

IN THE MATTER of the Gambling Act 2003
AND of an application by
SKYCITY AUCKLAND LIMITED to designate
gambling area

BEFORE THE GAMBLING COMMISSION

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

Date of Application: 14 October 2004 (received 20 October 2004)

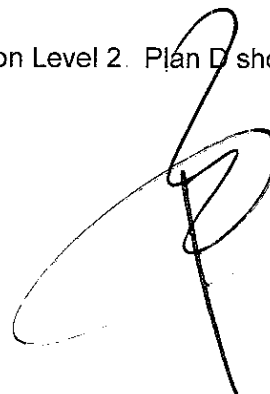
Date of Decision: 19 November 2004

Date of Notification of Decision: 7 December 2004

DECISION
ON APPLICATION BY SKYCITY AUCKLAND LIMITED
TO DESIGNATE GAMBLING AREA

Application

1. SKYCITY Auckland Limited (the "**applicant**") applied to the Gambling Commission (the "**Commission**") under section 139 of the Gambling Act 2003 (the "**Act**") to specify as gambling area at SKYCITY Casino Auckland areas delineated on plans marked "C" and "D" attached to its application.
2. The principal purpose of the application was to exclude newly constructed smoking decks from the gambling area, as required by the Casino Control Authority (the "**Authority**"). The applicant also took the opportunity in submitting new plans for the gambling area to make "tidy up" amendments to it, outlined below
3. Plan C submitted by the applicant shows the main gaming floor on Level 2. Plan D shows Level 3. Plans C and D **include** within the gambling area:
 - (a) areas previously approved by the Authority;



- (b) the VIP Members' Room (designated by the Commission pursuant to decision GC01/04);
 - (c) the top of the escalator on Level 3. The applicant noted that the bottom of the escalator was included in the gambling area, submitted that the top may, inadvertently, have been excluded from the gambling area;
 - (d) a small area at the north end of the main gaming floor labelled "ATM location" excluded from the gambling area by the Authority
4. Plans C and D **exclude** from the gambling area smoking decks constructed by the applicant pursuant to approvals given by the Authority.

Key issues

5. The principal issue for the Commission was to ensure that the proposal complied with the statutory criteria set out in section 139(2) of the Act, and the requirement not to increase opportunities for casino gambling, in particular.

Licence condition

6. Condition J of the applicant's casino premises licence (as amended by the Commission by decision GC01/04) provides as follows:

The gaming area of the casino shall comprise the following:

- (a) areas delineated in red shown on plans "A" and "B" as specified by the Casino Control Authority under the Casino Control Act 1990; and
- (b) the area delineated in red shown on plan "C" dated 15 June 2004 as specified by the Gambling Commission under section 139 of the Gambling Act 2003

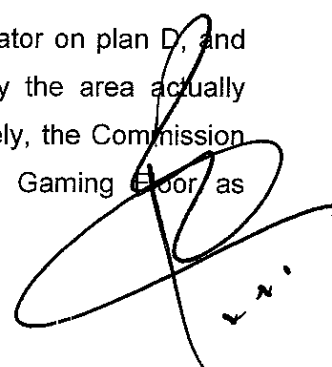
Statutory criteria

7. "Gambling area" is defined in section 4 of the Act as meaning:
- (b) for a casino venue, that part of the venue that is specified by the Gambling Commission under section 139 or the Casino Control Authority under the Casino Control Act 1990 as an area where casino gambling is permitted ...
8. 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
9. 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).

Submissions by the applicant

10. The Authority agreed on 13 February 2004 to approve the construction of seven smoking decks on the casino building on condition that the applicant applied to redesignate the gaming area of the casino to exclude the decks before the decks were used. The applicant submitted that the redesignation of the gambling area was a “technical consequence” of the Authority’s previous approval.
11. The applicant clarified that, of the seven decks approved by the Authority, adjustments to the gambling area were required only in relation to five. The other two are already outside the gambling area.
12. The applicant noted that each of the five decks could only be accessed from the gambling area and that the design of the decks was such that part of the construction was within the existing gambling area.
13. In relation to the “tidy up” amendments proposed by the applicant it was submitted that:
 - (a) the escalators at the back of the new Members’ Room (to the left of PLAY Casino) were not included in the gambling area designation on Level 3, even though the same escalators were denoted on Level 2 as forming part of the gambling area. The applicant indicated that it “would have no objections” if the Commission chose to include the escalator on Level 3 in the gambling area designation for consistency;
 - (b) the existing gambling area excluded a small area at the north end of the Main Gaming Floor (labelled on the plans approved by the Authority as “ATM’s location”). It was noted that the area excluded from the gambling area was larger than the area actually occupied by the ATMs (as far as could be ascertained, the plans not being to scale)
14. To address these two matters, the applicant had included the escalator on plan D, and redrawn the designated gambling area on plan C to exclude only the area actually occupied by the two ATM’s. The applicant indicated that alternatively, the Commission could draw a straight line along the northern wall of the Main Gaming Floor as



representing one boundary of the designated gambling area. The Commission understood that this would have had the effect of including the backs of the ATMs in gambling area.

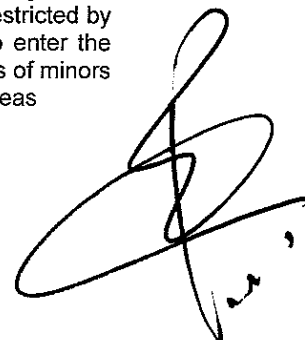
15. In support of its proposal, the applicant submitted that:
- (a) the redesignation of the gambling area to exclude the decks was a technical consequence of a previous approval given by the Authority;
 - (b) the application would not result in an increase in the opportunities for casino gambling under sections 11 and 12 of the Act. By excluding the decks from the gambling area, they could not be utilised for gaming purposes (eg gaming machines could not be located on the decks). The applicant submitted that the Authority had already determined the question of whether there was an increase in opportunity when it approved the construction of the decks, and resubmitted the legal opinion by counsel for the applicant on the construction of sections 11 and 12 considered by the Commission in earlier decisions;
 - (c) the proposed redesignation has no impact on any person beyond the impact of the approval already given by the Authority.

Submissions by the Secretary

16. In its letter dated 17 November 2004, the Department noted that the Auckland Casino Compliance Unit had investigated the proposal thoroughly, conducted a physical tour of the new areas and discussed particular issues relating to unauthorised access with relevant SKYCITY staff.
17. The Casino Compliance Unit made the following observations about the proposals:

Of the seven decks on the plans, the one to be located off the current VIP room has yet to be constructed. There is one smoking deck on the third floor that has no access to the gambling area. Of the remaining five decks, four are located directly off various sections of the gambling area on floors two and three and provide no opportunity for unauthorised access to the gambling area.

The remaining deck is accessible from the new VIP room, the third floor gambling area and the theatre foyer. It is possible that minors entering the premises via the theatre foyer may be able to access the new VIP room or the third floor gambling area through the smoking deck. However, SKYCITY has advised that the smoking area adjacent to the VIP area is intended almost exclusively for use by VIP players and that the doors from the theatre foyer and the third floor gambling area would not normally be open. When those doors are open, security staff will be stationed at the entrances to gambling areas to ensure minors do not gain access to gambling areas. Furthermore, access to the new VIP room from the smoking deck will be restricted by 'swipe card access' and should not present the opportunity for minors to enter the gambling area in the new VIP area. These measures will minimise the risks of minors attempting to 'piggy back' their way from the smoking deck into gambling areas.



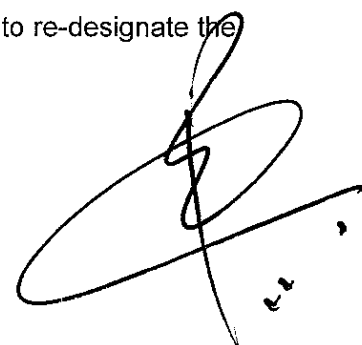
18. The Department confirmed its preference for the escalator on Level 3 being included in the gambling area. This was not only to ensure consistency, but also because the escalator provides direct access from the main gaming floor to the Level 3 gambling area.
19. With respect to the ATM, the Department noted that under the Gambling (Harm Prevention and Minimisation) Regulations 2004, licence holders would be required from 1 April 2005 to ensure that there are no ATMs available in the gambling area.

Analysis

20. The primary issue for the Commission was ensuring all aspects of the proposal were consistent with section 139(2) criteria, including promoting compliance with the Act by minimising risk of underage access to gambling areas, and ensuring that the proposal did not give rise to any increased opportunities for casino gambling.
21. It is noted by the Commission that:
 - (a) Removal from the designated gambling area of smoking decks partially located in it would result in a decrease in the area available for gambling, and prevent the expansion of gambling activities into smoking areas.
 - (b) Including the Level 3 escalators was appropriate for reasons of consistency and to minimise further any risks of underage access.
 - (c) Redrawing the designation of the main gaming floor to exclude only the area housing the back of the two ATMs would slightly enlarge the gambling area. The applicant advised however that the area in question is used for toilets. It is not used to place gambling products and there is no intention that it will be so used in future.
 - (d) If the backs of ATMs were included in the gambling area, it may be necessary in future when the Regulations come into effect either to remove the ATMs or amend the designated gambling area to exclude the ATMs from it. For this reason, the alternative option proposed by the applicant, to draw a straight line to include the backs of the ATMs, was not preferred by the Commission.

Decision

22. On the basis of the facts presented, the Commission determined that there were no affected persons and was satisfied that the amendment to condition J to re-designate the casino was consistent with section 139(2) criteria.

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23. The Commission decided to delete condition J and remove plans A, B and C appended to the licence, and replace J with the following:

The gambling area of the casino shall comprise the areas delineated shown on plans "A" and "B" dated 13 September 2004 attached to this licence

24. Plans "A" and "B" (being plans "C" and "D" attached to the application) are appended to this decision, and will be appended to the licence.
25. For the avoidance of doubt, it is noted that the designated gambling area will be that area within the confines of the outer marked boundaries and shall:
- (a) exclude all smoking decks, the stairwells and elevators;
 - (b) include the escalators on Levels 2 and 3;
 - (c) exclude the actual area occupied by the ATMs on the Main Gaming Floor.

Right of appeal

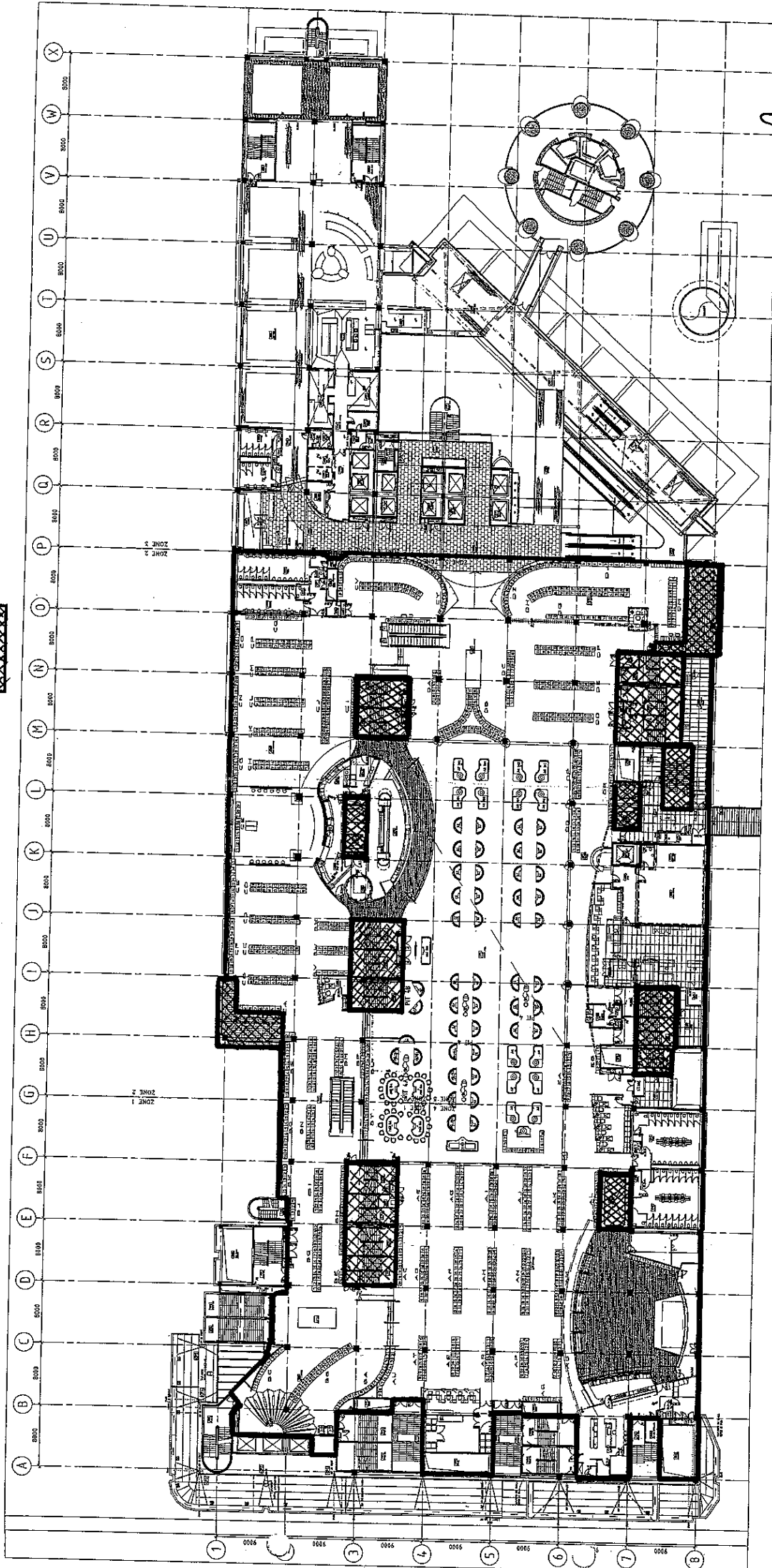
26. Pursuant to section 235 of the Act, a person affected by this decision may appeal that decision to the High Court. An appeal must be made within 15 working days of the date of notice of the Commission's decision, or any longer period that the High Court may allow.



Peter Chin
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

7 December 2004

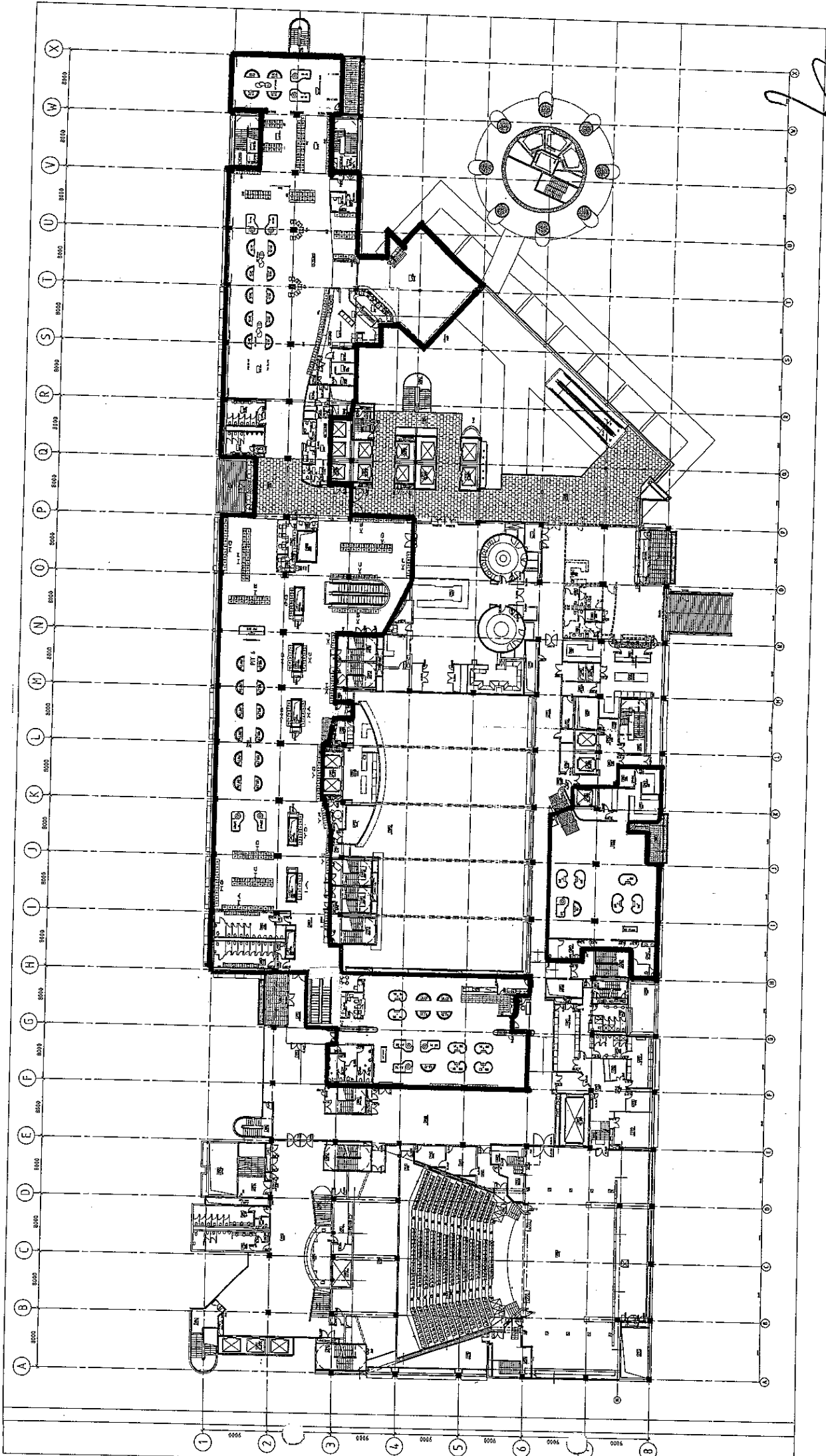


Excluded from gambling area

Plan "A"

ARCHITECTS Craig Craig Moller Craig Craig Moller Auckland Ltd Level 13 Westpac Place 3 Albert St PO Box 105 233 Auckland New Zealand Telephone 64 9 357 0688 Email ccm@ccm.co.nz www.ccm.co.nz	CLIENT AND PROJECT Sky City Entertainment Group Current Floor Plans	DRAWING INFORMATION Drawn: GDM Checked: GDM Scale: Original Scale (N): 200 Revised Scale (N): 500 Date: 15/09/04 Drawn by: GDM Approved for Construction: GDM Date: 15/09/04 Drawn by: GDM Approved for Construction: GDM Date: 15/09/04	DRAWING TITLE SKY CITY - PODIUM LEVEL 2 - FLOOR PLAN PROPOSED LAYOUT PLAN	REVISION No. Revision A ISSUED FOR EXAMINATION B ISSUE FOR EXAMINATION C/A M/S DRAWING NO. REVISION
		REVISION No. Revision A ISSUED FOR EXAMINATION B ISSUE FOR EXAMINATION C/A M/S DRAWING NO. REVISION		

Plan "B"



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REVISION	NO.	DATE	BY	CHK	APP
1	ISSUE FOR INFORMATION	13/09/04			
2	ISSUE FOR INFORMATION	18/09/04			
3	ISSUE FOR INFORMATION				

DRAWING TITLE
 SKY CITY - PODIUM
 LEVEL 3 - FLOOR PLAN
 PROPOSED LAYOUT PLAN

Refer to Revision 1 for original signatures
 This drawing is the property of the architect and shall not be used for any other purpose without the written consent of the architect.
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 Project No. SKC-04

DRAWING INFORMATION	
Scale	As Shown
Grid	As Shown
North	As Shown
Author	AM
Checked	AM
Approved for Construction	AM
Drawn	AM
Plot No.	SKC-04
Plot Date	18/09/04

CLIENT AND PROJECT
 Sky City Entertainment Group
 Minor Works



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