

Report of the Head of Licensing and Registration

Report to Licensing Committee

Date: 18th October 2011

Subject: Large Casino - Application Process

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. The Gambling Act 2005 provides Leeds City Council with the opportunity to grant a Large Casino Premises Licence. Over the last year officers from Entertainment Licensing and City Development have been preparing the process and related documents. This includes a new section to be inserted in the Gambling Act 2005 Statement of Licensing Policy ("the Policy") and a full application pack.
2. The determination of the licence at both Stage 1 and Stage 2 will be a matter for Licensing Committee. Stage 1 will follow the same process as any other gambling premises licence. It is proposed that Stage 2 will follow a bespoke process.
3. This report outlines for members information on the proposed process for determining the large casino licence.

Recommendations

4. That Licensing Committee consider and approve in principle the proposed process for determining the large casino licence so that the Policy can be finalised for approval by full Council and a draft application pack can be developed for approval by Licensing Committee in January 2012.

1.0 Purpose of this report

- 1.1 To advise Licensing Committee of the proposed process for determining a large casino licence and seek approval in principle to allow finalisation of the relevant sections of the Policy and further development of the draft application pack.

2.0 Background information

- 2.1 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 the council and the applicant must complete before issuing a large casino licence. This includes:

- Updating the Statement of Licensing Policy to include a statement of the principles the council will apply when determining the casino applications.
- Development of an application pack which describes the procedure the council proposes to follow and how the principles will be applied when determining the licence.
- Commencement of the application process with an advertisement of the “competition” and a two stage application process:
 - Stage 1 follows the same process as for all gambling premises licence application determinations
 - Stage 2 follows an evaluation process which determines which of the competing applications would result in the greatest benefit to the authority’s area (this being the test set out in the Gambling Act itself).

- 2.2 Although the process at Stage 1 follows the same legislative process set out in the Gambling Act 2005 and applied to all gambling premises licence applications (similar to that used for Licensing Act applications), the Government gave authorities very little guidance as to how the process at Stage 2 is to be organised other than:

- applicants are to be given an equal opportunity
- that an authority may engage in discussions with applicants with a view to the particulars of the application being refined, supplemented or altered so as to maximise the benefits
- that an authority may not discuss the details of a person’s application with other applicants without the person’s permission; and
- that there has to be a protocol governing the storage of confidential information.
- that legal agreements may be made to secure the benefits offered conditional on the grant of a licence.

- 2.3 Beyond this there is no guidance at all and so the procedure appears to be for each authority to decide. There is no requirement for a public hearing or representations at Stage 2, merely a requirement that the authority come to a decision.

2.4 Casino Network

- 2.5 Since 2008, the 16 authorities who were given the ability to issue casino licences have been meeting monthly to discuss a consistent approach and to develop best practice. This group, called the Casino Network, has procured legal advice from Philip Kolvin QC, who is one of the countries leading Counsel in matters relating to licensing. Philip Kolvin has represented both local authorities and the industry in licensing matters for many years and is well respected.
- 2.6 The Casino Network sought legal advice on the application process, and a standard application pack was developed based on lessons learned from other authorities and best practice. All the authorities have adopted a similar approach based on this legal advice, in order to provide a consistent approach.

2.7 Executive Board

- 2.8 In March 2010 Executive Board provided steer on the principles the council will apply when making a determination of the casino licence. These principles underpinned the development of the Policy and have informed the development of the application process.

2.9 Development of Application Process

- 2.10 Officers from Entertainment Licensing have been working with officers from City Development, Legal Services and Procurement to put in place an application process which is robust and mitigates the risk of legal challenge by being fair and transparent. Officers sought specialist advice from other council departments, including Finance and Economic Development.
- 2.11 City Development (who are leading the project) determined that external advice was necessary to pull together a robust evaluation. External expertise was procured, using the council procurement process, from PriceWaterhouse Cooper. Officers worked with PwC to produce a method of evaluating the Stage 2 applications. (available as background papers).
- 2.12 As part of this work an evaluation matrix was developed which can be used to score the applications. Three evaluation categories were identified:
- **Financial Contribution** - The nature and scale of financial contribution the applicant will make to the council, in terms of upfront, annual, underwritten variable payments. This also addresses financial models and business forecasts submitted by applicants as well as commercial agreements. This supports the financial and the social principles of the policy
 - **Socio-economic benefits** - The applicant's vision and strategic objectives for the development including jobs, how this will address the strategic objectives set out in the policy, the expected net economic impact, and approach to mitigating any negative social impacts. This supports the social and economic principles of the policy

- **Risk and Deliverability** - Funding arrangements, commitments in the legal agreement, financial standing of applicants and implementation arrangements will be evaluated. This supports all three of the principles of the policy to ensure proposals are deliverable.

3.0 Main issues

3.1 Members are asked to consider the following application process:

3.2 Stage 1 Determination

3.3 The process begins with the council advertising the process in a national newspaper.

3.4 Once the application process has been advertised, applicants have three months in which to make their Stage 1 application. This will follow the same basic process as for all gambling licence applications and has the following steps:

- ♦ Application received by the Licensing Authority
- ♦ 28 days consultation period - advertised by site notice and newspaper advert
- ♦ If relevant representations are received, the application will be determined by a Licensing Committee hearing
- ♦ If no relevant representations are received the applications are automatically granted.
- ♦ Applicants are advised which applications would, if there were an unlimited number of licences available, be considered to be granted

3.5 At Stage 1 representations may be received from any responsible authority or interested party. The legislation provides that for the purpose of this process any other applicant can be considered to be an interested party, and it is expected that every application will receive a representation from at least one of the other applicants, as well as possible representations from members of the public.

3.6 It is proposed that Stage 1 is advertised in February 2012, which will lead to determination of Stage 1 taking place in June 2012.

3.7 Stage 2 Determination

3.8 Once Stage 1 has completed and the appeal period is over and any appeals dispensed with, the process will move into Stage 2. A letter will be written to all successful Stage 1 applicants advising them of the start of Stage 2, and inviting their initial applications.

3.9 The initial applications will be reviewed and negotiations will begin with each applicant with a view to the application being refined, supplemented or altered so as to maximise the benefits.

- 3.10 Once the negotiations have come to an end, applicants will be asked to make their final and best application. It is this application that will be scored against the evaluation matrix and each application will be scored against each sub-criteria and an overall score provided.
- 3.11 Licensing Committee will consider each application and determine which one, if granted, would bring the greatest benefit to the area.
- 3.12 Licensing Committee will make a “minded to grant” decision on their chosen applicant and instruct officers to finalise the legal agreement which will bind the applicant to the benefits proposed in their application. Once this is completed the Licensing Committee will reconvene to formally grant the licence.
- 3.13 Notice of rejection is then given to all the unsuccessful applicants
- 3.14 Use of an Advisory Panel
- 3.15 To assist in the evaluation applicants will be asked to provide a number of standard documents (detailed in **Appendix 1**) which will form the Stage 2 Application. This will allow a like-for-like comparison of the applications. From the experience of other councils who have already undergone this process it is expected that these documents will be extensive and fill at least an archive box, possibly two, per applicant. There is a requirement that the Stage 2 applications be kept securely and confidentially, and therefore tight document control will be important to ensure that confidentiality is not breached.
- 3.16 Officers consider that members will wish to draw on specialist advice in evaluating the applications, to provide detailed technical analysis especially in relation to areas relating to finance and credit assumptions, socio-economic impacts, health impacts, the credibility of the casino offer, and so on.
- 3.17 One option for this kind of evaluation would consist of an initial review by Licensing Committee, who would advise officers of which specialist they will require a report from. The report would be obtained and brought back to the Licensing Committee at a later date. However this approach would lead to excessive delays in the evaluation of applications, as each external advisor would need to be procured which is a process that can take up to three months.
- 3.18 In order to streamline the process and to keep control of documentation and timescales, Counsel strongly advises the use of an Advisory Panel to evaluate the applications, undertake negotiations and provide Licensing Committee with an evaluation report before they meet to determine the licence.
- 3.19 City Development are working on a detailed proposal for the Advisory Panel Terms of Reference which will be considered by Licensing Committee in January. However, the broad proposal is as follows:

- Advisory Panel will be completely independent of the decision making process, avoiding bias.
- They will undertake an initial review of the application and undertake the negotiation with applicants.
- Once the final application is received, the Advisory Panel will provide one report per application detailing the benefits offered and committed to, with an evaluation of how credible that offer is.
- The Advisory Panel will score each application using the standard scoring matrix provided in the Stage 2 Evaluation methodology.
- Advisory Panel will present each report to Licensing Committee and be available to respond to any questions about the evaluation. The Advisory Panel will not select a preferred applicant, but merely make an analysis of each application.

3.20 The benefit of this is:

- It will be easier to control timescales and to set realistic deadlines
- Specialist officers from the council will be able to plan and dedicate time to the process
- External advisors can be procured providing the best value for money for the council
- Expertise in negotiations and conclusion of legal documents
- The council can better ensure it meets the requirements of confidentiality and document control

3.21 Licensing Committee will then discuss the applications and the report from the Advisory Panel and select their preferred applicant. If further information is required, Licensing Committee may request this from the Advisory Panel before making their determination.

3.22 Licensing Committee will instruct the legal advisors to finalise the legal agreement and once this is done will reconvene to grant the licence.

3.23 In addition it is important that the members who start the evaluation process are the same members who make the final decision. This will be easier to achieve if member involvement is concentrated within a smaller timeframe.

3.24 Composition of Advisory Panel

3.25 City Development propose that wherever possible internal advisers are used to provide value for money. However there are some areas where the specialism required is outside of the expertise of the council. Specific details will follow but it is expected the panel would consist of the advisors as described in **Appendix 3**.

3.26 Process & Timetable

3.27 It is proposed that Advisory Panel will be managed by City Development who have similar expertise from major planning developments, including the drawing up of legal agreements under procurement processes and evaluating proposals from commercial operators and developers.

3.28 The proposed timetable is as follows:

Activity	Date
Advertisement of application process	Feb 2012
Stage 1 Committee hearings	Jun 2012
The applicants will submit information required by the Stage 2 Evaluation Methodology demonstrating how their application, if granted, would be likely to result in the greatest benefit to the council's area.	Jun 2012
Initial review of applications by Advisory Panel	Aug 2012
Dialogue meetings - applicants will be invited to participate in dialogue with the council in order to refine, supplement or otherwise alter their application in order to maximise the benefits to the council's area.	Sep 2012
Applicants will respond to the dialogue with a final and best application	Nov 2012
Advisory Panel's evaluation reports presented to Licensing Committee	Dec 2012
Selection of preferred applicant by Licensing Committee (minded to grant decision)	Dec 2012
Finalisation of Schedule 9 agreement (by legal advisors)	Dec 2012
Grant of licence	Dec 2012

3.29 The detailed process can be found in Stage 2 Guidance (**Appendix 2**).

4.0 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 Due to timescales and the desire to consult on the application pack alongside the policy, the application pack was presented to the public for consultation in July. This four week consultation did elicit one detailed response from the industry who queried some technical aspects of the application pack. The response to these comments have been included in the Statement of Licensing Policy consultation response (available as background papers), but will be considered further at a later date by Licensing Committee when the application pack is formally approved.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 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.

4.2.2 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 its 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.

4.3 Council Policies and City Priorities

4.3.1 The application pack 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.

4.4 Resources and Value for Money

4.4.1 The large casino provides the council with the opportunity to secure benefits for the city. Although the development of the revised Policy and application pack, as well as the upcoming application process has had a cost associated with it, the project is being delivered within the budget approved at Executive Board on 3rd March 2010.

4.5 Legal Implications, Access to Information and Call In

4.5.1 The application pack has received internal legal assurance from Legal Services and external legal assurance from Counsel. The only recourse for applicants is appeal to the Magistrates Court at the end of Stage 1 and Judicial Review of the decision made at the end of Stage 2. Therefore, the application pack has been developed with transparency and fairness as a prime consideration.

4.6 Risk Management

4.6.1 Licensing Committee can decide not to endorse the approach detailed in Section 3 and propose a different approach. However, this would result in the need to redevelop the application pack. This would impact on the project timescales and may incur additional costs for the council.

5 Conclusions

5.1 The application pack has been developed to meet both the statutory requirements and the need to be risk aware. The risk of legal challenge with this process is high, with the process being untested. There is a strong need to be open and transparent.

- 5.2 The application process is being presented to Licensing Committee in advance of the final draft application pack to ensure that Licensing Committee are aware of and approve the proposed approach in principle and to ensure that the various approvals required can take place at the required time and without changes to one aspect inadvertently affecting other approvals.

6 Recommendations

- 6.1 That Licensing Committee consider and approve in principle the proposed process for determining the large casino licence set out in this report so that the Policy can be finalised for approval by full Council and that the draft application pack can be developed for approval by Licensing Committee in January 2012.

7.0 Background documents (available from the report author)

- 7.1 Revised Gambling Act 2005 Statement of Licensing Policy 2010-2012
- 7.2 Gambling Act 2005 Statement of Licensing Policy Consultation Report
- 7.3 Stage 2 Evaluation Methodology

Appendices

1. Evidence to be supplied by applicants
2. Stage 2 Guidance