

Bath & North East Somerset Council

MEETING:	The Licensing Committee
MEETING DATE:	7 and 8 August 2012
TITLE:	To Consider and Determine Applications Under Stage Two of the Casino Competition for the Issue of a Provisional Statement for a Small Casino in Bath Applications by: Apollo Resorts and Leisure Limited, 24 Adam and Eve Mews, London, W8 6UJ Global Gaming Ventures, Millennium Bridge House, 2 Lambeth Hill, London, EC4V 4AJ
WARD:	ALL

AN OPEN PUBLIC ITEM

List of attachments to this report:

Annex A: Stage Two Application Pack

Annex B: Terms of Reference for Bath & North East Somerset Council's Licensing Committee and the Advisory Panel

Annex C: Application for Provisional Statement by Apollo Resorts and Leisure Limited

Annex D: Provisional Decision to Grant an Application for a Provisional Statement to Apollo Resorts and Leisure Limited

Annex E: Application for Provisional Statement by Great Eastern Quays Limited

Annex F: Provisional Decision to Grant an Application for a Provisional Statement to Great Eastern Quays Limited

List of attachments which are exempt from the public domain:

Annex G: Proposed Schedule 9 agreement between the Council and Apollo Resorts and Leisure Limited and Gala Casinos Limited

Annex H: Proposed Schedule 9 agreement between the Council and Global Gaming Ventures and others

Annex I: Final Report of the Casino Advisory Panel

Annex J: Representations made from Apollo Resorts and Leisure Limited

Annex K: Representations made from Global Gaming Ventures

1 THE ISSUE

- 1.1 Two applications have been received for the issue of a Provisional Statement at Stage Two of the Casino Competition (“the Competition”) and the Licencing Committee is asked to determine which application should be awarded the Provisional Statement.

2 RECOMMENDATION

- 2.1 The Licensing Committee is asked:

- 2.1.1 To determine which of the competing applications would, in the Committee’s opinion, be likely if granted to result in the greatest benefit to the Council’s area in accordance with Schedule 9 paragraph 5 of the Gambling Act 2005 and having regard to the ‘Guidance to Applicants’ (Annex **A (i)**), which sets out the process for the award of the Provisional Statement, the relevant section of the ‘Terms of Reference for Bath & North East Somerset Council’s Licensing Committee and the Advisory Panel’ (Annex **B**), the Gambling Commission’s Guidance to Licensing Authorities, the DCMS Code of Practice and the Council’s published Statement of Licensing Principles;
- 2.1.2 That the issue of any Provisional Licence should be subject to the successful applicant completing a Schedule 9 agreement offered at Stage Two;
- 2.1.3 That the completed Schedule 9 agreement be made a condition of the Provisional Statement pursuant to S.169 of the 2005 Act; and
- 2.1.4 To determine in accordance with Schedule 9 paragraphs 9(3) of the Act whether the Provisional Statement should cease to have effect at the end of a specified period and if so what period.

3 FINANCIAL IMPLICATIONS

- 3.1 The Committee must award the Provisional Statement to the applicant whose application is likely to result in the greatest benefit to the area.
- 3.2 It is open to Full Council to make a no casino resolution in which case there would be no competition at all and the Council would not be able to take advantage of the benefits which the successful applicant would have been able to deliver in the District.
- 3.3 Depending on the decision made by the Committee to award a Provisional Statement, it is open to the losing applicant to challenge this decision by way of Judicial Review.
- 3.4 The cost of running the competition, granting the licence and associated work is covered by a specific reserve of £300,000 plus £32,000 from the original bid applicants. Circa £70,000 of this remains and will be drawn down as required by Development and Major Projects.

3.5 The costs associated with the risk of Judicial Review are covered in the Robustness Statement.

4 THE REPORT

Background

4.1 The Licensing Authority (“the Authority”), was awarded permission to grant one small casino premises licence (“the licence”) in its area on 20 May 2008 under The Gambling (Geographical Distribution of Casino Premises Licences) Order 2008. This Order states that no more than one such licence issued by a licensing authority may have effect at any time.

4.2 The Council has resolved to take the necessary steps to issue the licence within its area pursuant to those Regulations, Part 8 and Schedule 9 of the 2005 Act and The Gambling (Inviting Competing Applications for Large and Small Casino Premises Licences) Regulations 2008 (“the 2008 Regulations”).

4.3 Under the 2005 Act a licence is required where an applicant intends to provide gambling facilities. The applications seek to provide gambling facilities in the form of a small casino. A small casino is classified, in The Categories of Casino Regulations 2008, as having a combined floor area of those parts of the casino, which are used for providing facilities for gambling, is equal to or exceeds 500 square metres, but is less than 1,500 square metres.

4.4 Under section 204 of the 2005 Act an applicant may apply for a provisional statement in respect of premises that he expects to be constructed or altered or expects to acquire a right to occupy. Once a provisional statement has been granted, an applicant can then apply for a licence once the relevant criteria have been met.

4.5 Stage One is a regulatory process under which the Council makes a provisional decision to grant a provisional statement / premises licence to any applicant who satisfies the regulatory test in section 153 of the Act. Stage Two is based on a competition whereby the Committee are asked to determine which application, if granted, is likely to result in the greatest benefit to the administrative area of the Council.

4.6 The Council published an advertisement in October 2010, inviting operators to participate in a competition for a Small Casino Premises Licence in Bath with a closing date of 28 February 2011. In accordance with the two stage process, Stage One of the regulatory assessment of applications has been completed. The provisional decisions to grant the applications for Provisional Statements, at Stage One, were made on 7 June 2011 to Apollo Resorts and Leisure Limited, and Gala Casinos Limited and on 8 June 2011 to Grosvenor Casinos Limited.

4.7 An application for a Provisional Statement was also received from Great Eastern Quays Limited (now known as Global Gaming Ventures Limited). As this application did not attract any relevant representations, the application was granted by officers under their delegated powers.

4.8 The Stage One decisions in respect of Apollo Resorts and Leisure Limited and Great Eastern Quays Limited are at Annexes **D** and **F** respectively

Stage Two Applications

4.9 The four applicants were invited to participate in Stage Two of the Competition on 28 July 2011 with a deadline of 11pm on 3 October 2011 for details of the bids to be submitted.

4.10 The Stage Two application pack documents listed below are attached at Annex **A**:

- Stage Two Application Form – Notes for Guidance (**A(ii)**)
- Stage Two Application Form (**A(iii)**)
- Scoring Matrix (**A(iv)**)
- Principles and Weightings (**A(v)**)
- Draft Schedule 9 Agreement (**A(vi)**)

4.11 The Council received two applications for Stage Two of the Competition. The Applicants were Apollo Resorts and Leisure Limited (“Apollo”) and Global Gaming Ventures Limited (“GGV”), formerly Great Eastern Quays Limited.

4.12 Apollo informed the Council on 30 September 2011 that it would be working in conjunction with Gala Casinos Limited (“Gala”) in submitting its application at Stage Two and, if Apollo’s application was successful, Gala would apply for a transfer of the licence to it. Gala also wrote to the Council on 29 September 2011 confirming this arrangement. GGV objected to the joint venture, and the proposed transfer of the licence, and considered that Apollo should be excluded from the competition on the basis of amongst other things, alleged unlawful anti-competitive practice. The Committee was asked to determine this issue and made a decision on 13 December 2011 that while they would take into account the nature of Apollo’s relationship with Gala to the extent that it was relevant, they would not exclude Apollo from the competition.

4.13 GGV submitted documentation in support of their bid on 5 October 2011 (after the deadline of 3 October 2011). The Committee exercised its discretion to accept late bids and made a decision on 13 December 2011 not to exclude GGV from the competition.

4.14 Apollo Resorts & Leisure Ltd – Walcot Street, Cattle Market car park

4.13.1 The application was lodged and spare copies were stored in a secure room within Council premises in accordance with the Protocol for Management of Information and Handing of Confidential Data adopted by the Council.

4.13.2 Copies of the Stage Two application form, plan of premises and supporting documentation submitted with the application form will be provided to Members at the meeting including correspondence with the Council and Casino Advisory Panel during Stage Two. Members have had the opportunity to view these documents before the meeting, and an invitation was sent out on 11 June 2012 by the Licensing department inviting Members to view the bids on an appointment basis.

4.13.3 A copy of the proposed Schedule 9 agreement to be made between Apollo, if successful at Stage Two, and the Council is attached as Annex G.

4.15 Global Gaming Ventures Ltd – Former Saw Close Clinic and Gala Bingo Hall, Saw Close, Bath

4.14.1 The application was lodged and spare copies were stored in a secure room within Council premises in accordance with the Protocol for Management of Information and Handing of Confidential Data adopted by the Council.

4.14.2 Copies of the Stage Two application form, plan of premises and supporting documentation submitted with the application form will be provided to Members at the meeting including correspondence with the Council and Casino Advisory Panel during Stage Two. Members have also had the opportunity to view these documents before the meeting, and an invitation was sent out on 11 June 2012 by the Licensing department inviting Members to view the bids on an appointment basis.

4.14.3 A copy of the proposed Schedule 9 agreement to be made between GGV, if successful at Stage Two, and the Council is attached as Annex H.

Schedule 9 Agreement

4.16 The Applicants have also been provided with a pro forma written Agreement (“the Agreement”) which is intended to secure provision of the benefits offered by the applicants and to ensure that the applications are judged on an equal basis, as contemplated by Schedule 9 of the Act.

4.17 Applicants have been invited to complete an Agreement to secure the benefits they are offering should they be awarded the Provisional Statement, together with the compensation they are offering should the casino development be delayed, or the benefits fail to materialise, or cease. The Agreement is likely to be made a condition of the licence, so that any breach will be subject to remedies under the 2005 Act. While it is not obligatory for applicants to offer to enter into the Agreement, this may affect the Authority’s evaluation of the benefit arising from the applications.

4.18 Members should note that negotiations with Apollo and GGV, concerning their respective Agreements, are continuing. Any subsequent updates will be made available at the hearing.

Casino Advisory Panel and Technical Advisors

4.19 An Advisory Panel (“the Panel”) was appointed by the Council to evaluate the Stage Two applications and draft a Report for the benefit of the Committee. The Panel produced a draft report and, following representations by both remaining applicants produced a final report which is attached as Annex I. The Panel is

not a decision-making body, and while the Committee will take the Panel's evaluations into account, it is not bound to follow them.

- 4.20 The Panel were required to carry out a comprehensive review of both applications and scored each submission against the Council's criteria provided in the Stage Two Application Pack and in accordance with the Principles and Weightings document (**A(v)**).
- 4.21 The process in Stage Two allows that the Panel may engage in discussions or negotiations with each Stage Two applicant with a view to the particulars of their application being refined, supplemented or otherwise altered so as to maximise the benefits to the Authority's area, should the application be granted.
- 4.22 The Draft Report and Scoring Matrix (which are appended within the Panel's Final Report as Annex G) were sent to each applicant and their representations to the drafts are attached at Annexes **J** (Apollo) and **K** (GGV).
- 4.23 The Panel was supported by Technical Advisors, who are experts in the fields of finance and the gaming industry, and were commissioned by the Authority to provide the Panel with support and advice on financial and operational issues. The Panel's Final Report refers to the reports of the Technical Advisors, which are appended within the Panel's Report as Annexes *D, E and F*).
- 4.24 The Committee is required to review the Panel's recommendations and scoring before commencing their own determinations.

Disclosure of Confidential Information

- 4.25 The Committee should be aware that a breach of confidentiality incident took place within the Council on 30 January 2012. The minutes of the Panel meeting with the applicants (held in December), and the minutes of the Officer's Clarification Meeting (held in January) intended for each applicant, were inadvertently sent to the other. The Council chose to temporarily suspend the Competition in order to consider its position.
- 4.26 Following discussions with the applicants and on obtaining legal advice, the Council decided to recommence the Competition on 10 April 2012, and the applicants were advised to submit their final proposals for the Panel to continue their evaluations.

5 RISK MANAGEMENT

- 5.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

6 EQUALITIES

- 6.1 An Equality Impact Assessment (Eq1A) has been completed. No adverse or other significant issues were found.

6.2 The Committee will take into account their equality duties in determining this issue.

7 CONSULTATION

7.1 No consultation was required for this issue.

8 ISSUES TO CONSIDER IN REACHING THE DECISION

8.1 Human Rights.

9 ADVICE SOUGHT

9.1 The Council's Monitoring Officer (Divisional Director – Legal and Democratic Services), Section 151 Officer (Divisional Director - Finance), Divisional Director of Environmental Services, and Information Compliance Manager have had the opportunity to input into this report and have cleared it for publication.

Contact person	<p>Janice D'Costa, Casino Project Manager, 07530 263 365</p> <p>Andrew Jones, Environmental Monitoring and Licensing Manager, 01225 477557</p>
Background papers	<p>The Gambling Act 2005</p> <p>The Gambling (Geographical Distribution of Casino Premises Licences) Order 2007</p> <p>The Gambling (Inviting Competing Applications for Large and Small Casino Premises Licences) Regulations 2008</p> <p>The Categories of Casino Regulations 2008</p> <p>Code of Practice - Determinations under Paragraphs 4 and 5 of Schedule 9 to the Gambling Act 2005 relating to Large and Small Casinos dated 26 February 2008</p> <p>Guidance to Licensing Authorities issued by the Gambling Commission 3rd Edition dated May 2009</p> <p>B&NES Statement of Principles dated February 2010</p>
<p>Please contact the report author if you need to access this report in an alternative format</p>	