

## LICENSING COMMITTEE

4<sup>TH</sup> SEPTEMBER 2014

### GAMBLING ACT 2005 – APPLICATION FOR LARGE CASINO PROVISIONAL STATEMENT BY KYMEIRA CASINO LIMITED AT THE PROPOSED ROYAL PIER WATERFRONT DEVELOPMENT, MAYFLOWER PARK, SOUTHAMPTON

The committee has heard an application by Kymeira Casino Limited for a provisional statement for a large casino licence at the above address. The hearing today concerned Stage 1 of the application process pursuant to Schedule 9 of the Gambling Act 2005. The applicant has applied for an exclusion of the default condition so as to operate 24 hours per day on Monday to Sunday inclusive.

The description of the premises in the application stated that the casino will be within the Royal Pier development, on a site bounded by Town Quay Road and Pier to the east, Mayflower Park to the west and the River Test. The building itself would comprise ground floor catering units and casino with its principal entrance from the street with staff accommodation at mezzanine level and four levels of car parking above.

The application plan shows the casino footprint in blue at one end of the larger development, with further plans showing the general disposition of uses in and immediately around the casino.

The application has received representations from the following:

- (1) Southampton Commons & Parks Protection Society (SCAPPS), objecting to the proposal on grounds which are summarised as follows:
  - a. To create the premises would require a planning permission which would destroy Mayflower Park, a valuable public open space.
  - b. Gambling is the wrong use for this prestigious, prominent waterfront site, and may deter other more appropriate uses.
  - c. The juxtaposition of gambling uses with other uses which will attract families and young children is undesirable, particularly in the absence of detailed designs showing how the risk of harm to children will be obviated.
- (2) City of Southampton Society (CoSS), which supports the SCAPPS representation.
- (3) Friends of Town Quay Park (FTQP) a membership organisation representing the community of people who use Town Quay Park and the adjoining Cuckoo Lane Park, some of whom are people living in the local community who, they say, would be affected by the casino development. Its objections can be summarised as follows:
  - a. They are concerned about the impact on the tranquillity of the parks, which are important open spaces, particularly from those coming to and going from the casino.
  - b. They are also concerned about the impact on crime, safety and the noise environment caused by drift into the parks from users of the development, particularly in the current economic climate in which there is a reduction in public protection services.
  - c. They urge careful consideration of the ratio of gaming machines to gaming tables given the high staking limits of casino gaming machines, and wish particular scrutiny

to be paid to social responsibility measures and their high level oversight and control within the gambling organisations concerned.

- d. FTQP is also concerned about the impact of a 24 hour operation on the quality of life of residents and visitors.

As to these representations:

- The Committee takes the view that it cannot or should not take into account planning objections, since these are outside the legal or practical scope of the Gambling Act 2005 and the objectives which it seeks to promote. Furthermore, the Committee is conscious that, if this development is to proceed, it will require planning permission under a process which will consider whether in planning and policy terms the proposed uses are appropriate, together with the environmental impact on residents, visitors and park users. At that stage, it will obviously consider all representations in relation to the planning merits of the proposal. Furthermore, matters such as nuisance and general amenity are not matters for this Committee, and in any event the Committee is content that such matters will be carefully looked at by its planning colleagues in due course. It does, however, take the view that crime and disorder associated with gambling – which are expressly referred to in the licensing objectives - are properly matters for its consideration and deals with these matters below.
- The Committee is unable to consider the ratio of machines to gaming tables because the ratio is fixed by section 172 of the Gambling Act 2005 and section 172(10) precludes any interference on the matter.

The application also received representations from Hampshire Constabulary stating that the applicants are obliged to demonstrate that they are fit and proper persons to potentially be awarded the licence, but that the applicants are not holders of an operating licence which was considered to be a fundamental requirement. It was also stated that the applicants had failed to provide any evidence that might convince the Committee that they are fit and proper, having made no reference to age verification schemes or what form of identification would be required, and how children and other vulnerable persons would be protected from harm or exploitation by gambling. However, the representation was withdrawn on the morning of this hearing.

A similar representation was received by Southampton City Council as licensing authority, but the representation was withdrawn by the Council shortly before the hearing.

The applicant was represented by Stephen Walsh QC. He explained that the application was on behalf of developers for a provisional statement. He said that the development is at an early stage, and the application was made on the basis that, as the Gambling Commission envisages, a provisional statement application may be made. The successful applicant for a provisional statement at Stage 2 will need to make an application for a premises licence, at which stage interested parties and responsible authorities may make representations on any matters upon which representations could not have been made at Stage 1. These may include various matters which cannot be dealt with at this stage due to the formative nature of the proposals.

The development is a 35 acre site, 14 acres of which is to be reclaimed from the water. In essence, it is to provide for multi-use, 700 apartments, the large casino, 300 bedrooms of hotel space, 750,000

sq. ft of office space, 80,000 sq. ft. of retail space and multi-storey car parking, together with a new harbour. It is also proposed that the Mayflower Park be enlarged and re-landscaped with new recreation facilities, and that there be an extended public area along the waterfront. It is a £400m development.

He explained that no children would be able to gain admission to the casino.

As to the representations, he reiterated that the park would be extended, re-landscaped and furnished with new children's facilities. In relation to the representations regarding crime and disorder fall-out from the development, the whole development will be subject to consultation regarding layout and design, including designing out crime and nuisance, the incorporation of full CCTV, secure and monitored pedestrian routes, improved lighting and so forth. That must be in consultation with police, the Council and other stakeholders. It is a key part of how the development will be progressed.

Separately, he said, there will be an agreed dispersal policy for the casino, which will encompass the times of day for departure, the design of access routes etc, but because the development is at an early stage a chapter and verse could not be given. That is why the application is made for a provisional statement. In due course, the planning authority will be giving careful consideration and applying stringent conditions.

As to the operation of the casino, he explained that the application is for a provisional statement. The Gambling Commission says at paragraph 11.2 of its Guidance that the developer may apply for a provisional statement to test the principle of the development, and it is inherent in the provisions that the applicant may not have an operating licence at that stage, but would need to have one in order to obtain a premises licence at a later stage. The Gambling Commission publishes mandatory Licence Conditions and Codes of Practice as to the way in which the licensing objectives are to be promoted in gambling premises. If an application were to be made by Kymeira for a premises licence, by that stage there would need to be an operating licence in place, and in order to obtain that licence Kymeira would need to have satisfied the Gambling Commission of its compliance with the Licence Conditions and Codes of Practice.

Mr. Walsh explained that the controlled doors shown on the licence plan would permit exit from the casino to the restaurant, but not entry from the restaurant to the casino. He was content with a condition to that effect.

The Committee then heard from Graham Linecar for SCAPPS. He said there has been a great deal of disquiet as to what this process may result in for Southampton. The Royal Pier had been derelict for some time, but the City Centre Action Plan was the only plan on which there had been public consultation, and was awaiting the Inspector's report. The community had only had very limited information as to the aspiration for the Royal Pier site. There had been only one public consultation session, with no layout plans. This is the first step in choosing between 7 bids. Mr. Linecar said he would focus on one objective which was the protection of children from harm or exploitation. SCAPPS is objecting because the Action Plan set objectives for the Royal Pier area, including a replaced Mayflower Park with water frontage. SCAPPS had not seen plans for the layout. Until layout plans have been agreed, there must be concern that the applicants for the site cannot provide guarantees that a gambling premises next to a family-oriented area of land would not harm children.

As children are growing up, they are playing games leading them to be interested in, and tempted by, gaming machines. Despite entry policies which will prevent access, the very proximity of the casino to the park will present temptation. Children will be aware of the allure of the casino, right next to the park. A casino, he said, would be an unsuitable anchor enterprise for this location. He anticipated that the casino would be designed so as to prevent visibility of gambling from outside. But by its nature, gambling premises are inward looking, and this by itself would waste the opportunity for waterfront views. In the absence of detailed designs of the development as a whole, it is impossible for the Committee to be satisfied as to how children would be protected.

The Committee asked Mr. Linecar why this would cause more harm than the existing small casinos. He replied that this casino would be right next door to a park attractive to families and children.

The Committee asked whether there might not be greater usage of the park in the daytime and the casino at night, and therefore whether there would in reality be harm arising from the juxtaposition. He replied that the park was intended to provide for a wide range of different users at different times of day, and lighting may mean that it was not confined to day-time, particularly given its waterfront location. He was concerned that it broadened awareness of opportunities for gambling in the minds of children. He thought that there was a growing anxiety about how easy it is to get into gaming, including electronically, and this would be a further presence.

Mr. Linecar was asked how many people were in his group. The current membership was between 150 and 180. He accepted that he could not say he was accurately representing the views of a large number of people. But anecdotally he could say that many people are anxious about the same things. He said that he had held a Committee meeting at which there was a consensus about the objection. The meeting had been attended by 9 committee members, in accordance with its constitution.

Mr. Linecar did not wish to make closing submissions.

In making closing submissions, Mr. Walsh stated that there would be greater liaison as the full premises licence application and planning permission proceeded.

He accepted that there may be a condition providing that there should be no visibility of gambling facilities from the exterior of the building.

The Committee has considered, in accordance with Schedule 9 paragraph 4 of the Gambling Act 2005, whether it would grant this provisional statement if it had power to grant more than one premises licence for Southampton. The Committee's jurisdiction in that regard is governed by section 153 of the Gambling Act 2005 which requires the licensing authority to aim to permit the use of premises for gambling in so far as the authority thinks it:

- (a) in accordance with any relevant code of practice issued by the Gambling Commission;
- (b) in accordance with any relevant guidance issued by the Commission;
- (c) reasonably consistent with the licensing objectives (subject to (a) and (b));
- (d) in accordance with the authority's gambling licensing policy (subject to (a) – (c)).

In applying that test, the Committee may not have regard to the expected demand for the proposed facility (s 153)(3)) and nor may it have regard to whether the proposal is likely to be permitted in accordance with planning or building law (s 210). This approach applies both to the principle of the licence sought and to the application to exclude the default condition relating to hours of operation. The Committee may not have regard to information which is relevant at Stage 2 of the Schedule 9 procedure unless it is also relevant to the determination at Stage 1 (see Regulation 6 of the Gambling (Inviting Competing Applications for Large and Small Casino Premises Licences) Regulations 2008 and paragraph 4.4 of the Secretary of State's Code of Practice). Furthermore, the Committee may not at this stage have regard to whether any of the competing applications is more deserving of being granted (Schedule 9 paragraph 4(2)(a) Gambling Act 2005). The Committee confirms that it has obeyed all of these requirements.

The Committee is satisfied that Kymeira will be able to operate a casino which is regulatorily compliant, and that any casino would need to have an operating licence from the Gambling Commission which is subject to compliance with the Licence Conditions and Codes of Practice. This includes control of entry to prevent the admission of children.

The Committee has not considered the question of whether there may be crime and disorder in the vicinity arising from the operation of the casino. This is because there is no detailed design for the casino, nor detailed designs for the wider development. These are matters which may be considered in any future gambling premises licence application, the planning process and any application for a Licensing Act 2003 licence.

In the circumstances, the Committee is satisfied that the relevant tests have been met and that it is appropriate to make a provisional decision to grant the application.

For the avoidance of doubt, any eventual licence for these premises will be subject to the statutory conditions included under:

- sections 176(3) of the Gambling Act 2005 (as to compliance with the Commission's Code of Practice as to access for children and young persons);
- section 177 thereof as to the giving of credit;
- section 183, which prohibits the use of the premises for gambling on Christmas Day.

With the consent of the applicant, the Committee also attaches individual conditions:

- Prohibiting visibility of gambling facilities from the exterior of the premises.
- Preventing access directly from the restaurant into the casino via the doors marked "controlled doors."
- Requiring the operation of Challenge 25.
- Requiring the entry to the restaurant and any other secondary entrances to the casino to be supervised by staff who shall be SIA-qualified unless the need for such qualification is exempted under legislation, the controls at such entrances to be the same as those operated at the principal entrance.

The Committee was impressed with the Community Action on Responsible Gambling offered by a competitor and has considered whether to attach a condition to this grant requiring a similar scheme. It has decided not to, because it is confident that at Stage 2 the applicant will wish to offer a scheme which provides for community engagement and democratic accountability in the way it promotes socially responsible gambling.

Given that there are competing applications for the large casino licence, this is a provisional decision issued under Schedule 9 paragraph 4(2)(c) of the Gambling Act 2005. Since other applications have been successful at Stage 1, then those applications will join this one at Stage 2 of the competition.

#### Decision

The Committee therefore makes a provisional decision to grant the application for a provisional statement, to exclude the default condition as to hours of operation and to attach the individual conditions mentioned above.