

## Agenda Item 9.g

### Report of the Cabinet Member for Place

Cabinet – 11 February 2014

#### PROPOSAL TO CONSULT ON PASSING A RESOLUTION NOT TO ISSUE CASINO LICENCES

<b>Purpose:</b>	To seek agreement for the proposed amendments to the Council's Statement of Principles, Gambling Act 2005 (Gambling Policy), in respect of a proposal to pass a resolution not to issue casino licences (a No Casino Resolution), to be issued for consultation.
<b>Policy Framework:</b>	Gambling Policy, January 2013 - 2016.
<b>Reason for Decision:</b>	To enable the Authority to comply with the consultation requirements of the Gambling Act 2005 prior to reporting to Council for decision.
<b>Consultation:</b>	Finance, Legal, Access to Services.
<b>Recommendation(s):</b>	1) To agree that the proposed amendments to the Gambling Policy be issued for consultation prior to reporting to Council for decision.
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#### 1.0 Introduction

1.1 The Gambling Act 2005 (the Act) contains the regulatory system to govern the provision of gambling in the UK. It requires all licensing authorities to prepare and publish a statement of the principles that they propose to apply in exercising their functions in respect of gambling.

1.2 The policy must be reviewed every three years but it can be reviewed and revised by the authority at any time.

1.3 The licensing authority must consult on any revisions of the policy.

## **2.0 No Casino Resolution.**

2.1 One of the provisions of the Act allows a licensing authority to pass a resolution not to issue casino premises licences (a No Casino Resolution). The decision to pass such a resolution may only be taken by Council and must be published in the authority's Gambling Policy. In making this decision the authority may take into account any principle or matter, not just the licensing objectives. The licensing objectives in respect of the Gambling Act 2005 are:

- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime;
- Ensuring that gambling is conducted in a fair and open way;
- Protecting children and other vulnerable persons from being harmed or exploited by gambling.

## **3.0 The effect of a No Casino Resolution.**

3.1 Once made the resolution will last for 3 years and the Authority would need to pass a resolution every 3 years to keep the policy in place. The resolution must specify the date it comes into effect and it may also be revoked by passing a further resolution which would also be subject to a further consultation

3.2 A No Casino Resolution will only affect new casinos. It will not have any effect on casino premises that were originally licensed under the Gaming Act 1968, casino premises licences issued before the resolution takes effect or on provisional statements issued before that date. An applicant can apply for a provisional statement in respect of premises that have not yet been constructed, are to be altered or an applicant expects to acquire rights to occupy. A provisional statement allows an applicant to judge if a development is worth taking forward. Once the premises are constructed, altered or acquired the holder of a provisional statement can then apply for a premises licence which can only be refused or the terms agreed modified, if circumstances have changed since the provisional statement was issued.

3.3 There are 4 casino licences in force in Swansea. These licences relate to premises that were previously licensed under the Gaming Act 1968. Only one of the premises licensed is currently operating as a casino. There are no provisional statements currently in force.

3.4 The Authority was awarded the power to grant a new small casino premises licence on the 19<sup>th</sup> May 2008. Passing the resolution will affect the issue of this premises licence as the Authority will not be able to grant the licence whilst the resolution is in force.

## **4.0 The Small Casino**

4.1 A "small casino" is defined in the Act. It must have a minimum total customer area of 750m<sup>2</sup> and can offer casino games, betting and up to 80 gaming machines provided that a maximum ratio of 2:1 gaming machines to tables is met.

4.2 The process for licensing the small casino requires the licensing authority to invite applications for the premises licence. The invitation to apply for the casino premises licence has not yet been published.

4.3 To enable the authority to publish the invitation in accordance with the requirements of the Act a considerable amount of preparatory work is required, including changes to the Gambling Policy and the associated consultation process. The extended period of economic downturn currently being experienced has also meant that there has been only limited interest in the new casino licence from casino operators. Both these factors have resulted in the delay in taking the application process forward.

#### **5.0 Current Position**

5.1 Since the original bid for the new casino licence was submitted there have been changes in the focus of the Authority's priorities and commitments to improving the wellbeing of people in Swansea. Tackling poverty was adopted by Full Council as a top priority for the City and County of Swansea on 26 July 2012.

5.2 Swansea has an above average level of deprivation, with 17 (12%) of its 147 Lower Super Output Areas (LSOAs) now ranked in the top 10% most deprived in Wales, as measured by the Wales Index of Multiple Deprivation 2011. In terms of the overall index, the most deprived LSOAs in Swansea are in Townhill, Penderry and Castle. In response to this, Council adopted the "Target Area Approach" to tackling poverty in February 2013.

5.3 Research on the social impacts of gambling, carried out in Scotland on behalf of the Scottish Executive in 2006 shows that disadvantaged social groups who experience poverty, unemployment, dependence on welfare, and low levels of education and household income are most likely to suffer the adverse consequences of increased gambling. Problem gambling can lead to debt, divorce, crime, depression and also suicide, all of which can have a negative impact on communities, particularly those already experiencing the stresses of life on a low income. This is a particularly important consideration in view of the current economic climate.

#### **6.0 Proposal to Pass a No Casino Resolution**

6.1 Taking into account the Authority's commitment to addressing poverty in Swansea, its impact on communities and concern about the adverse social and financial consequences of increased and problem gambling, the Licensing Authority is now proposing to pass a No Casino Resolution. This is subject to the results of the proposed consultation on the amendments to the Gambling Policy and the decision of Council.

6.2 In addition to paragraph 6.1 of this report it is considered that licensing objective 3, "Protecting children and other vulnerable persons from being harmed or exploited by gambling" is also relevant in this case. The term "vulnerable persons" is not defined but the statutory guidance produced by the Gambling Commission states that for regulatory purposes it must be assumed that this group includes people who gamble more than they want to,

people who gamble beyond their means and people who are unable to make informed or balanced decisions about gambling.

## **7.0 Proposed changes to the Gambling Policy**

**7.1** If a No Casino Resolution is passed this must be published in the Gambling Policy. If the Gambling Policy is revised authorities must consult on any revision. It is proposed that the existing Gambling Policy is amended and that the proposed amendments are issued for consultation. The consultation undertaken will detail the issues contained in paragraphs 5 and 6 of this report and a copy of the amended Gambling Policy will also be circulated.

**7.2** The proposed amendments to the Gambling Policy are identified in bold italic type in the extract relating to casinos, attached at Appendix A to the report. The information to be removed is identified by striking through the relevant text.

**7.3** The amendments proposed are listed below:

- A paragraph to be added stating that the Licensing Authority has passed a resolution not to issue casino licences and how the decision was reached; (paragraph 3.7.1)
- A paragraph to be added stating that applications for a casino premises licence will not be considered and will be returned to the applicant; (paragraph 3.7.2)
- A paragraph to be added confirming that the resolution will not affect existing casino premises; (paragraph 3.7.3)
- A paragraph to be added stating that the resolution will last for 3 years; (paragraph 3.7.4)
- Existing paragraph 3.7.1, which states that there is no resolution to prohibit casinos at present to be removed;
- The wording in paragraph 3.7.7 has been amended;
- A paragraph to be added stating that as the City and County of Swansea has been authorised to issue a small casino premises licence it is required to set out the principles it would apply in determining such an application, notwithstanding that it has passed a resolution not to issue casino licences; (paragraph 3.7.9). These principles are contained in paragraphs 3.7.10 – 3.7.31.
- The paragraphs have been renumbered due to the amendments.

**7.4** Existing licence holders, representatives of persons carrying on gambling businesses, statutory bodies, representatives of interested parties and City and County of Swansea Members will be consulted.

## **8.0 Equality and Engagement Implications**

- 8.1 An Equalities Impact Assessment Screening Form has been completed with the agreed outcome that a full Equalities Impact Assessment report is not required. Legislation prescribes who must be consulted regarding the policy changes.

## **9.0 Financial Implications**

- 9.1 Acceptance of the proposed amendment would mean the City foregoing the possibility of potential financial benefits from the development of a Casino for up to the next three years, although there appears to be a lack of interest from potential casino operators in the current economic climate.

## **10.0 Legal Implications**

- 10.1 The Authority's original submission of a bid to the Government's Casino Advisory Panel for the Licence was subject to a willingness to licence and the Authority made representations to demonstrate its commitment to licence if it was awarded the power to grant a large/small licence.
- 10.2 Authorities unable to demonstrate a willingness to commit to the grant of a licence were not considered.
- 10.3 At this time there is no deadline imposed for granting the Licence.
- 10.4 A no casino resolution is a non executive function and cannot be delegated therefore it has to be passed by full Council .The resolution must be published in the Authority's Gambling Policy before being given effect and will require consultation .

## **Background Papers**

City and County of Swansea, Statement of Principles, Gambling Act 2005  
Equalities Impact Assessment Screening Form

## **Appendices:**

Appendix A – Extract from the City and County of Swansea Statement of Principles (Gambling Policy), Gambling Act 2005

EXTRACT FROM  
CITY AND COUNTY OF SWANSEA  
STATEMENT OF PRINCIPLES (GAMBLING POLICY)  
GAMBLING ACT 2005  
DRAFT AMENDMENT 2014

(THE AMENDMENTS ARE DRAFT AND WILL NOT TAKE EFFECT UNLESS APPROVED BY COUNCIL FOLLOWING THE CONSULTATION)

**3.7 Casinos**

**3.7.1** *On the "date to be inserted" 2014, the City and County of Swansea acting as a Licensing Authority agreed to pass a resolution not to issue casino licences under Section 166 of the Act. This resolution came into effect on the "date to be inserted" 2014. The decision followed a consultation process and consideration of the responses received.*

**3.7.2** *A potential applicant for a casino premises licence should be aware that this resolution has been passed and that applications for a casino premises licence will not be considered by this Authority. Any application received will be returned and the applicant informed that a resolution not to issue casino licences is in place for the City and County of Swansea.*

**3.7.3** *This resolution will not affect existing casino premises licences including any applications for variations or transfers of these licences.*

**3.7.4** *The resolution will last for a period of 3 years from the date it takes effect. After this time the Authority may pass a new resolution not to issue casino premises licences.*

~~**3.7.1.** There is no resolution to prohibit casinos at present, although the Authority reserves the right to review this situation and may at some time in the future resolve not to permit casinos. Should the Authority decide to pass such a resolution, this will be a decision of Full Council. This Policy will be updated with details of any such resolution.~~

**3.7.5** In 2006, the City and County of Swansea submitted a proposal to the Independent Casino Advisory Panel to license one Large and one Small casino. On 19 May 2008 the Categories of Casino Regulations 2008 and the Gambling (Geographical Distribution of Large and Small Casino Premises Licences) Order 2008 were made. The latter Order specifies which Licensing Authorities may issue Large and Small Casino Premises Licences. The City and County of Swansea was one of the eight authorities authorised to issue a Small Casino Premises Licence.

**3.7.6** On 26 February 2008, the Secretary of State for Culture Media and Sport issued the Code of Practice on Determinations under Paragraphs 4 and 5 of Schedule 9 to the Gambling Act 2005, relating to Large and Small Casinos, which sets out: -

**3.7.6.1** the procedure to be followed in making any determinations required under Paragraphs 4 and 5 of Schedule 9 to the Gambling Act 2005; and

**3.7.6.2** matters to which the Licensing Authority should have regard in making those determinations.

**3.7.7** The Licensing Authority is permitted to grant a Premises Licence for a Small Casino. ~~It is likely that a number of operators will wish to operate the casino.~~ **To grant a casino premises licence the Licensing Authority is required to** publish an invitation for applications to be made for a Small Casino Licence under Schedule 9 of the Gambling Act 2005 and will determine the applications received in accordance with The Gambling (Inviting Competing Applications for Large and Small Casino Premises Licences) Regulations 2008, the Department for Culture Media and Sport's Code of Practice and the Gambling Commission's Guidance to Licensing Authorities.

**3.7.8** There are potentially two stages to the determination process. In making a determination required by Paragraph 4 of the Schedule, the Licensing Authority must apply the procedure for assessing applications for premises licences which it ordinarily applies to such applications (Casino Application Stage 1). Where the Licensing Authority determines that it would, if it were able, grant more than one of the Stage 1 applications, the applicants who made those applications would be invited to participate in Casino Application Stage 2.

**Note: paragraphs 3.7.7 & 3.7.8 do not apply whilst the resolution not to issue casino licences is in force**

**3.7.9 As the City and County of Swansea has been authorised to issue a small casino premises licence it is required to set out the principles it would apply in determining such an application, notwithstanding that it has passed a resolution not to issue casino licences.**

### **General Principles**

**3.7.10** Subject to the provisions in the Act, any person may make an application. The Licensing Authority will determine each application according to criteria which are: -

**3.7.10.1** the same for all applicants;

**3.7.10.2** made known to all applicants;

**3.7.10.3** not pre-selected to favour a particular applicant or application.

**3.7.11** The Licensing Authority shall ensure that any pre-existing contract, arrangements or other relationship with a company or individual does not

affect the procedure for assessing applications so as to make it unfair or perceived to be unfair to any applicant. The Licensing Authority shall therefore disregard any contract, arrangement or other relationship.

**3.7.12** The Licensing Authority recognises that applicants may either apply for a full Casino Premises Licence or alternatively a Provisional Statement. Applicants for full Premises Licences however must fulfil certain criteria in that they must:

**3.7.12.1** hold or have applied for an Operating Licence; and

**3.7.12.2** have the right to occupy the premises in question.

Unless otherwise specified, any reference to the application and procedures for a 'premises licence' for a casino in the following parts of this section of this document shall also include the application and procedures for a 'provisional statement' for a casino.

**3.7.13** In making any decision in respect of an application, the Licensing Authority shall not have regard to whether or not a proposal by the applicant is likely to be permitted in accordance with the law relating to planning or building regulation and any decision shall not constrain any later decision by the Authority under the law relating to planning or building.

**3.7.14** The Licensing Committee will make the determination on casino licence applications at Stage 1 and at Stage 2. During Stage 2, the Licensing Committee will be supported by an Advisory Panel of Officers and others with appropriate experience.

**3.7.15** In accordance with the Code of Practice issued by the Secretary of State, the Licensing Authority will ensure that there is a Register of Interest in place disclosing interest in any contract, arrangement or other relationship with an applicant or a person connected or associated with an applicant. Applicants should note that this does not apply to any agreement between the Licensing Authority and applicant entered into during Stage 2 of the application process.

#### **Casino Application Stage 1**

**3.7.16** The Licensing Authority will provide an Application Pack which will include a statement of the principles that it proposes to apply and the procedure that it proposes to follow in assessing applications for the Small Casino Premises Licence.

**3.7.17** At this stage, the Licensing Authority cannot accept any additional information other than the prescribed application form laid down in The Gambling Act 2005 (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007. All such additional information will be disregarded and returned to the applicant.

**3.7.18** With regard to Stage 1, the General Principles as stated in Part B - Paragraph 3.0 of the Gambling Policy shall apply to all applications.

**3.7.19** The Licensing Authority recognises that each of the other applicants is considered as an 'interested party' and as a result may make representations.



It is recognised that the Licensing Authority's decision at Stage 1 may be appealed against, in which case the Licensing Authority will not proceed further until all appeals have been dealt with.

3.7.20 If this process results in more than one provisional decision to grant a Premises Licence, Casino Application Stage 2 will be implemented.

### **Principles to be applied to casino application Stage 2**

3.7.21 The Licensing Authority will apply to Stage 2 the following principles in determining whether or not to grant a Casino Premises Licence: -

- 3.7.21.1 Any provision that is made for the protection of children and other vulnerable people from harm or exploitation arising from gambling, whether in the proposed casino or the wider community;
- 3.7.21.2 Any provision that is made for preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
- 3.7.21.3 Any provision that is made for ensuring that gambling is conducted in a fair and open way;
- 3.7.21.4 Likely effects of an application on employment and regeneration in Swansea;
- 3.7.21.5 Design and location of the proposed development;
- 3.7.21.6 Range and nature of non gambling facilities to be offered as part of the proposed development;
- 3.7.21.7 Any financial and other contributions;
- 3.7.21.8 The deliverability of the proposals contained in the applications.

3.7.22 In determining which application is likely to result in the greatest benefit to Swansea, the Licensing Authority has set out matters which are likely to receive the greatest weight (Appendix C). However, an applicant is not debarred from putting forward other benefits which the Licensing Authority will consider and weight to the extent that it considers them relevant.

3.7.23 Although applicants are able to submit an application for any location within Swansea which will be judged on its own individual merits, the Licensing Authority is provisionally of the view that the locations for the Small Casino likely to bring the greatest benefit to Swansea are:

- 3.7.23.1 Swansea city centre;
- 3.7.23.2 Swansea waterfront.

## **Casino Application Stage 2**

- 3.7.24 The Licensing Authority will agree and implement a protocol governing the storage of confidential information submitted during Stage 2 of the application process so as to maintain confidentiality.
- 3.7.25 At this Stage, applicants will be required to state the benefits their applications, if granted, would bring to Swansea.
- 3.7.26 The Licensing Authority will *itself* evaluate all applications and *make the decision* to grant the available Small Casino Premises Licence to the applicant that in its opinion will result in the greatest benefit to Swansea.
- 3.7.27 The Licensing Authority may enter into a written agreement with an applicant and may determine to attach conditions to any licence issued so as to give effect to any agreement entered into. The Licensing Authority may have regard to the effect of any agreement so entered in making the determination on the applications.
- 3.7.28 The Advisory Panel, appointed by the Licensing Authority, will carry out a preliminary assessment of each Stage 2 application. Following the preliminary assessment, the Advisory Panel may engage in discussions or negotiations with each Stage 2 applicant with a view to the particulars of an application being refined, supplemented or otherwise altered so as to maximise the benefits to the Authority's area that would result from it, were it granted.
- 3.7.29 The Advisory Panel will assess each bid according to criteria set out in the Application Pack. The applicant will be sent the Advisory Panel's assessment of its application to enable the applicant to correct any factual errors or (without providing new information) make representations as to the assessment.
- 3.7.30 The Advisory Panel will then provide a final written report to the Licensing Committee which will include its recommendation as to the correct band for each criterion, its qualitative assessment and also the applicant's response. The Licensing Committee will consider the Advisory Panel's report and will determine the precise score for each criterion. The Licensing Committee will not take further evidence or representations made by the applicants but will then make its decision. Any legal advice required shall be supplied by the Solicitor acting for the Licensing Authority. The Licensing Authority will accept or reject any advice given as it considers appropriate.
- 3.7.31 All Stage 2 applicants will be informed of the decision and reasons for approval or rejection as soon as is reasonably practicable. It is noted that once a decision has been made there will be no right of appeal.