seems to be acknowledged that some other use will. Therefore, the amount of benefit likely to result from the grant of a casino licence rather than a refusal appears marginal, and certainly well short of the ambition which underpins the casino licensing process in Southampton. This was really emphasised at a very early stage in paragraph 15.28 of the Statement of Principles, which the Panel has cited.

For that reason, while GGV would have been well-placed had this been a competition which rode simply on the likelihood of delivery of a casino without more, the dearth of causative influence on the realisation of a wider regeneration scheme leaves GGV a very distant last in the evaluation of Criterion 1.

### *Criterion 2*

The Committee accepts the scoring and reasons of the Advisory Panel under this head. The score of 85 reflects proposals which are creditable without being outstanding or particularly innovative.

### *Criterion 3*

The score has been objectively judged by a mathematical model which has resulted in a score of 70.

### **Conclusion**

GGV's final score of 525 left it last in the competition by a margin of over 400 points.

While it has, in its words, an "oven ready" proposal, that is both its virtue and its downfall. It is a proposal which comes in at the tail end of a scheme which will be delivered with or without a casino. The proposal is uniquely poor in terms of its regenerative potential, which was clearly the main point of the competition under the Evaluation Criteria and Scoring Matrix. A higher financial offer may have closed the gap on the other runners, but even despite GGV's near certainty of delivery in the relatively near future, its financial offer was very significantly less than the best offer.

The Committee takes the clear, unanimous view that the GGV proposal is not likely to result in the greatest benefit to the area of Southampton and must be rejected.

## **EVALUATION OF GROSVENOR CASINOS LIMITED'S PROPOSALS**

### *Criterion 1*

The Committee has noted that there was discussion as to whether the location of the casino could move as between Stages 1 and 2 and agrees that it cannot. It is aware that it is dealing with a proposal under which the casino will be located in its Stage 1 position.

The Committee accepts and adopts the description of Grosvenor's proposal, as well as the scoring, in section 9 of the report. The Committee accepts that there is a very high likelihood of what would be a high quality casino being delivered. On the scoring approach adopted by the Panel and now this Committee, that element of the calculation carries one third of the marks under Criterion 1.

However, Grosvenor has fallen a little short on each of the component elements under the second part of the calculation, which considers the regeneration potential of the wider scheme, the deliverability of the wider scheme and the causative significance of the casino to the wider scheme. As to the first of these, the regeneration potential of the proposal was scored at 9, being excellent.

However, when it comes to the deliverability of the wider scheme, there are a number of hurdles confronting the proposal. Even if the Council were supportive of the proposal (which for reasons given above the Committee accepts would be the case) there would still be a question of agreeing terms with the Council as landowner, which is a matter of property and not political support and, more importantly, agreement with JLP, about

which the Committee is in no position to speculate since it lies entirely outwith Grosvenor's control. There are also a number of other leasehold interests involved as detailed in the Panel's report, as well as needing the appointment of a specialist operator for the extreme sport proposal.

In summary, the Committee agrees with the Panel that delivery of the wider scheme is contingent on a number of events which are outside the control of Grosvenor and its development partners, and there is an absence of evidence that these hurdles will all be surmounted. In the circumstances, the Committee regards the award of 5 marks for deliverability of the wider scheme, representing an assessment that it is "likely, i.e. more than 50%", as rather generous. However, on the basis that the assessment only means "marginally more than 50%" the Committee adopts it.

The Committee also understands that the casino may provide some anchoring, both financial and otherwise, for the wider scheme, the Committee does not consider that there is a demonstrably high degree of dependence of the larger scheme on the casino. It considers that the score of 6 for causative significance is correct.

Standing back from the proposal, while undoubtedly the wider scheme would be an asset to Southampton, it falls short of the scale and import of the Royal Pier scheme, perhaps lacking in some ambition and vision, and perhaps constrained by the site itself. Further, in contradistinction to the Royal Pier scheme, the Grosvenor scheme is to some extent creating replacement capacity rather than new capacity.

But more importantly, the wider scheme at this stage appears to be, at root, a paper scheme, with a very long way to go and a number of obstacles in its way, which may in time be overcome but which are not the subject of present solutions. In reaching that conclusion, the Committee has specifically considered the answers given on these points in its Grosvenor's letter of 22nd September 2015.

Further, the casino, while no doubt providing some impetus for the scheme, is not integral to the scheme in the sense that it is demonstrable that without the casino the scheme will not happen. On this point, Grosvenor stated in their letter that "in their view" the wider scheme would not happen without the casino, but provided no or insufficient justification for the assertion. Indeed, Grosvenor concede that, absent the casino, a "more conservative" scheme would be brought forward, albeit after some further delay. Such a scheme would presumably include the existing casino being remodelled or perhaps even relocated within the site, as is permitted under the Gambling Act 2005. Therefore, the outcome of a refusal would, even on Grosvenor's case, not be "no scheme" or even "no casino."

Accordingly, the Committee endorses the raw score of 292 for Grosvenor under Criterion 1, which scales up to 577 for the reasons which have been explained. As will be appreciated, this is a long way shy of the winning bid's 750 marks.

### *Criterion 2*

The Committee accepts the scoring and reasons of the Advisory Panel under this head. The score of 100 is a highly creditable total awarded to a highly competent and experienced operator. It appears that a few marks may have been lost through the non-submission of a procedure manual, although this is immaterial to the outcome of the competition.



### *Criterion 3*

The score has been objectively judged by a mathematical model which has resulted in a score of 125, the maximum possible.

### **Conclusion**

Grosvenor's score of 577 under Criterion 1, which was the third placed score, left it with far too much ground to make up on the remaining criteria. It did make up some ground on the other competitors on Criteria 2 and 3, so that its composite score of 802 placed it second overall. However, this was a very distant second indeed, being 132 points short of the winner. Even giving Grosvenor the benefit of any doubt could not have brought it within touching distance of the winning bid. In fact, the Committee has reached its conclusion without doubt. It has unanimously decided that Grosvenor's bid is not likely to result in the greatest benefit to the area.

The Committee adds by way of parenthesis that it does appear that some scheme will eventuate on this site, regardless of this decision, and hopes that Grosvenor will be a successful part of it, utilising its existing licence.

However, for the reasons it has given, the application of Grosvenor must be rejected.

## **EVALUATION OF KYMEIRA CASINO LIMITED'S PROPOSAL**

### **Application for adjournment**

The Committee considered the application for adjournment made by Kymeira in a letter dated 21<sup>st</sup> March 2016. The application is rejected.

There is a criticism in the letter that the final report by the Advisory Panel appears to have been redrafted in a hurry as in some respects both the wording and presentation are very poor, to the extent that in some cases sentences don't finish or make proper sense. The Committee has noted that the formatting of the report has meant that there are unnecessary line breaks in some places, and that there has been some transposition of text in certain places. However, the Committee does not consider itself or anyone else disadvantaged by that. The error seems to be one of formatting rather than thought. For example, the passage commencing "2016" on page 19 belongs following the date "11<sup>th</sup> February" further down the page, while the widowed words "level of" on page 25 belong with the orphaned words "risk associated" on page 26.

Kymeira is also concerned that new information has been provided in the final report. However, the actual scoring of Kymeira's bid under Criterion 1 was shown in the second draft report, upon which Kymeira has had the opportunity to comment, and upon which it has in fact commented. The third report contained an upwards revision of its scoring under Criterion 3. The supplemental report chiefly set out some more details as to the process. The Committee notes that the competition rules do not provide for comments on the final report, and in any case cannot see that Kymeira has been materially disadvantaged by its inability to do so. Kymeira has had the same opportunity to shape its bid and respond to questions as every other party, and the Committee is fully confident that the process has been not only full and fair but equally fair to all participants.

Kymeira has also complained at the inchoate nature of the Schedule 9 agreements. In this respect, all the applicants are in the same boat.

## **Evaluation of Kymeira's proposal**

### *Criterion 1*

The Committee agrees with the way the Panel has scored Kymeira's proposal under this criterion, both as to the total score and the constituent elements in the calculation.

The Committee accepts and adopts the description of Kymeira's proposal in section 9.2 of the Panel's report. It considers that the wider scheme is an ambitious and exciting one for Southampton. It is impressed, as was the Panel, with the track record of delivery of the main players in the wider scheme as set out in section 9.3. It endorses the Panel's decision to take account of the state of progression of the scheme, the level of investment which has already been made to date, the existence of the CLDA and the heads of terms. It also accepts, for the reasons given by the Panel, that the casino licence will in and of itself catalyse the wider development.

The fact that the City Council itself has an interest in the site and the likelihood of planning permission being obtained for the scheme are matters which the Committee disregards for the reasons given above.

The Committee has given close consideration to the likelihood of delivery of the wider scheme. It would be a pointless exercise, a waste of the years spent and funds expended in running the competition and a huge disservice to the people of Southampton to grant the licence for a casino which will not be built and a wider scheme which will never be delivered. It is quite obviously a huge responsibility which the Committee has taken extremely seriously.

A scheme which is merely nascent may appear attractive but lack the sense of planning and progression to enable a finding that it is "likely". A scheme which is practically built out may be certain to be completed but the casino could not claim to be the cause of the wider scheme. In this case, the Committee considers the wider scheme to be apt for the site, backed by credible participants and supported by a sufficient record of progression to enable the Committee to make a judgment about its likelihood of fruition. The Committee is also influenced by the judgment of the Advisory Panel itself which includes experts on the casino industry specifically and wider regeneration initiatives more generally.

A score of 6 for the deliverability of the wider scheme implies that deliverability is "more than likely, i.e. significantly more than 50%". This is more than 5 ("likely, i.e. more than 50") but less than 7 ("very likely"). The Committee considers that this is a fair evaluation of the deliverability of the wider scheme.

The Committee also specifically endorses a score of 10 for the regeneration potential of the scheme and 8 for the causative significance of the casino to the scheme.

In summary, the Committee considered this to be a very impressive scheme, and was particularly impressed with the regeneration aspects of the proposal. It was glad to see the proposal for 730 residential apartments.

Where Kymeira has performed less well is in the specific casino proposal itself. The Committee accepts the Panel's concerns regarding splitting the proposal over two floors, whatever regional precedent may be found, both on a practical and logistical level, and in relation to the trading assumptions on which the proposal is based, which appear not only significantly out of kilter with reasonable expectations for both table gaming and machine gaming (in one case too low and in one far too high), but which give the Committee concern as to the overall viability of the operation. The Committee is seriously concerned at the Panel's finding that the proposition was strategically inconsistent, significantly at variance with industry norms, and lacking a sufficiently cohesive and evidenced rationale.

Linked with this, and in the Committee's view probably the cause of it, is that Kymeira do not have an operator for the casino. That Kymeira do not have a track record of delivering large casinos is perfectly understandable – only two operators nationally do. But Kymeira as a company has no track record of delivering any casino, and cannot present any entity as the operator of their proposed casino. The track record of the operator is of course specifically mentioned in Criterion 1.

The Committee also echoes the Panel's concern that not only is there not an operator on board, but that the contractual model under which an operator would be appointed and the identity of that operator, is not specified. As the Panel also states, this appears to have affected the ability of Kymeira to demonstrate some of the policies and procedures that would normally be expected from an established operator.

The Committee have struggled to understand Kymeira's response to these criticisms, which is essentially that not having an operator is a strength and not a weakness. Even accepting that it has an experienced operational and legal team able to select an operator at the relevant time, it is inherent in the nature of the competition that the Panel and now the Committee will evaluate that which is proposed now. Where, as here, what is proposed lacks credibility in some key respects, it cannot provide an answer to say that credibility will be achieved later.

The Committee is fully in agreement with the Panel, when it states, by way of justification for the score of 4 for the regeneration potential of the casino itself, that the lack of an operator justified the low mark, since it resulted in evidential shortfalls and inaccuracies, and diminution in the Panel's confidence in the proposal.

The Committee gave serious consideration to reducing from 7 the score for deliverability of the casino itself, since the credibility gap in the proposal also affects that score. However, it decided that a sufficient overall deduction had been made under the regeneration score. However, the Committee considers that the two scores combined, 4 and 7, are at the top end of reasonable in the first part of the Criterion 1 calculation. Any variation would necessarily be downwards.

Accordingly, the Committee endorses the raw score of 310 for Kymeira under Criterion 1, which scales up to 612 for the reasons which have been explained. As will be appreciated, this is a long way shy of the winning bid which, Kymeira will appreciate, is by an operator with a genuine track record of delivery of large casinos.

## *Criterion 2*

The Committee accepts the scoring and reasons of the Advisory Panel under this head. The Committee specifically rejects Kymeira's critique of the scoring. It regards as unrealistic Kymeira's case that it would be otiose to provide detailed policies and procedures at this stage. The Statement of Principles itself expects policies and procedures in place. The Evaluation Criteria and Scoring Matrix expressly requires demonstration of what is proposed. A simple commitment to excellence cannot possibly receive the same score as particularised proposals which are demonstrably excellent. Again, this is no doubt a function of Kymeira not actually being a casino operator. It cannot be criticised for that. However, it is not a commendation either. Its proposals must be judged on the evidence, in the same way as any other applicant. If the proposals lack specificity, they may be marked down, as they have been here, in the Committee's view correctly.

### *Criterion 3*

The score has been objectively judged by a mathematical model which has resulted in a score of 65.

### **Conclusion**

Kymeira's score of 612 on Criterion 1 left it with too much ground to make up on the remaining criteria. In fact, however, it came last in the competition on Criteria 2 and 3. Its composite total of 732 was over 200 points shy of the winning total. Therefore, while it came third overall it was a very distant third, and even giving Kymeira the benefit of any doubt could not have brought it within touching distance of the winning bid. In fact, the Committee has reached its conclusion without doubt. It has unanimously decided that Kymeira's bid is not likely to result in the greatest benefit to the area.

By way of parenthesis, the Committee adds that where there are two applicants both chasing the same site on the same footprint in the same wider development, it is not impossible but it is nevertheless counter-intuitive to award the licence to an entity which has not run a casino before over an entity which has experience of developing and opening the very type of casino the subject of the competition. It is noted that Kymeira has provided no guarantor and has offered no liquidated and ascertained damages in relation to the provision of jobs. In the view of the Committee, Kymeira suffers from a credibility gap relative to the eventual winner, which its bid has not managed to close. In short, there is a much greater risk in granting to an applicant which does not have any operator even identified, let alone contracted in, than to an applicant which is itself an experienced operator.

Accordingly, the application of Kymeira must be rejected.

## **EVALUATION OF ASPERS' PROPOSAL**

### *Criterion 1*

The Committee agrees with the way the Panel has scored Aspers' proposal under this criterion, both as to the total score and the constituent elements in the calculation.

The Committee accepts and adopts the description of the Aspers' proposal in section 9.2 of the Panel's report. It considers that the wider scheme is an ambitious and exciting one for Southampton. It also considers that the casino proposal itself is professionally presented, detailed and credible.

So far as deliverability is concerned, it is impressed at Aspers' track record of delivery of large casinos. Of course, it is the only applicant which has delivered a large casino under the Act.

It is also impressed, as was the Panel, with the track record of delivery of the main players in the wider scheme as set out in section 9.3. It endorses the Panel's decision to take account of the state of progression of the scheme, the level of investment which has already been made to date, the existence of the CLDA and the heads of terms. It also accepts, for the reasons given by the Panel, that the casino licence will in and of itself catalyse the wider development.

The fact that the City Council itself has an interest in the site and the likelihood of planning permission being obtained for the scheme are matters which the Committee disregards for the reasons given above.

The Committee has given close consideration to the likelihood of delivery of the wider scheme. It would be a pointless exercise, a waste of the years spent and funds expended in running the competition and a huge disservice to the people of Southampton to grant the licence for a casino which will not be built and a wider scheme which will never be delivered. It is quite obviously a huge responsibility which the Committee has taken extremely seriously.

A scheme which is merely nascent may appear attractive but lack the sense of planning and progression to enable a finding that it is "likely". A scheme which is practically built out may be certain to be completed but the casino could not claim to be the cause of the wider scheme. In this case, the Committee considers the casino and the wider scheme to be apt for the site, attractive, thoroughly presented and justified, backed by credible participants and supported by a sufficient record of progression to enable the Committee to make a judgment about its likelihood of fruition. The Committee is also influenced by the judgment of the Advisory Panel itself which includes experts on the casino industry specifically and wider regeneration initiatives more generally.

A score of 6 for the deliverability of the wider scheme implies that deliverability is "more than likely, i.e. significantly more than 50%". This is more than 5 ("likely, i.e. more than 50") but less than 7 ("very likely"). The Committee considers that this is a fair evaluation of the deliverability of the wider scheme. It also considers that a score of 7 for the deliverability of the casino itself is correct.

The Committee has noted the comment by one rival applicant that there is no realistic prospect of a casino ever being developed at Royal Pier, that the scheme is unbuilt and unfinanced, and the applicant has no lease or other land interest and has apparently made no financial commitment. Of course, were the scheme already built, then the casino could not take credit for its delivery. Were it fully financed and with all relevant land interests disposed of or subject to legal agreements, a greater score than 6 might have been appropriate. As it is, the Committee is confident that it has judged the questions of deliverability and causative significance of the casino to the wider scheme fairly and accurately.

In summary, the Committee considered this to be a very impressive scheme, and was particularly impressed with the regeneration aspects of the proposal. It was glad to see the proposal for up to 730 residential apartments. It strongly endorses Aspers' proposal in respect of the employment of disadvantaged people. It considered that Aspers'

engagement already with Southampton institutions demonstrates not only a real commitment to weave itself into the business, welfare and protective network in Southampton, but a commitment to deliver the scheme itself.

As a minor matter, the Committee considered that the proposed quiet room in the casino is too small for a casino of this size and commitment to achieve excellence in relation to problem gambling. It hopes to see this rectified at a later stage in the process. It has not, however, affected the scoring of the application.

As stated above, the Committee has considered each of the five scores suggested by the Panel in its scoring mechanism under Criterion 1, which result in a raw score of 380 marks. This is the leading mark amongst the four applicants, resulting in a final score under Criterion 1 of 750.

#### *Criterion 2*

The Committee accepts the scoring and reasons of the Advisory Panel under this head.

#### *Criterion 3*

The Committee accepts the scoring and reasons of the Advisory Panel under this head. It is not understood that Asperts has challenged the score in any event.

### **Conclusion**

In conclusion, Asperts is an experienced operator with a track record of delivering large casinos. It is clear that a great deal of thought and commitment has gone into the proposal itself, as well as how it would be delivered. The Committee believes that the energy and commitment that has carried Asperts this far will continue and will help to drive forward the Royal Pier scheme as a whole. The Committee has unanimously reached the view that the Asperts proposal is likely to result in the greatest benefit to Southampton. In the opinion of the Committee it is, as stated above, head and shoulders above the other competitors.

### **Condition of grant**

In accordance with Schedule 9 paragraph 5(3)(a) of the Act, the Committee has determined to add a condition to any licence requiring compliance with the executed Schedule 9 agreement. It directs that the provisional statement shall not be issued until the agreement has been signed and Asperts has signalled assent to such a condition.

In addition, of course, any eventual licence will be subject to the individual conditions added at Stage 1, the statutory conditions and the mandatory conditions. The default conditions were excluded in the Stage 1 decision.

### **Period of grant**

In accordance with Schedule 9 paragraph 10(3) of the Act, the period of the provisional statement shall be three years from the date of this decision. Within that period, the Committee expects Asperts to have applied for a premises licence for the proposal. However, there is provision in Schedule 9 paragraph 10(4) for Asperts to apply for an extension of that period, which would enable it to explain the progress of the scheme.

This enables the licensing authority to retain some control over the pace and timing of delivery.

For the reasons given above, and subject to the condition specified, Asperts' application for a provisional statement is granted.