

PROVINCE OF THE WESTERN CAPE

PROVINSIE WES-KAAP

# Provincial Gazette Extraordinary

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### PROVINCIAL NOTICE

The following Draft Bills and Draft Regulations are published for comment:

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Any person or organisation wishing to comment on the Draft Bill or Draft Regulations is requested to lodge the comments in writing before or on 7 July 2020—

- (a) by posting the comments to:  
Ms Claire Horton  
Provincial Treasury  
Private Bag X9165  
Cape Town 8000;
- (b) by e-mailing the comments to:  
Claire.Horton@westerncape.gov.za;
- (c) by faxing the comments to:  
Fax no. 021 483 4680; or
- (d) by delivering the comments to:  
Ms Claire Horton  
Provincial Treasury  
Room 307 (3rd Floor)  
Provincial Building  
7 Wale Street  
Cape Town 8001.

The name, telephone, e-mail and/or fax number, and address of the person submitting the comment should be clearly indicated.

For queries contact Ms Claire Horton at 021 483 6037.

**The Afrikaans and isiXhosa translations of the Draft Bills and Draft Regulations will be published at a later date.**

**PROVINCIAL NOTICE**

The following Provincial Notices are published for comment.

MR H.C. MALILA,  
DIRECTOR-GENERAL

Provincial Legislature Building,  
Wale Street,  
Cape Town.

P.N. 34/2020

8 May 2020

**GENERAL EXPLANATORY NOTE:**

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.

**DRAFT WESTERN CAPE TWENTIETH GAMBLING AND RACING  
AMENDMENT BILL, 2020**

To amend the Western Cape Gambling and Racing Act, 1996, so as to insert a new definition; to delete a provision that requires the Western Cape Gambling and Racing Board to conduct a hearing for certain purposes; to do away with development applications; to do away with land-use matters; to provide for the types of applications that a member of the public may object to or comment on; to regulate anew the amendment of licences; to regulate anew the relocation of businesses or activities; to regulate anew exclusivity in respect of the operation of a casino; to make further provision for regulations and rules; to effect certain textual improvements; and to provide for matters incidental thereto.

**BE IT ENACTED** by the Provincial Parliament of the Western Cape, as follows:—

**Amendment of section 1 of Act 4 of 1996, as amended by section 4 of Act 4 of 1997, section 1 of Act 10 of 1997, section 1 of Act 4 of 1999, section 1 of Act 11 of 2000 and sections 1 and 3 of Act 4 of 2006**

**1.** Section 1 of the Western Cape Gambling and Racing Act, 1996 (Act 4 of 1996)(the principal Act), is amended in subsection (1)—

(a) by the insertion after the definition of “Chief Executive Officer” of the following definition:

“ ‘City of Cape Town’ means the geographical area of the City of Cape Town, a metropolitan municipality as defined in the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), established in terms of Provincial Notice 479/2000 in *Provincial Gazette* 5588 of 22 September 2000, which area was determined by the Municipal Demarcation Board in terms of the Local Government: Municipal Demarcation Act, 1998 (Act 27 of 1998), and is set out in the maps in Schedules V and VI;”;

(b) by the deletion of the definition of “Development application”;

(c) by the insertion after the definition of “Gambling machine” of the following definition:

“ ‘Helderberg area’ means the Helderberg area of the City of Cape Town;” and

- (d) by the insertion after the definition of “Province” of the following definition:  
“ ‘Provincial Government’ means the Western Cape Government;”.

**Amendment of section 18 of Act 4 of 1996, as amended by section 16 of Act 4 of 1997 and section 7 of Act 11 of 1997**

**2. Section 18 of the principal Act is amended—**

- (a) by the substitution for paragraph (a) of subsection (8) of the following paragraph:  
“(a) investigations into or matters concerning private information in respect of any applicant for a licence or the amendment of a licence;”; and
- (b) by the substitution for paragraph (d) of subsection (8) of the following paragraph:  
“(d) when deliberating on any matter the publication of which may, in the opinion of the Board, enable any applicant for a licence or the amendment of a licence to procure an unfair advantage over any other applicant.”.

**Amendment of section 23 of Act 4 of 1996, as amended by section 20 of Act 4 of 1997, section 8 of Act 10 of 1997, section 2 of Act 4 of 1999, section 4 of Act 1 of 2003 and section 1 and 10 of Act 4 of 2006**

**3. Section 23 of the principal Act is amended—**

- (a) by the substitution in subsection (1) for subparagraph (i) of paragraph (a) of the following subparagraph:  
“(i) an application for a licence, or the amendment of a licence, under this Act;”;
- (b) by the substitution in subsection (1) for subparagraph (i) of paragraph (b) of the following subparagraph:  
“(i) any applicant for a licence or the amendment of a licence;”;
- (c) by the deletion of subsection (2); and
- (d) by the substitution for subsection (5) of the following subsection:  
“(5) At any hearing in respect of an application for a licence, or the amendment of a licence, under this Act, the person applying for **[such a]** the licence or the amendment of the licence and any person objecting to the granting of **[such a]** the licence or the amendment of the licence shall be entitled to appear before the Board and to call witnesses in support of the application or objection and to cross-examine any other witness.”.

**Repeal of section 32A of Act 4 of 1996, as inserted by section 10 of Act 10 of 1997 and amended by section 1 of Act 4 of 2006**

**4. Section 32A of the principal Act is repealed.**

**Repeal of section 32B of Act 4 of 1996, as inserted by section 10A of Act 10 of 1997**

5. Section 32B of the principal Act is repealed.

**Amendment of section 33 of Act 4 of 1996, as amended by section 1 of Act 4 of 2006**

6. Section 33 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) [Any body which or] A person who wishes to object to or comment on any application made [for a licence] under this Act that is published in terms of section 32(2)(a) may do so by giving written notice thereof to the Board and setting out the grounds of the objection or comment in the prescribed manner.”.

**Amendment of section 34 of Act 4 of 1996, as substituted by section 28 of Act 4 of 1997 and amended by section 1 of Act 4 of 2006**

7. Section 34 of the principal Act is amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“By submitting an application [for a licence] under this Act, the applicant consents that the Board or any member or authorised officer thereof may—”.

**Amendment of section 35 of Act 4 of 1996, as amended by section 29 of Act 4 of 1997, section 11 of Act 10 of 1997, section 5 of Act 4 of 1999 and sections 1 and 16 of Act 4 of 2006**

8. Section 35 of the principal Act is amended—

(a) by the substitution in subsection (3) for subparagraph (iii) of paragraph (a) of the following subparagraph:

“(iii) the development is not undesirable within the specific geographical environment, with reference to social, religious, educational, cultural, economic, environmental[,], and transport [**and land-use**] aspects;”;

(b) by the substitution for subsection (4) of the following subsection:

“(4) After consideration of an application and, if applicable, of any objections thereto or any hearing, investigation or enquiry in connection therewith, the Board may—  
(a) refuse the application;  
(b) grant the application; or  
(c) postpone the consideration of the application,  
subject to any terms it sees fit.”.

**Insertion of section 35A in Act 4 of 1996**

9. The following section is inserted in the principal Act after section 35:

**“Amendment applications, corrections and change of details of certain premises**

**35A.** (1) Subject to subsection (2) and sections 41(1) and 41B(1), (3) and (4), a licence holder may apply to the Board for the amendment of any details specified in the licence held by the licence holder.

(2) The following may not be amended in terms of subsection (1):

- (a) the duration of a licence other than a temporary licence; or
- (b) the details of the premises specified in a licence contemplated in section 27(dA), (j), (kA) or 47.

(3) A licence holder that applies for the amendment of a licence shall pay the prescribed application fee.

(4) The provisions of sections 32, 33 and 35(1), (2) and (4) apply, with the necessary changes, to amendment applications, subject to subsections (5) and (6).

(5) The Board may dispense with the requirements of section 32(2) in respect of an amendment application where a decision by the Board in terms of section 35(4) will affect only the applicant.

(6) The provisions of sections 32(1)(a) and 35(4) do not apply to an application contemplated in section 41B(1) relating to the relocation of a casino.

(7) The Board may correct any error in a licence.

(8) The provisions of subsections (3), (4) and (5) do not apply to the correction of any error in a licence.

(9) Notwithstanding subsection (8), section 35(1) applies, with the necessary changes, to a request by a licence holder to the Board to correct any error in the licence held by the licence holder.

(10) The Board may not impose any fee or charge upon a licence holder for correcting any error in a licence, changing the details of a premises following a request contemplated in section 41B(4), or issuing an amended licence to the licence holder after correcting the errors or changing the details of the premises following the request.

(11) Subsection (10) does not apply to the correction of an error that was caused by a licence holder providing incorrect information to the Board.

(12) Where the Board grants an amendment application, corrects any error in a licence, or receives a request to change the details of a premises as contemplated in section 41B(4), the Chief Executive Officer shall, on production by the licence holder of the current licence, and subject to section 41B(13), cause an amended licence to be issued to the licence holder.”.

**Amendment of section 37 of Act 4 of 1996, as amended by section 31 of Act 4 of 1997 and sections 1 and 17 of Act 4 of 2006**

10. Section 37 of the principal Act is amended—

(a) by the insertion in subsection (1) after paragraph (l) of the following paragraph:

“(lA) relating to the relocation of a business or activity authorised by a licence, including the following matters:

- (i) the submission to the Board of reports on—
  - (aa) compliance with existing conditions of a casino operator licence contemplated in section 41B(5)(g);
  - (bb) the progress made by the holder of a casino operator licence to relocate a casino;
  - (cc) the upholding of commitments contemplated in section 41B(6), where applicable;
- (ii) any other matter contemplated in section 41B(5);
- (iii) any matter relevant to the relocation of a business or activity authorised by a licence set out in this section;”;

(b) by the deletion of paragraph (m) of subsection (1).

**Amendment of section 41 of Act 4 of 1996, as substituted by section 35 of Act 4 of 1997 and amended by section 10 of Act 11 of 1997, section 7 of Act 4 of 1999, sections 1 and 19 of Act 4 of 2006 and section 5 of Act 7 of 2013**

11. Section 41 of the principal Act is amended by the deletion of subsections (2) and (3).

**Insertion of section 41B in Act 4 of 1996**

12. The following section is inserted in the principal Act after section 41A:

**“Relocation**

**41B.** (1) Subject to subsections (2) and (22), if the holder of a licence contemplated in section 27(a), (e), (f), (g) or (hB) wishes to relocate the business or activities authorised by the licence from one premises to another, the licence holder shall apply to the Board in terms of section 35A(1) to amend the details of the premises specified in the licence.

(2) Subsection (1) does not apply to a person who holds a national employment licence as contemplated in the National Act.

(3) If the holder of a licence contemplated in section 27(dA), (j), (kA) or 47 wishes to relocate the business or activities authorised by the licence from one premises to another, the licence holder shall apply to the Board for the relevant licence for the proposed premises.

(4) Where the holder of an operator licence other than a casino operator licence relocates its administrative office where gambling activities do not take place, from one premises to another, it shall inform the Board of the relocation and, where applicable, request the Board to issue an amended licence to reflect the details of the new premises.

(5) The Board shall not approve an application contemplated in subsection (1) relating to the relocation of a casino unless it is satisfied that—

- (a) the proposed relocation will promote job opportunities and tourism in the Province;
- (b) the proposed premises are, or will on completion be, suitable for the purpose for which they will be used under the casino operator licence;
- (c) the proposed development or establishment of the relocated casino is not undesirable within the specific geographical environment, with reference to social, religious, educational, cultural, economic, environmental and transport aspects;
- (d) the applicant is of good financial standing and has adequate means to undertake the proposed development or establishment of the relocated casino within time frames proposed by the applicant and to sustain the casino;
- (e) the applicant operates the casino at the current licensed premises in a manner that is consistent with this Act, the conditions of the licence, the National Act and any applicable prescripts made in terms of the National Act;
- (f) the applicant will continue to comply with the existing conditions of its casino operator licence at the proposed premises, to the extent that the conditions are relevant to the proposed premises or the area contemplated in subsection (22) to which the casino is to be relocated;
- (g) the applicant will continue to comply with the existing conditions of its casino operator licence relating to contributions to—
  - (i) black economic empowerment as contemplated in section 53 of the National Gambling Act; and
  - (ii) corporate social investment,that apply in the area from which the casino is to be relocated, for a period agreed to between the applicant and the relevant beneficiaries, failing which, a period of two years, calculated from the date on which the relocated casino commences operations contemplated in subsection (10);
- (h) the applicant has, in the application submitted to the Board, made full and frank disclosure of all matters prescribed or determined by the Board, and the relevant information in respect of the application was made available for public scrutiny;

(i) granting the application is not against the public interest and is in accordance with the policy and objectives of this Act.

(6) An applicant may, in an application contemplated in subsection (1) relating to the relocation of a casino, make commitments to the Board in order to satisfy the Board as to any matter contemplated in subsection (5)(a), (b), (c), (d), (f), (g) or (i).

(7) Subject to subsections (20), (21) and (22), after consideration of an application contemplated in subsection (1) relating to the relocation of a casino and, if applicable, of any objections thereto or any hearing, investigation or enquiry in connection therewith, the Board may—

- (a) refuse the application;
- (b) grant the application; or
- (c) postpone the consideration of the application,

subject to any terms it sees fit.

(8) Subject to section 37, the Board may at any time amend existing conditions of a casino operator licence, or impose further conditions on the licence, in order to address matters relating to the relocation of a casino.

(9) Notwithstanding section 32(1)(b), an application contemplated in subsection (1) relating to the relocation of a casino shall include at least the prescribed information, to enable the Board to satisfy itself regarding the matters contemplated in subsection (5).

(10) Notwithstanding the granting of an application contemplated in subsection (1) relating to the relocation of a casino or the issuing of an amended licence in terms of section 35A(12), the amendment of the licence concerned takes effect on the date that the holder of the casino operator licence commences operating the relocated casino.

(11) The date on which the relocated casino commences operations contemplated in subsection (10) shall be determined by the holder of the casino operator licence after consultation with the Board.

(12) Notwithstanding the granting of an application contemplated in subsection (1) relating to the relocation of a casino, and notwithstanding subsections (10) and (11), the holder of the casino operator licence may not commence operating the relocated casino until the following requirements have been met:

- (a) the development or establishment of the casino has been completed;
- (b) the holder of the casino operator licence has provided the Board with copies of all relevant approvals or documents that the holder of the casino operator licence is required to obtain from competent authorities in terms of the applicable legislation in relation to the development or establishment of the casino, or the commencement of operations at the casino;
- (c) the Board has inspected the premises of the casino;
- (d) the Board has caused to be conducted applicable tests on equipment and gambling devices contemplated in this Act or the National Act; and
- (e) the Board has approved the commencement of operations at the casino.



(13) Where the Board has granted an application contemplated in subsection (1) relating to the relocation of a casino, it may not issue an amended licence to the holder of the casino operator licence in terms of section 35A(12) if the requirements of subsection (12) have not been met.

(14) Notwithstanding the effective date contemplated in subsections (10) and (11), or the provisions of section 41(4), the holder of the casino operator licence shall cease operating the casino at the current premises when it produces the current licence to the Board.

(15) Notwithstanding subsection (14), the Board may at any time provide the holder of the casino operator licence with written consent in terms of section 41(4) to cease operating the casino, for the purpose of facilitating the relocation process.

(16) Where the holder of a casino operator licence who has applied for the amendment of its licence for the purpose contemplated in subsection (1) applies for the renewal of its licence in terms of section 40, the application shall relate to the casino at the current premises.

(17) Where the holder of a casino operator licence has submitted an application contemplated in subsection (1) to the Board relating to the relocation of a casino, the Board shall notify every holder of a casino operator licence in the Province, in writing, of the publication of the application contemplated in section 32(2)(a) of the Act.

(18) Where the Board has published an application contemplated in subsection (1) relating to the relocation of a casino, and the holder of a casino operator licence other than the holder of a casino operator licence whose application was published wishes to submit an application of this nature, it shall do so within the commenting period applicable to the published application.

(19) Where the Board receives more than one application contemplated in subsection (1) relating to the relocation of a casino, the Board shall consider the applications concurrently.

(20) When determining which application contemplated in subsection (19) is preferable, the Board shall consider which application is more favourable to the Province, having regard to the criteria contemplated in subsection (5) and any commitments made in terms of subsection (6).

(21) Notwithstanding section 44A(1), and subject to the provisions of this Act, the Board may permit the relocation of one casino during the 20-year period contemplated in section 44A(1).

(22) The area to which the casino contemplated in subsection (21) may be relocated is the part of the Helderberg area that falls outside the 25-kilometre radius shown in the map in Schedule VI.

(23) For the purpose of subsection (5)(g)(ii) “contributions to corporate social investment” means the applicant’s monetary and non-monetary contributions to society and the local community that fall outside of its regular business activities.”.

**Substitution of section 44A, as inserted by section 13 of Act 11 of 1997**

13. The following section is substituted for section 44A of the principal Act:

**“Exclusivity**

**44A.** (1) The holder of a casino operator licence has exclusivity to operate a casino in an area contemplated in subsection (2), (3) or (4), as the case may be, for a period of 20 years, which commences as contemplated in subsection (5).

(2) Where a casino was established in the City of Cape Town or an outlying area before the date of commencement of the Western Cape Twentieth Gambling and Racing Amendment Act, 2020, the holder of the casino operator licence has exclusivity to operate the casino in that area, subject to subsections (3) and (4).

(3) Where a casino relocates from an outlying area after the commencement of the Western Cape Twentieth Gambling and Racing Amendment Act, 2020—

- (a) the holder of the casino operator licence has exclusivity to operate the relocated casino in the area contemplated in section 41B(22); and
- (b) the holder of the casino operator licence for the existing casino in the City of Cape Town has exclusivity to operate the casino in the 25-kilometre radius shown in the map in Schedule VI.

(4) Where the existing casino in the City of Cape Town relocates after the commencement of the Western Cape Twentieth Gambling and Racing Amendment Act, 2020, the holder of the casino operator licence has exclusivity to operate the casino in the area contemplated in section 41B(22).

(5) The period contemplated in subsection (1) commences—

- (a) in respect of a casino that was established before the date of commencement of the Western Cape Twentieth Gambling and Racing Amendment Act, 2020, on the date of commencement of that Act;
- (b) in respect of a casino other than a relocated casino, that is established after the commencement of the Western Cape Twentieth Gambling and Racing Amendment Act, 2020, on the date on which it commences operations or one year after the granting of the casino operator licence, whichever occurs first;
- (c) in respect of a relocated casino, on the date the relocated casino commences operations, as contemplated in section 41B(10).

(6) For the purposes of this section—

- (a) “existing casino in the City of Cape Town” means the casino in the City of Cape Town that was established before the date of commencement of the Western Cape Twentieth Gambling and Racing Amendment Act, 2020, shown in the maps in Schedules V and VI;

- (b) “outlying area” means the Cape Winelands, Overberg, Garden Route or West Coast area of the Province, as the case may be, shown in the map contained in Schedule V.”

**Amendment of section 45 of Act 4 of 1996**

14. Section 45 of the principal Act is amended—

- (a) by the substitution for subsection (4) of the following subsection:

“(4) A casino operator licence shall attach to the premises specified in the licence[, **and which shall be developed in accordance with the approved development application**].”; and

- (b) by the insertion of the following subsection after subsection (4):

“(4A) The premises contemplated in subsection (4) shall be developed in accordance with applicable legislation and any conditions that the Board may impose.”.

**Amendment of section 75 of Act 4 of 1996, as amended by section 61 of Act 4 of 1997, section 16 of Act 10 of 1997, section 15 of Act 11 of 1997, section 4 of Act 8 of 1998, section 2 of Act 10 of 2000, section 6 of Act 1 of 2003 and sections 1 and 33 of Act 4 of 2006**

15. Section 75 of the principal Act is amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) contravenes any condition of a licence [**and in the case of a casino operator licence any condition of the concomitant approved development application**].”.

**Amendment of section 81 of Act 4 of 1996, as amended by section 65 of Act 4 of 1997, section 17 of Act 10 of 1997, section 6 of Act 8 of 1998, section 8 of Act 1 of 2003 and section 1 of Act 4 of 2006**

16. Section 81 of the principal Act is amended—

- (a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) any matter pertaining to an application for a licence or the renewal or amendment of a licence;”;

- (b) by the deletion of paragraph (c) of subsection (1);

- (c) by the substitution for paragraph (d) of subsection (1) of the following paragraph:

“(d) the maximum [**permissible**] number of licences of any particular kind that may from time to time be granted or held in a particular area;”;

- (d) by the insertion in subsection (1) after paragraph (f) of the following paragraph:

“(fA) the relocation of a business or activity authorised by a licence;”.

**Amendment of section 82 of Act 4 of 1996, as amended by section 66 of Act 4 of 1997, section 18 of Act 10 of 1997, section 9 of Act 1 of 2003 and section 1 of Act 4 of 2006**

17. Section 82 of the principal Act is amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) any matter pertaining to an application for a licence or the renewal or amendment of a licence;”.

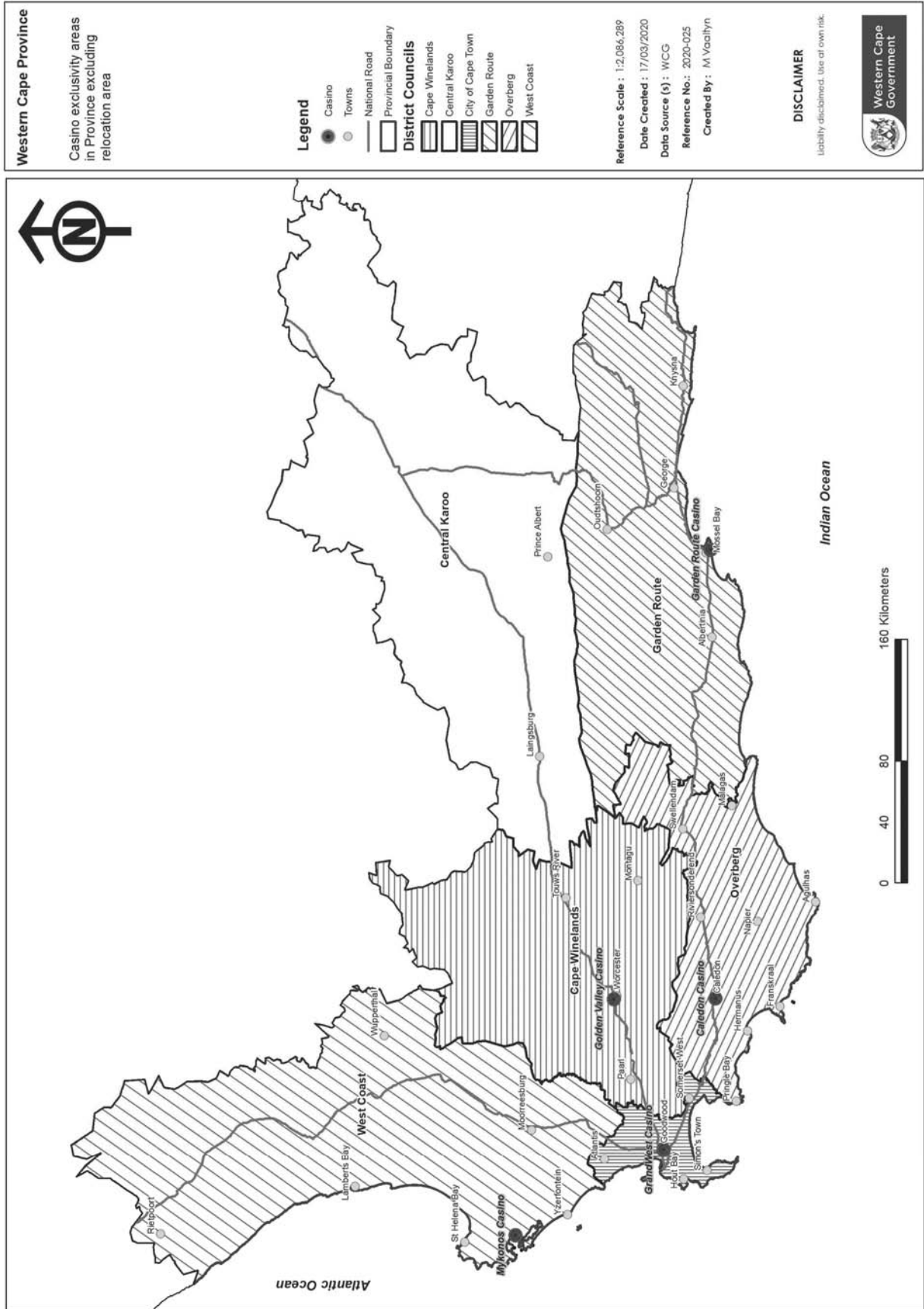
**Amendment of Schedule II to Act 4 of 1996, as substituted by section 70 of Act 4 of 1997 and as amended by section 18 of Act 11 of 1997, section 4 of Act 5 of 1999, section 4 of Act 10 of 2000, section 1 of Act 9 of 2001, section 1 of Act 7 of 2009 and section 7 of Act 7 of 2013**

18. Schedule II to the principal Act is amended by the deletion of paragraph 3.

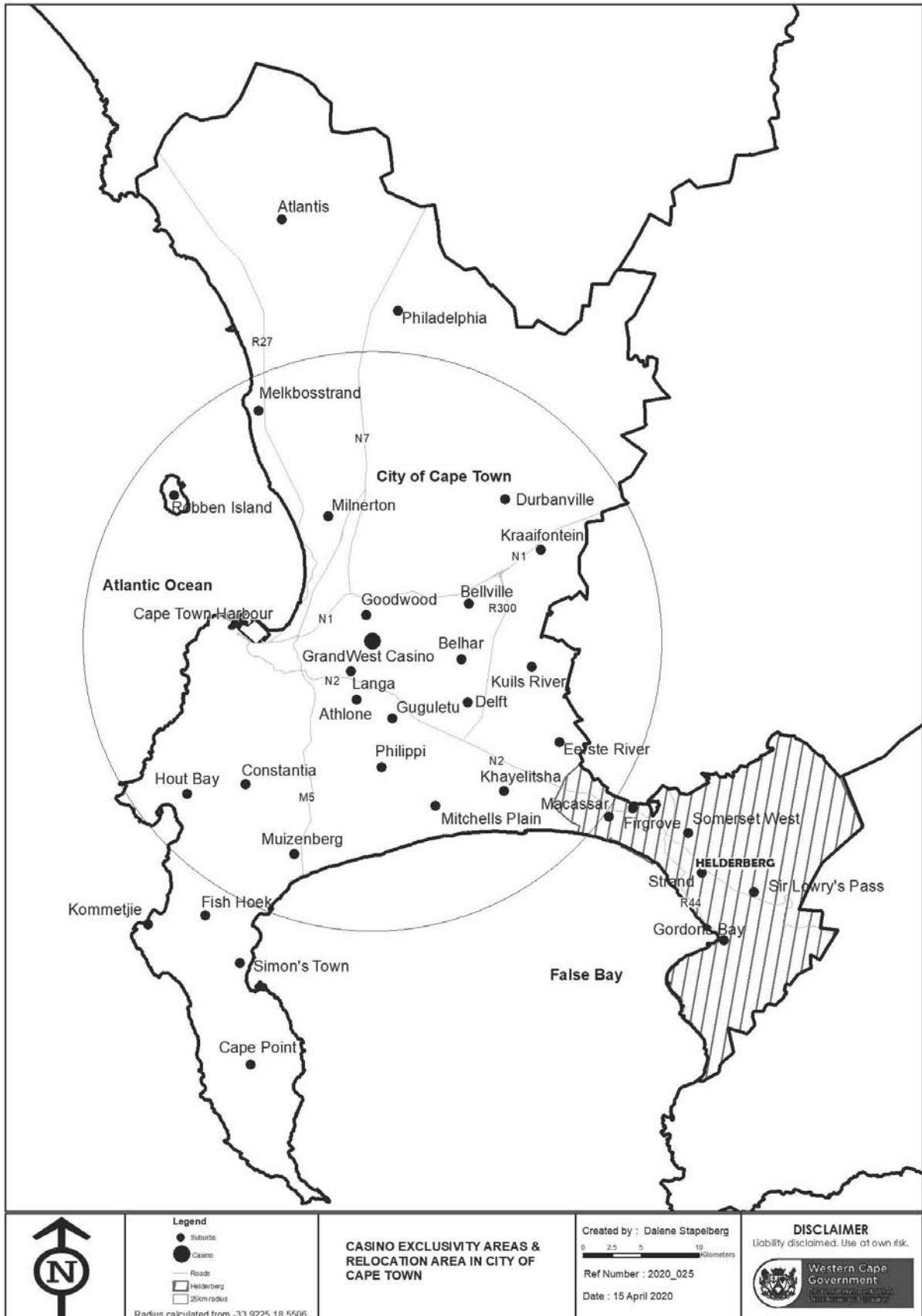
**Addition of Schedules V and VI to Act 4 of 1996**

19. The following Schedules are added after Schedule IV to the principal Act:

**“SCHEDULE V**  
**Casino exclusivity areas in Province excluding relocation area**  
*(Section 44A(2))*



**SCHEDULE VI**  
**Casino exclusivity areas and relocation area in City of Cape Town**  
*(Section 44A(3) and (4))*



**Substitution of expression in Act 4 of 1996**

20. The principal Act is amended by the substitution for the expression “Provincial Administration: Western Cape”, wherever it occurs, of the expression “Provincial Government”.

**Amendment of Arrangement of Sections in Act 4 of 1996, as amended by section 2 of Act 4 of 1997 and section 2 of Act 4 of 2006**

21. The Arrangement of Sections before section 1 of the principal Act is amended—

(a) by the insertion after the reference to the heading of section 35 of the following item:

“35A. Amendment applications, corrections and change of details of certain premises”; and

(b) by the insertion after the reference to the heading of section 41A of the following item:

“41B. Relocation”.

**Short title and commencement**

22. This Act is called the Western Cape Twentieth Gambling and Racing Amendment Act, 2020, and comes into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE  
DRAFT WESTERN CAPE TWENTIETH GAMBLING AND RACING  
AMENDMENT BILL, 2020**

**1. BACKGROUND**

- 1.1 In 1997 the Western Cape Provincial Cabinet issued Policy Determinations to be adhered to by the Western Cape Gambling and Racing Board (the Board) when establishing the licensed gambling industry in the Western Cape. The Policy Determinations were published under Provincial Notice 304/1997 in *Provincial Gazette* 5170 of 29 August 1997 and have since been amended.
- 1.2 The Policy Determinations provide, among other things, that the five casino operator licences allocated to the Western Cape are to be distributed one each to five geographically distinct regions.
- 1.3 The Policy Determinations provide further that casino operator licences are exclusive for a period of ten years and that exclusivity fees are to be paid for that period.
- 1.4 The Policy Determinations also list certain factors to which the Board must have regard when considering applications for casino operator licences. Furthermore, there was the requirement for each casino operator licence holder to make contributions to sustainable community projects in the particular area in which they were located. The casino operator licensed in the Cape Metropolitan region was required to make a financial contribution of R135 million for a world-class convention centre.
- 1.5 There are currently five casinos operating in the Western Cape. When the casinos were established, they were each granted a licence to operate a casino exclusively within a demarcated geographic area for a period of ten years. The allocation of the five casinos, one in each region, was aligned with the Province's five municipal districts, as follows: Cape Metropolitan area, Overberg, West Coast, Southern Cape and Breede River. The Policy Determinations provided for the Cape Metropolitan casino to have a 75-kilometre exclusivity radius, calculated from Cape Town City Hall.
- 1.6 The exclusivity periods referred to above have expired. Going forward, as set out in the Draft Western Cape Twentieth Gambling and Racing Amendment Bill, 2020 (the Draft Bill), a new exclusivity regime for casino operators will apply, whereunder casinos may operate exclusively in their existing areas for a period of twenty years. The opportunity for one casino to relocate to the Helderberg area of the City of Cape Town will also be made possible by the Draft Bill.
- 1.7 The provisions of the Policy Determinations that relate to casinos will be withdrawn.



## 2. OBJECTS OF DRAFT BILL

- 2.1 The main objective of the Draft Bill is to amend the Western Cape Gambling and Racing Act, 1996 (Act 4 of 1996)(the Act), in order to provide for a system that will replace the previous exclusivity regime described. This requires a number of technical and substantive amendments to be made to the Act.
- 2.2 A further objective of the Draft Bill is to remove from the Act provisions regarding development applications and other land-use or planning matters that are administered by municipalities or the Department of Environmental Affairs and Development Planning and not the Board.

## 3. CONTENTS OF DRAFT BILL

- 3.1 **Clause 1** of the Draft Bill amends section 1 of the Act by inserting definitions for “City of Cape Town” and “Helderberg area”. These terms are used in provisions relating to relocation and exclusivity. Clause 1 of the Draft Bill also inserts a new definition for “Provincial Government” to replace outdated terminology used in the Act.

Further, it deletes the definition for “Development application” from section 1 of the Act. This is a consequential amendment to the repeal of section 32A of the Act, which relates to development applications.

- 3.2 **Clause 2** of the Draft Bill makes consequential amendments to section 18(8) of the Act as a result of the insertion of the proposed sections 35A and 41B. The proposed section 35A relates to amendment applications, corrections of licences and change of details of certain premises, and the proposed section 41B relates to relocation. Section 18(8) of the Act will now also refer to the amendment of a licence.
- 3.3 **Clause 3** of the Draft Bill makes consequential amendments to section 23(1) and (5) of the Act as a result of the insertion of the proposed sections 35A and 41B. Section 23(1) and (5) of the Act will now also refer to the amendment of a licence.

Clause 3 also deletes section 23(2) of the Act in order to afford the Board flexibility regarding whether or not it conducts hearings. This is consistent with the wording of section 23(1)(a) of the Act.

- 3.4 **Clause 4** of the Draft Bill repeals section 32A of the Act. Development applications are administered by municipalities or the Department of Environmental Affairs and Development Planning and not by the Board.

- 3.5 **Clause 5** of the Draft Bill repeals section 32B of the Act. Land-use aspects, in the sense contemplated in section 32B of the Act, are administered by municipalities and not by the Board.
- 3.6 **Clause 6** of the Draft Bill amends section 33(1) of the Act by indicating that members of the public may comment on applications that are published in terms of section 32(2)(a) of the Act. Clause 6 also makes textual improvements to section 33(1) of the Act.
- 3.7 **Clause 7** of the Draft Bill widens the scope of section 34(2) of the Act in order for it to apply to all kinds of applications and not merely licence applications.
- 3.8 **Clause 8** of the Draft Bill amends section 35(3)(a)(iii) of the Act by removing the reference to land-use aspects. Land-use aspects, in the sense contemplated in section 35(3)(a)(iii) of the Act, will be considered by the applicable municipalities. Clause 8 also makes textual improvements to section 35(4) of the Act.
- 3.9 **Clause 9** of the Draft Bill inserts the proposed section 35A into the Act. The proposed section 35A sets out the procedure for the amendment and correction of licences and the change of details of certain premises. When the holders of certain licences, including holders of a casino operator licence, wish to relocate the business or activities authorised by the licence, they must apply in terms of the proposed section 35A for the amendment of the licence.
- 3.10 **Clause 10** of the Draft Bill amends section 37 of the Act by providing for the Board to impose conditions relating to the relocation of businesses or activities.
- Further, it deletes section 37(1)(m) of the Act, which deals with the imposition of conditions relating to penalties for failure by a licence holder to comply with conditions pertaining to a development application. This amendment is consequential to the repeal of section 32A of the Act.
- 3.11 **Clause 11** of the Draft Bill deletes section 41(2) and (3) of the Act. The amendment is consequential to the insertion of the proposed sections 35A and 41B. The amendment of licences and relocation will be regulated mainly in terms of the new sections 35A and 41B, read with consequential amendments and applicable regulations.
- 3.12 **Clause 12** of the Draft Bill inserts the proposed section 41B into the Act. The proposed section 41B sets out the procedure that applies should the holders of certain licences wish to relocate the businesses or activities authorised by the licences to new premises. The proposed section 41B also elaborates on the procedure that applies should the holder of a casino operator licence wish to relocate its casino to the Helderberg area of the City of Cape Town.

- 3.13 **Clause 13** of the Draft Bill substitutes section 44A of the Act, which relates to exclusivity. The new provision provides for the holder of a casino operator licence to have exclusivity in respect of a particular area for a period of twenty years.
- 3.14 **Clause 14** of the Draft Bill amends section 45 of the Act by removing certain words relating to development applications. It also provides for the manner in which casino premises are to be developed. These are consequential amendments arising from the repeal of section 32A of the Act.
- 3.15 **Clause 15** of the Draft Bill makes consequential amendments to section 75(1)(b) of the Act as a result of the repeal of section 32A of the Act. It proposes the deletion of a reference to any condition of an approved development application.
- 3.16 **Clause 16** of the Draft Bill makes consequential amendments to section 81(1) of the Act as a result of the insertion of the proposed sections 35A and 41B and the repeal of section 32A of the Act.
- 3.17 **Clause 17** of the Draft Bill makes consequential amendments to section 82(1)(a) of the Act as a result of the insertion of the proposed sections 35A and 41B.
- 3.18 **Clause 18** of the Draft Bill makes a consequential amendment to Schedule II to the Act, as a result of the proposed substitution of section 44A of the Act. Clause 18 deletes paragraph 3 of Schedule II to the Act, which relates to exclusivity fees.
- 3.19 **Clause 19** of the Draft Bill adds Schedules V and VI to the Act, which contain applicable maps. Schedule V contains a map of the exclusivity areas in the Province, excluding the one relocation area, namely the Helderberg area of the City of Cape Town. Schedule VI contains a map indicating the exclusivity areas and one relocation area in the City of Cape Town.
- 3.20 **Clause 20** of the Draft Bill amends the Act by substituting the expression “Provincial Administration: Western Cape”, wherever it occurs, of the expression “Provincial Government”. The intention is to update the terminology used in the Act.
- 3.21 **Clause 21** of the Draft Bill provides for the amendment of the Arrangement of Sections of the Act to include the headings of the new proposed sections 35A and 41B.
- 3.22 **Clause 22** of the Draft Bill provides for the short title and date of commencement.

#### **4. FINANCIAL IMPLICATIONS**

The Draft Bill provides for the introduction of prescribed application fees for the amendment of licences.

The Board may need to obtain the services of an external service provider to provide necessary expertise to assist the Board in making its determination regarding the potential relocation of a casino to the Helderberg area. This will result in the Board's incurring costs in this regard.

The publication costs of the Draft Bill are covered within the Provincial Treasury's current budget.

**5. PERSONNEL IMPLICATIONS**

None

**6. LEGISLATIVE COMPETENCE**

The Provincial Minister responsible for financial matters in the Province is satisfied that the provisions of the Draft Bill fall within the legislative competence of the Province.

**PROVINCIAL NOTICE**

P.N. 35/2020

8 May 2020

**GENERAL EXPLANATORY NOTE:**

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.

**DRAFT WESTERN CAPE TWENTY-FIRST GAMBLING AND RACING  
AMENDMENT BILL, 2020**

**To amend the Western Cape Gambling and Racing Act, 1996, so as to provide for exclusivity and economic opportunity taxes; to repeal the provision relating to bid fees; and to provide for matters incidental thereto.**

**BE IT ENACTED** by the Provincial Parliament of the Western Cape, as follows:—

**Insertion of sections 64A and 64B in Act 4 of 1996**

1. The following sections are inserted in the Western Cape Gambling and Racing Act, 1996 (Act 4 of 1996)(the principal Act), after section 64:

**“Exclusivity tax**

**64A.** (1) The holder of a casino operator licence shall pay an exclusivity tax annually as set out in Schedule IV, for the period of 20 years referred to in section 44A(1) and (5).

(2) Notwithstanding subsection (1) and section 44A(1) and (5)(c), where the Board has granted an application contemplated in section 41B(1) relating to the relocation of a casino, the holder of the casino operator licence shall commence paying the exclusivity tax one year from the date on which the relocated casino commences operations.

(3) Subsection (2) does not exempt the licence holder from its liability to pay the exclusivity tax for the full period of 20 years contemplated in section 44A(1) and (5)(c).

(4) The provisions of section 64 apply, with the necessary changes, to the exclusivity tax.

**Economic opportunity tax**

**64B.** (1) The holder of a casino operator licence whose application contemplated in section 41B(1) relating to the relocation of a casino is granted, shall pay a once-off economic opportunity tax set out in Schedule IV.

(2) The holder of the casino operator licence shall pay the economic opportunity tax to the Board within five days from the date on which the Board informs it that the application has been granted.

(3) The Board shall pay the economic opportunity tax into the Provincial Revenue Fund within five days of receiving it from the holder of the casino operator licence.”.

**Repeal of section 44B, as inserted by section 13 of Act 11 of 1997 and amended by section 1 of Act 10 of 2000**

2. Section 44B of the principal Act is repealed.

**Amendment of Schedule II to Act 4 of 1996, as substituted by section 70 of Act 4 of 1997 and amended by section 18 of Act 11 of 1997, section 4 of Act 5 of 1999, section 4 of Act 10 of 2000, section 1 of Act 9 of 2001, section 1 of Act 7 of 2009 and section 7 of Act 7 of 2013**

3. Schedule II to the principal Act is amended by the deletion of paragraph 4.

**Amendment of Schedule III to Act 4 of 1996, as amended by section 71 of Act 4 of 1997, section 2 of Act 9 of 1998, section 2 of Act 9 of 2001, section 2 of Act 8 of 2002, section 1 of Act 3 of 2003, section 1 of Act 7 of 2003, section 1 of Act 4 of 2006 and section 1 of Act 8 of 2013**

4. Part B of Schedule III to the principal Act is amended by the addition of the following paragraph after paragraph 1:

**“Exclusivity tax**

**1A.** The exclusivity tax contemplated in section 64A is as follows:

<b><u>TAXABLE REVENUE</u></b>	<b><u>EXCLUSIVITY TAX</u></b>
Where the adjusted annual gross revenue in the preceding year’s tax period—	
<u>does not exceed R300,0 million</u>	<u>0,25% of each R1 of the taxable revenue</u>
<u>exceeds R300,0 million</u>	<u>2,5% of each R1 of the taxable revenue</u>

”.

**Amendment of Schedule IV of Act 4 of 1996, as substituted by section 5 of Act 10 of 2000 and amended by section 3 of Act 8 of 2002**

5. Schedule IV to the principal Act is amended by the addition after Part B of the following Part:

**“Part C**  
**Economic opportunity tax**

The economic opportunity tax contemplated in section 64B is as follows:

<b><u>Area to which casino is to be relocated</u></b>	<b><u>Economic opportunity tax</u></b>
<u>Part of Helderberg area falling outside the 25-kilometre radius shown on map in Schedule VI</u>	<u>R177,50 million, escalating annually at the rate applicable in respect of debts to the State as determined by the Minister responsible for National Finance from time to time</u>

”.

**Amendment of Arrangement of Sections in Act 4 of 1996, as amended by section 2 of Act 4 of 1997 and section 2 of Act 4 of 2006**

6. The Arrangement of Sections before section 1 of the principal Act is amended by the insertion after the reference to the heading of section 64 of the following items:

- “64A. Exclusivity tax  
64B. Economic opportunity tax”.

**Short title and commencement**

7. This Act is called the Western Cape Twenty-First Gambling and Racing Amendment Act, 2020, and comes into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE  
DRAFT WESTERN CAPE TWENTY-FIRST GAMBLING AND RACING AMENDMENT  
BILL, 2020**

**1. BACKGROUND**

- 1.1 With the original roll-out of casinos in the Western Cape the Provincial Government levied bid fees for the access to the Western Cape economy which the operators would enjoy. In addition, each of the operators was required to pay exclusivity fees in order to operate a casino exclusively within a demarcated geographic area for a ten-year period.
- 1.2 The exclusivity periods have now expired, and this presents an opportunity for the relocation of one casino to the Helderberg area of the City of Cape Town.
- 1.3 A new exclusivity tax is introduced based on the adjusted annual gross gambling revenue and is payable for a period of twenty years for exclusivity within a demarcated geographic area. A new, once-off economic opportunity tax is also introduced, which is payable by the casino operator whose application to amend its licence for relocation purposes is granted.

**2. OBJECTS OF DRAFT BILL**

- 2.1 The main objective of the Draft Western Cape Twenty-First Gambling and Racing Amendment Bill, 2020 (the Draft Bill), is to amend the Western Cape Gambling and Racing Act, 1996 (Act 4 of 1996)(the Act), in order to provide for exclusivity taxes for the holders of casino operator licences, to provide for an economic opportunity tax that will be payable for the relocation of a casino to the Helderberg area of the City of Cape Town area of the Province, and to repeal bid fees.
- 2.2 The Draft Bill sees the introduction of an exclusivity tax for exclusivity in certain geographic areas for a further twenty years. A two-tiered tax structure linked to the size of the annual adjusted gross gambling revenue is payable annually for a period of twenty years.
- 2.3 The Draft Bill sees the introduction of an economic opportunity tax where the Western Cape Gambling and Racing Board (the Board) has approved an amendment application relating to the relocation of a casino to the Helderberg area of the City of Cape Town area of the Province. An economic opportunity tax relates to the additional value that will accrue to the holder of a casino operator licence as a direct result of a casino relocation versus the status quo and is linked to the anticipated increase in annual gross gambling revenue estimates. The economic opportunity tax is payable once-off by the casino operator within five days of the approval by the Board of the amendment application relating to the change in premises.



### **3. CONTENTS OF DRAFT BILL**

- 3.1 **Clause 1** of the Draft Bill inserts the proposed sections 64A and 64B in the Act. The proposed section 64A deals with the annual exclusivity tax, and the proposed section 64B deals with the once-off economic opportunity tax.
- 3.2 **Clause 2** of the Draft Bill repeals section 44B of the Act. Section 44B relates to bid fees, which will no longer be applicable.
- 3.3 **Clause 3** of the Draft Bill provides for the amendment of Schedule II to the Act as a result of the repeal of section 44B of the Act, which section deals with bid fees. Clause 3 deletes paragraph 4 of Schedule II to the Act, which paragraph sets out the bid fees payable in terms of section 44B of the Act.
- 3.4 **Clause 4** of the Draft Bill amends Part B of Schedule III to the Act by inserting a new paragraph setting out the applicable exclusivity taxes.
- 3.5 **Clause 5** of the Draft Bill amends Schedule IV to the Act by providing for the economic opportunity tax payable for the relocation of one casino to the Helderberg area of the City of Cape Town area of the Province.
- 3.6 **Clause 6** of the Draft Bill provides for the amendment of the Arrangement of Sections of the Act to include references to the proposed new sections 64A and 64B.
- 3.7 **Clause 7** of the Draft Bill provides for the short title and date of commencement.

### **4. FINANCIAL IMPLICATIONS**

A new exclusivity tax for casino operators operating exclusively within a geographical demarcated area for a period of twenty years is introduced, along with an economic opportunity tax for a casino's relocation to the Helderberg area of the City of Cape Town. The Provincial Treasury may need to obtain the services of an external service provider to provide expert analysis on the comments the Draft Bill may elicit. The publication costs of the Draft Bill are covered within the Provincial Treasury's current budget.

### **5. PERSONNEL IMPLICATIONS**

None

### **6. LEGISLATIVE COMPETENCE**

The Provincial Minister responsible for financial matters in the Province is satisfied that the provisions of the Draft Bill fall within the legislative competence of the Province.

**PROVINCIAL NOTICE**

P.N. 36/2020

8 May 2020

**WESTERN CAPE GAMBLING AND RACING ACT, 1996 (ACT 4 OF 1996)  
WESTERN CAPE GAMBLING AND RACING REGULATIONS, 1996: DRAFT  
AMENDMENT, 2020**

The Provincial Minister of Finance, in terms of section 81 of the Western Cape Gambling and Racing Act, 1996 (Act 4 of 1996), intends to make the regulations set out in the Schedule.

**SCHEDULE****Definition**

1. In these regulations “the Regulations” means the Western Cape Gambling and Racing Regulations, 1996, as published under Provincial Notice 239/1996 dated 7 June 1996 and as amended by Provincial Notices 440/1996 (dated 11 October 1996), 458/1996 (dated 30 October 1996), 303/1997 (dated 29 August 1997), 446/1997 (dated 12 December 1997), 50/1998 (dated 23 January 1998), 285/1998 (dated 29 May 1998), 331/1998 (dated 19 June 1998), 334/1998 (dated 26 June 1998), 363/2000 (dated 16 August 2000), 24/2001 (dated 2 February 2001), 11/2002 (dated 18 January 2002), 358/2002 (dated 8 November 2002), 265/2003 (dated 8 August 2003), 396/2003 (dated 21 November 2003), 291/2013 (dated 2 September 2013) and 96/2016 (dated 31 March 2016).

**Amendment of Arrangement of Regulations**

2. The Arrangement of Regulations before regulation 1 is amended—
  - (a) by the substitution for the reference to the heading to Chapter 4 of the following item:

**“CHAPTER 4  
LICENSING, AMENDMENT APPLICATIONS AND MATTERS RELATING TO  
CERTAIN LICENCES”;**

- (b) by the insertion after the reference to the heading to regulation 13 of the following items:
      - “13A. Regulations applicable to amendment of licences
      - 13B. Information for application contemplated in section 41B(1) relating to relocation of casino”; and
    - (c) by the deletion of the references to the headings to regulations 27 and 28.

**Substitution of heading to Chapter 4**

3. The following heading is substituted for the heading to Chapter 4 of the Regulations:

**“CHAPTER 4  
LICENSING, AMENDMENT APPLICATIONS AND MATTERS RELATING TO CERTAIN  
LICENCES”.**

**Amendment of regulation 9**

4. Regulation 9 of the Regulations is amended—
- (a) by the deletion of subregulation (2); and
  - (b) by the substitution for subregulation (3) of the following subregulation:  
“(3) The Chief Executive Officer shall not transmit any information in terms of subregulation (1) which in his or her opinion is confidential or irrelevant for purposes of comment.”.

**Insertion of regulations 13A and 13B**

5. The following regulations are inserted after regulation 13 of the Regulations:

**“Regulations applicable to amendment of licences**

- 13A.** Regulations 7(1), (2), (3), (4), (5) and (6), 8, 9 and 10 apply, with the necessary changes, to an application for the amendment of a licence contemplated in section 35A(1) of the Act.

**Information for application contemplated in section 41B(1) relating to relocation of casino**

- 13B.** (1) Notwithstanding regulation 7(1), an application contemplated in section 41B(1) relating to the relocation of a casino shall include at least the following information:
- (a) reports from independent experts that set out the impact or potential impact of the proposed relocation on—
    - (i) the area from which the casino will relocate, including the impact on—
      - (aa) employees of the casino;
      - (bb) local suppliers of goods and services to the casino;
      - (cc) beneficiaries of contributions contemplated in section 41B(5)(g) of the Act; and
      - (dd) residents of the area; and

- (ii) the specific geographical environment to which the casino is to be relocated in the area contemplated in section 41B(22) of the Act, with reference to social, religious, educational, cultural, economic, environmental and transport aspects;
  - (b) the impact or potential impact of the proposed relocation on the applicant's shareholding structure;
  - (c) the projected customer client base of the proposed relocated casino and the demographics of the area to which the casino is to be relocated contemplated in section 41B(22) of the Act;
  - (d) any commitments by the applicant contemplated in section 41B(6) of the Act;
  - (e) details of the contributions to black economic empowerment and corporate social investment, as contemplated in the Act, that the applicant will provide in the area to which the casino is to be relocated contemplated in section 41B(22) of the Act;
  - (f) the extent to which the applicant will be able to comply with existing conditions of its licence in the area to which the casino is to be relocated contemplated in section 41B(22) of the Act;
  - (g) the tourism, job creation and economic benefits of the proposed relocation for the area to which the casino is to be relocated contemplated in section 41B(22) of the Act and the Province;
  - (h) the proposed time frames for the development or establishment of the relocated casino;
  - (i) details of the financial standing and means of the applicant in order to satisfy the Board regarding the matters contemplated in section 41B(5)(d) of the Act.
- (2) The Board may request an applicant to provide it with any additional information it requires in order to satisfy itself regarding the matters contemplated in section 41B(5) of the Act.”.

#### **Amendment of regulation 26**

**6.** Regulation 26 of the Regulations is amended—

- (a) by the substitution for subregulation (1) of the following subregulation:
  - “(1) If an application for a licence, or an application for the amendment of a licence for the purpose contemplated in section 41B(1) of the Act, is granted by the Board in respect of premises not yet erected or completed, the applicant shall furnish the Board with any guarantee of completion of the premises required by the Board.”;
  - and
- (b) by the substitution for subregulation (2) of the following subregulation:

- “(2) If the premises or any stages of development thereof have not been substantially completed within the period determined as a condition of the licence, the licence may be revoked in terms of section 42 of the Act.”.

#### **Substitution of expressions**

7. The Regulations are amended—
- (a) by the substitution for the expression “Provincial Administration of the Western Cape”, wherever it occurs, of the expression “Provincial Government”;
  - (b) by the substitution for the expression “Provincial Administration: Western Cape” in the title block of Schedule 1 to the Regulations, below the word “Confidential”, of the expression “Provincial Government”;
  - (c) by the substitution in the second paragraph of the Explanatory Notes of Schedule 1 to the Regulations for the expression “Provincial Administration: Western Cape (PAWC)” of the expression “Provincial Government”; and
  - (d) by the substitution in the third paragraph of the Explanatory Notes of Schedule 1 to the Regulations for the expression “PAWC’s” of the expression “Provincial Government’s”.

#### **Short title and commencement**

8. These regulations are called the Western Cape Gambling and Racing Regulations, 1996: Amendment, 2020, and come into operation on the date of commencement of the Western Cape Twentieth Gambling and Racing Amendment Act, 2020.

**PROVINCIAL NOTICE**

P.N. 37/2020

8 May 2020

**WESTERN CAPE GAMBLING AND RACING ACT, 1996 (ACT 4 OF 1996)  
WESTERN CAPE GAMBLING AND RACING REGULATIONS (FEES AND COSTS), 2016:  
DRAFT SECOND AMENDMENT, 2020**

The Provincial Minister of Finance, in terms of section 81 of the Western Cape Gambling and Racing Act, 1996 (Act 4 of 1996), intends to make the regulations set out in the Schedule.

**SCHEDULE****Definition**

1. In these regulations “the Regulations” means the Western Cape Gambling and Racing Regulations (Fees and Costs), 2016, as published under Provincial Notice 97/2016 dated 31 March 2016 and amended by Provincial Notices 81/2017 (dated 24 March 2017), 45/2018 (dated 26 March 2018), 36/2019 (dated 26 March 2019) and 28/2020 (dated 25 March 2020).

**Insertion of regulation 5A**

2. The following regulation is inserted after regulation 5 of the Regulations:

**“Application fee for amendment of casino operator licence for purpose of relocation**

**5A.** The application fee payable by the holder of a casino operator licence in terms of section 35A(3) of the Act when it applies for the amendment of the licence for the purpose of relocation as set out in section 41B(1) of the Act is as set out in Annexure D.”.

**Addition of Annexure D**

3. The following Annexure is added after Annexure C to the Regulations:

**“ANNEXURE D  
APPLICATION FEE FOR AMENDMENT OF CASINO OPERATOR LICENCE FOR  
PURPOSE OF RELOCATION  
(Section 35A(3) of the Act and regulation 5A)**

Kind of licence	Application fee
Casino operator licence	R504 703,00

”.

**Short title and commencement**

4. These regulations are called the Western Cape Gambling and Racing Regulations (Fees and Costs), 2016: Second Amendment, 2020, and come into operation on the date of commencement of the Western Cape Twentieth Gambling and Racing Amendment Act, 2020.