

IN THE MATTER of the Gambling Act 2003
AND of an application by
QUEENSTOWN CASINOS LIMITED for specification
and variation of conditions
of casino venue licence

BEFORE THE GAMBLING COMMISSION

Members: P Chin (Chief Gambling Commissioner)
K M Ford
M M Lythe
P Stanley
G Reeves

Date of Application: 3 September 2004 (filed 6 September 2004)

Date of Decision: 22 October 2004

Date of Notification of Decision: 19 November 2004

DECISION

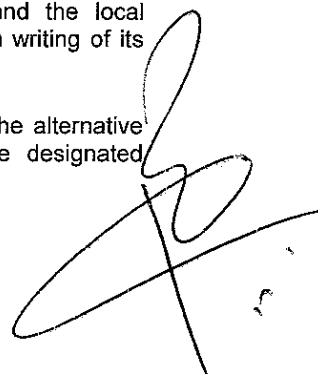
**ON APPLICATION BY QUEENSTOWN CASINOS LIMITED TO SPECIFY A NEW LICENCE
CONDITION RELATING TO THE DESIGNATION OF THE GAMBLING AREA AT
SKYCITY QUEENSTOWN CASINO**

Application by Queenstown Casinos Limited

1. Queenstown Casinos Limited (the "**applicant**") applied on 3 September 2004 to the Gambling Commission ("**Commission**") under section 139 of the Gambling Act 2003 (the "**Act**") to specify a new Condition 1.2a of its casino venue licence as follows:

The Commission has specified under section 139 of the Gambling Act the area delineated in the plan set out in schedule 1 of these conditions, as the gambling area for the Casino venue. The Commission has also specified under section 139 of the Gambling Act an alternative gambling area as delineated in the plan set out in schedule 2 of these conditions. The alternative gambling area will take effect subject to the following:

- 1 The licence holder providing the Gambling Commission and the local government inspectorate with a minimum of 10 days notice in writing of its intention to activate the alternative gambling area; and
- 2 The licence holder specifying the dates and times at which the alternative gambling area will apply and terminate at which time the designated gambling area will revert to that set out in the schedule 1 plan



2. As a consequential amendment, the applicant invited the Commission to vary licence Condition 1.2 of the licence by deleting the following sentence:

The Authority shall upon approval of the final plans of the casino premises, designate the gaming area.

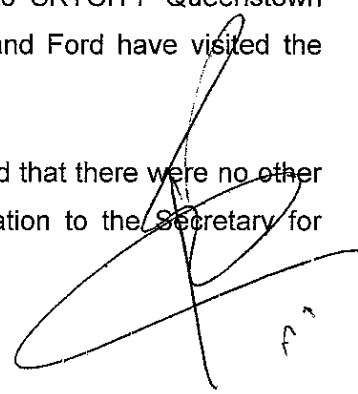
3. The applicant submitted with its application a letter of support from SKYCITY Casino Management Limited, the holder of the operator's licence for SKYCITY Queenstown Casino. It was submitted by the applicant that there were no other persons affected by the proposal.

Background

4. The gambling area at SKYCITY Queenstown Casino (the "**Casino**") currently includes the restaurant and bar areas and the corridor leading to those areas. Previously, on the application of the licence holder, the Casino Control Authority (the "**Authority**") would temporarily redesignate the gambling area to exclude the Summit Room. This enabled the casino operator to use the Summit Room for non-gaming related functions open to persons under 20 years, who would otherwise be prohibited from entering a gambling area.
5. The purpose of the application was to establish a new mechanism for temporarily designating the gambling area. The objective was to provide the operator with flexibility to use parts of the casino premises for non-gambling purposes without it needing to apply to the Commission for specific approval or variation of its licence conditions every time it wished to do so.
6. The proposed new licence condition would establish two alternative gambling area configurations, and a notification mechanism for switching between the two. The standard (schedule 1) configuration excludes the bar and restaurant area and the corridor leading to these areas. The alternative (schedule 2) configuration excludes the bar and restaurant area and the Summit Room, so that the Summit Room can be used for non-gaming related functions and meetings that would not otherwise have been possible given the age restriction created by the designation.

Processing of Application

7. Commissioners Stanley and Reeves conducted a site visit to SKYCITY Queenstown Casino on 3 September 2004. Commissioners Chin, Lythe and Ford have visited the casino on previous occasions and were familiar with the layout.
8. At its meeting on 13 September 2004, the Commission resolved that there were no other persons affected by the proposal, and to forward the application to the Secretary for



comment. The Commission requested that the Secretary consider in particular whether the configurations proposed were likely to increase potential access by minors to toilets within the gaming area, and to comment on the adequacy of the notice requirements proposed by the applicant for switching between the two configurations.

Statutory Criteria

9. Section 139(1) of the Act provides that the Commission may specify, vary, or revoke conditions of a casino licence by an application by the holder of the casino licence, or at the Commission's own initiative, or at the request of the Secretary of Internal Affairs.
10. Section 139(2) of the Act provides that:
 - (2) A condition of a casino licence specified under subsection (1)–
 - (a) must be consistent with this Act; and
 - (b) must contribute to achieving the purposes of this Act; and
 - (c) must contribute to the efficient and effective administration of this Act; and
 - (d) must not permit an increase in the opportunities for casino gambling; and
 - (e) may relate to any matter, including the matters specified in Schedule 1, within the confines of paragraphs (a) to (d).
11. The Act contemplates that the Commission can vary or specify new conditions to provide additional or different gambling areas. This follows from the definition of "gambling area" in section 2, as meaning "for a casino venue, that part of the venue that is specified by the Gambling Commission under section 139 ... as an area where casino gambling is permitted ...". Further, Schedule 1, clause 7, identifies "the designation of gambling areas within a casino" as a condition that may attach to a casino licence.
12. Section 140 of the Act sets out the procedure for specifying, varying or revoking casino licence conditions. The Commission is required to allow the holder of the casino licence, the Secretary, and any other person affected to make written submissions to the Commission within 20 working days after the date of being notified of the application by the Commission. Following on from this, the Commission may also seek comments from the casino licence holder.
13. Section 303 is of potential relevance in the current circumstances in assessing whether the proposal is consistent with section 139(2) criteria, the purposes of the Act and its efficient and effective administration. Section 303 requires the holder of a casino operator's licence to exclude persons under 20 years from participating in casino gambling or entering, or remaining in, the gambling area of a casino.

Submissions by the applicant

14. In its application, the applicant noted that, while the restaurant and bar area form part of the gambling area, they have never been used for casino gambling. The applicant stated that:

Redesignating the gambling area to remove these areas would provide us with some flexibility in future in the sense that we could potentially use these areas for special events where the age restriction might otherwise be problematic. It is not our intention and it would not be practical to open these areas up to persons under the age of 20 years in a general sense. This is because the toilet facilities are in the gaming and as such would not be accessible to any minors.

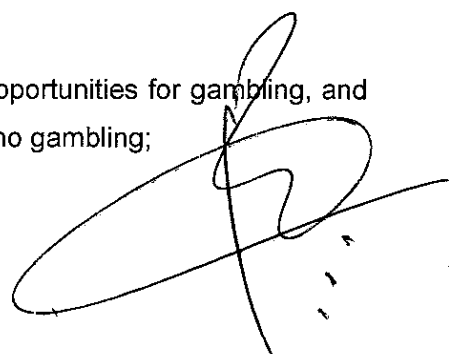
However on those occasions where we wanted to stage a function/event/meeting which involved a minor or minors we would have the flexibility to use the restaurant and bar areas (subject to any age restrictions applying to those areas under the Sale of Liquor Act) for this purpose. In all such cases we would make it known that any minors would have to use the toilet facilities in the mall. We would also ensure a security presence between the bar and the gaming floor to restrict access to the gambling area over the period of the function.

15. In relation to the Summit Room, and the proposal to adopt a mechanism enabling it to exclude it from the gambling area, the applicant stated that, notwithstanding the ability to use the bar and restaurant areas for special events:

... we anticipate occasions where it would be preferable to use the Summit Room to host such functions subject to its availability. This room provides a more private setting, which would be more suited to meetings and private functions. Commercially it would not be viable to make application under section 139 each time we proposed using the Summit Room for such purposes. Proposing an alternative designation which excludes the Summit Room as part of the gambling area subject to the provisos we have identified would provide us with additional flexibility while still ensuring certainty at any time of those areas specified as part of the gambling area for the casino venue.

16. The applicant further submitted that the proposal was consistent with section 139(2) criteria for the following reasons:

- (a) The proposal is consistent with the Act because it provides for gambling areas to be specified;
- (b) The Condition contributes to the purposes of the Act by limiting casino gambling to the confines of a specified gambling area (thereby prohibiting the rest);
- (c) The Condition contributes to the efficient and effective administration of the Act by providing certainty as to the area designated as the gambling area. The fact the gambling area is specified in the alternative subject to the identified provisos does not compromise that certainty;
- (d) The Condition does not permit an increase in the opportunities for gambling, and in fact involves narrowing the area available for casino gambling;



- (e) The Condition relates to one of the matters set out in schedule 1 of the Gambling Act.

Submissions by the Secretary

17. The Department stated in its letter of 8 September that the Secretary “has no objection to the proposed re-designation of the gambling area as proposed by the applicant, including the proposed notification mechanism for changing between the two alternative gambling areas”. The letter noted that the Secretary supported the view of the local Inspectorate that the proposed mechanism is appropriate and provides sufficient notification and information for the Inspectorate.
18. In relation to the issue of the potential for minors to access toilets in the gaming area, and the gaming floor beyond, the Department commented as follows:

The local Inspectorate has been consulted on this matter and considers that whilst the risk of minors accessing the gambling area is increased, the level of risk was acceptable. This is primarily because SKYCITY Queenstown will to all intents and purposes continue to manage the Restaurant and Bar area as though it were a gambling area for everyday purposes. In practice this means that Security Personnel stationed in the casino (and Restaurant) foyer will continue to refuse entry to persons under the age of 20.

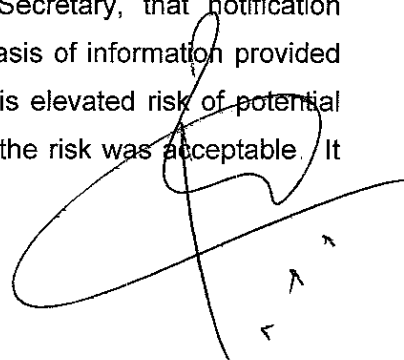
As SKYCITY Queenstown notes at paragraph 9 in the schedule of its application:

It is not our intention and it would not be practical to open these areas up to persons under the age of 20 years in a general sense. When special events are conducted that allow persons under the age of 20 to enter the restaurant, additional security personnel will be stationed by the toilets to prohibit access to the gambling area.

19. The applicant advised, by email dated 13 October, that it did not wish to comment on the Secretary’s submission.

Assessment of Proposal

20. The Commission acknowledged the operator’s desire to efficiently utilise the casino premises. Its potential concerns, which were raised with the Secretary for comment, included the need to ensure that regulators and the public generally had adequate certainty about what constituted the gambling area at any particular point in time. The Commission wished also to ensure that the proposal would not compromise the applicant’s ability to comply with section 303 and the requirement to exclude persons under 20 from the gambling area.
21. The Commission was satisfied, following inquiry of the Secretary, that notification requirements were adequate. It was also satisfied, on the basis of information provided by the applicant and the local inspectorate, that while there is elevated risk of potential access to the gaming area by persons under the age of 20, the risk was acceptable. It

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noted that the applicant intended to post additional security when there were special events, to prevent use of toilets in the gaming area

22. The Commission was satisfied that that the proposal was consistent with 139(2) criteria, noting in particular that:

- (a) it provided the operator with an appropriate level of flexibility within established and certain parameters;
- (b) it would, on the facts, not result in an increase in gambling opportunities. It was noted that:
 - (i) there was no proposal to introduce new tables, machines, or change any of the existing layouts or configurations under either alternative configuration; and
 - (ii) the applicant was proposing smaller gambling area for both alternatives (although the bar and restaurant are not currently used for gambling in any event).

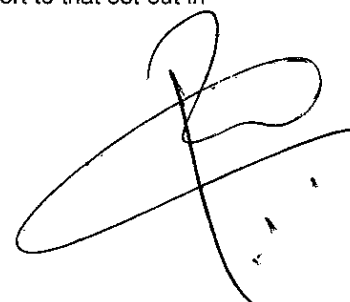
Decision

23. The Commission resolved unanimously to grant the application, it being determined that the new condition would provide the operator with an appropriate degree of flexibility to use the casino premises, within established and certain parameters.

24. The wording of Condition 1.2a proposed by the applicant was adopted with minor amendments to achieve consistency with the overall drafting of the casino premises licence. The Commission agreed that the following new licence condition should be inserted (together with schedules 1 and 2 appended to the application):

1 2a The standing gambling area for the casino shall be the area delineated in the plan set out in schedule 1 attached to these conditions. The alternative gambling area for the casino shall be the area delineated in the plan set out in schedule 2 attached to these conditions. The alternative gambling area will take effect subject to the following:

1. The licence holder providing the Gambling Commission and the local government inspectorate with a minimum of 10 working days notice in writing of its intention to activate the alternative gambling area; and
2. The licence holder specifying in that notice the dates and times at which the alternative gambling area will apply and terminate, at which time the designated gambling area will revert to that set out in the schedule 1 plan.



- 25 As a consequential amendment, the Commission varied licence Condition 1.2 by deleting the last sentence as follows:

The Authority shall upon approval of the final plans of the casino premises, designate the gaming area

26. Pursuant to section 235 of the Act, a person affected by this decision may appeal that decision to the High Court. An appeal must be made within 15 working days of the date of notice of the Commission's decision, or any longer period that the High Court may

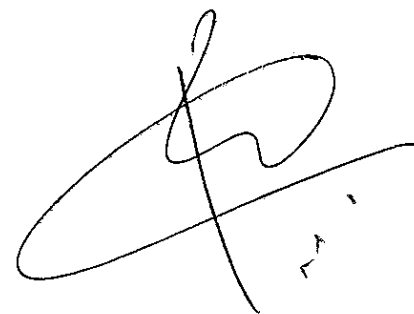
allow.



Peter Chin
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

19 November 2004

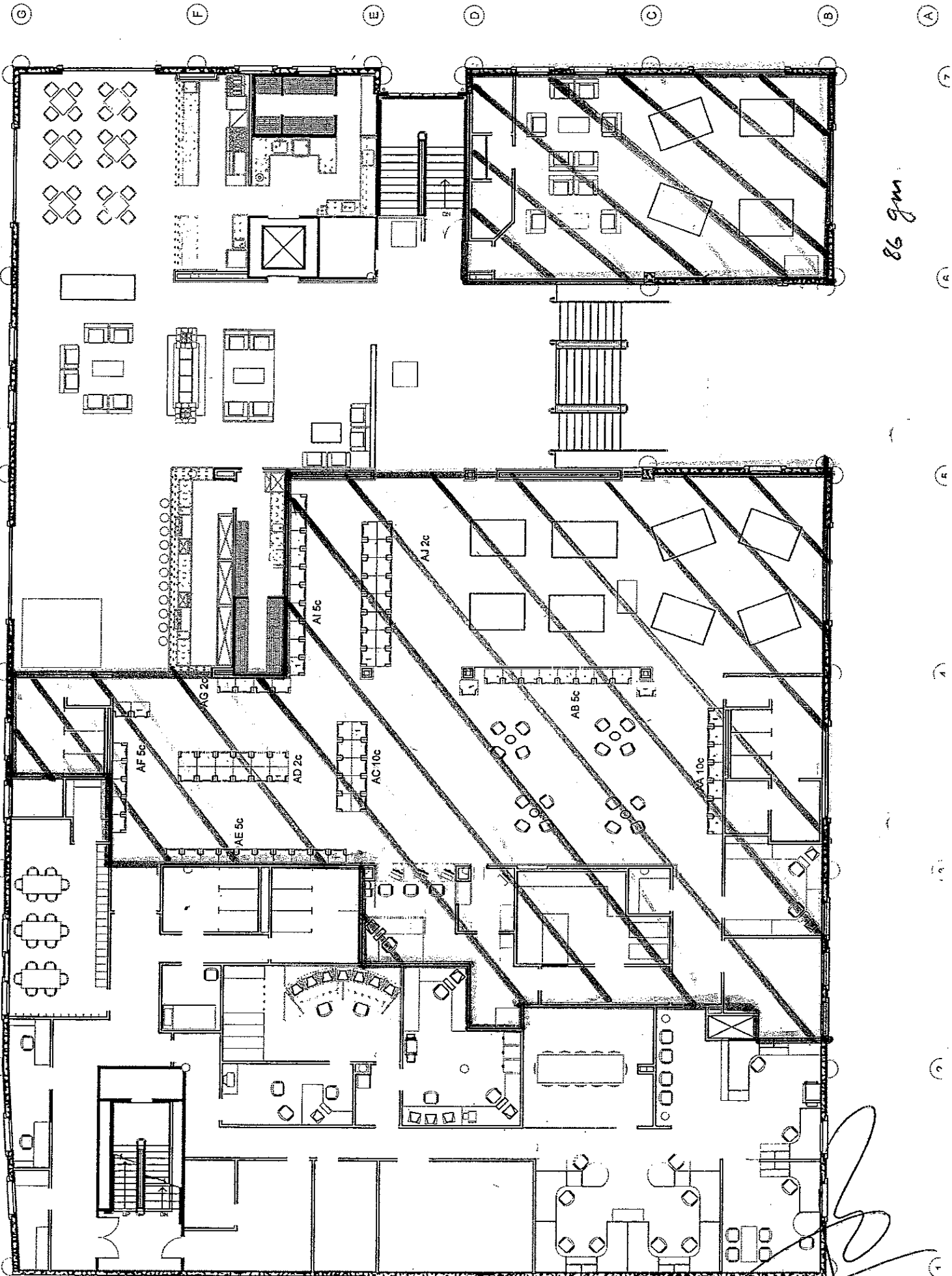


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SCHEDULE 2

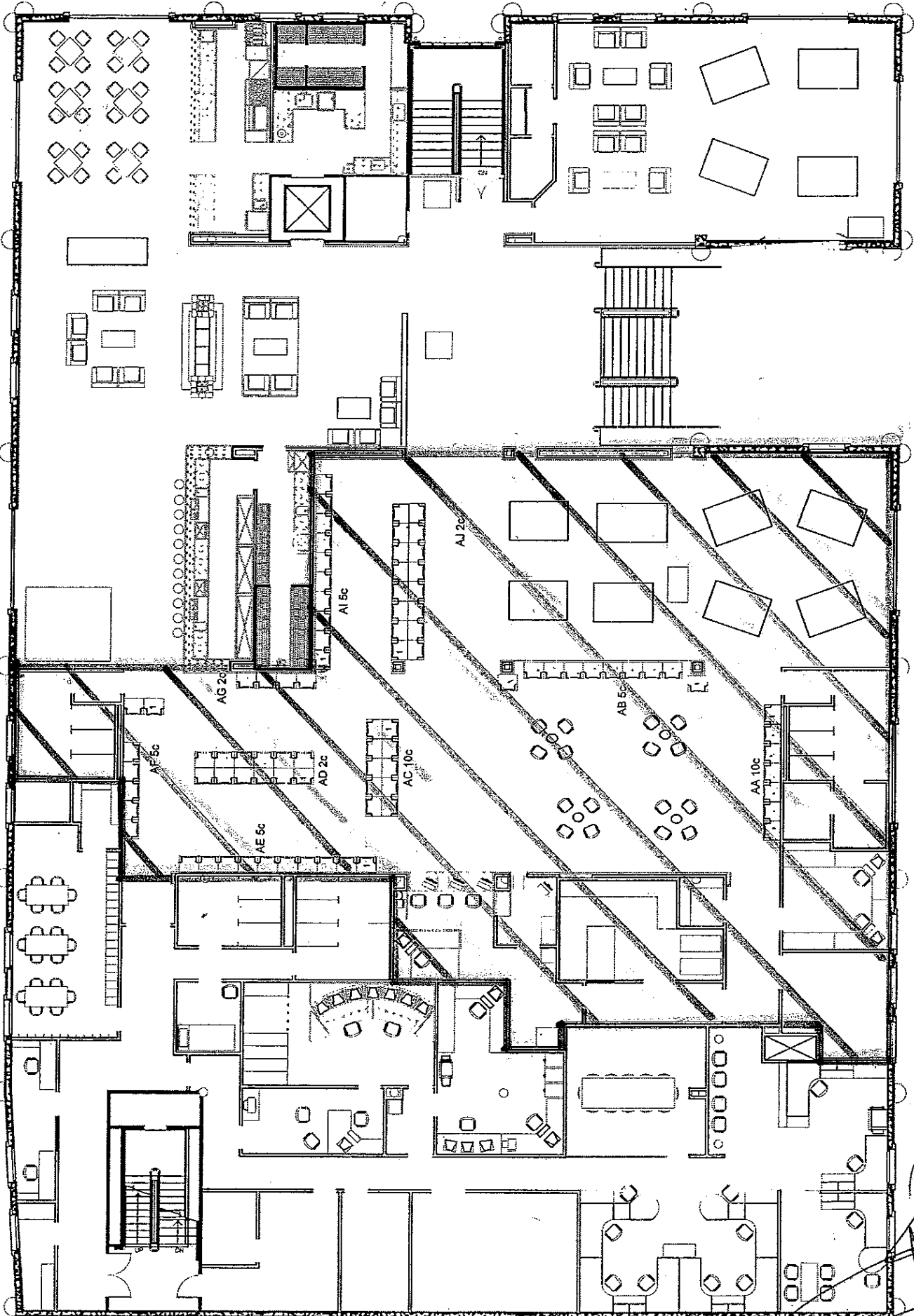
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