

IN THE MATTER of the Gambling Act 2003

AND on an application by **SKYCITY AUCKLAND LIMITED** for approval of construction and design changes and to redesignate the Gambling Area at the Auckland casino

BEFORE THE GAMBLING COMMISSION

Members: G L Reeves (Chief Gambling Commissioner)
P J Stanley
L M Hansen
R D Bell
A K Foote

Date of Application: 19 December 2012

Date of Decision: 15 February 2013

Date of Notification
of Decision: | March 2013

**DECISION ON AN APPLICATION BY SKYCITY AUCKLAND LIMITED
FOR APPROVAL OF CONSTRUCTION AND DESIGN CHANGES
AND TO REDESIGNATE THE GAMBLING AREA AT THE AUCKLAND CASINO**

Introduction

1. SKYCITY Auckland Limited ("**SCAL**") applied to the Commission:
 - (a) for approval of construction and design changes to levels 2 and 6 of the Auckland casino, under conditions 6 and 7 of SCAL's venue licence; and
 - (b) to redesignate the Gambling Area, under condition 9 of SCAL's venue licence.
2. Submissions were sought on SCAL's proposal from the Secretary for Internal Affairs (the "**Secretary**"), Ministry of Health ("**MoH**"), Problem Gambling Foundation ("**PGF**") and the Salvation Army ("**SA**"). Submissions were received from all parties.
3. The relevant licence conditions are:

SCAL's venue licence

6. The Licence Holder must obtain the approval of the Commission prior to:
 - (a) construction or design changes to Levels 2, 3, 5 and 6 of the casino venue, including the Gambling Area but excluding the SKYCITY Theatre and foyer area, restaurant and bar areas outside the Gambling Area, hotel rooms and the back of house areas used by staff (unless construction or design changes to any of these excluded areas may

impact on matters set out in condition 7 in which case prior approval must be sought);

- (b) the construction or relocation outside the Gambling Area and within the Casino Venue of bank facilities available to the public excluding ATMs, EFTPOS and like devices;
- (c) the addition or alteration of signage relating to the casino business on any building, road or structure within the block of land bounded by Hobson Street, Wellesley Street West, Federal Street and Victoria Street West, including the Casino Venue, Sky Tower, car park, bus terminal and walkways between the casino and the Sky Tower and the convention centre.

The process by which the Licence Holder may obtain approval for construction or design changes to Levels 2, 3, 5 and 6 of the casino venue, including the Gambling Area (paragraph (a) above) is set out in condition 7. The Commission will determine any application for approval under 6(b). The Executive Director may approve the addition or alteration of signage relating to the casino business on any building, road or structure within the casino block (paragraph (c) above) if he/she is satisfied the proposed changes will have no potentially adverse effects. If he/she is not so satisfied, the proposed changes must be referred to the Commission for a decision on approval.

7. The Licence Holder must notify the Executive Director of any proposed changes to the construction or design of Levels 2, 3, 5 and 6 of the casino venue, including the Gambling Area but excluding SKYCITY Theatre and foyer area, restaurant and bar areas outside the Gambling Area, hotel rooms and the back of house areas used by staff. Notification must be accompanied by relevant drawings and an assessment of any impacts the alterations may have on:

- (a) the integrity and fairness of games;
- (b) the effectiveness of security and surveillance;
- (c) harm prevention, harm minimisation and responsible gambling;
- (d) potential access to the Gambling Area by persons under 20 years of age; and
- (e) compliance by any person with the Act, including section 11.

The Executive Director may approve the proposed changes to the construction or design if he or she is satisfied that there are no adverse impacts in relation to the matters specified in (a)-(e) above. If the Executive Director is not satisfied, he or she will refer the proposal to the Commission for determination.

8. The Licence Holder shall ensure that:

- (a) gambling activity is not visible from outside the Casino Venue; and
- (b) there is provision for generation of emergency power to maintain in situations of an interruption to mains power:
 - (i) minimum services to the Gambling Area; and
 - (ii) lighting in highly sensitive areas such as count rooms, surveillance suite, cashiering locations and gambling equipment storerooms.

9. The current Gambling Area for the casino venue is delineated in the plan attached as Schedule 1 to these conditions. A first alternative Gambling Area is delineated in the plan attached as Schedule 2. A second alternative Gambling Area is delineated in the plan attached as Schedule 3. A third

alternative Gambling Area is delineated in the plan attached as Schedule 4. A fourth alternative Gambling Area is delineated in the plan attached as Schedule 5. A fifth alternative Gambling Area is delineated in the plan attached as Schedule 6. A sixth alternative Gambling Area is delineated in the plan attached as Schedule 7.

- 9A. A change of Gambling Area will take effect subject to the Licence Holder providing the Commission and the Inspectorate a minimum of 10 working days prior notice in writing of its intention to adopt one of the approved Gambling Areas referred to in Condition 9 and shown in Schedules 1, 2, 3, 4, 5, 6 and 7.

4. The relevant sections of the Smoke-free Environments Act 1990 (the "**Smoke-free Act**") and the Gambling Act 2003 (the "**Act**") are as follows:

Smoke-free Environments Act

2 Interpretation

- (1) In this Act, unless the context otherwise requires,—

...
internal area, in relation to any premises or vehicle, means an area within or on the premises or vehicle that, when all its doors, windows, and other closeable openings are closed, is completely or substantially enclosed by—

- (a) a ceiling, roof, or similar overhead surface; and
- (b) walls, sides, screens, or other similar surfaces; and
- (c) those openings

...

open area, in relation to any premises, means a part of the premises that is not an internal area

13A Smoking in casinos

- (1) The holder of the casino operator's licence in respect of a casino must take all reasonably practicable steps to ensure that no person smokes at any time in any part of the casino that is not an open area.
- (2) Subsection (1) does not prevent the holder of the casino operator's licence in respect of a casino from prohibiting smoking in a part of the casino that is an open area.
- (3) No person may smoke at any time in any part of a casino that is not an open area.

Gambling Act

139 Conditions of casino licence

- (1) The Gambling Commission may specify the conditions of a casino licence or vary or revoke the conditions of a casino licence in the following circumstances:
 - (a) on granting a casino operator's licence;
 - (b) on renewing a casino venue licence;
 - (c) on approving a casino venue agreement or an amendment to it;
 - (d) on application by the holder of the casino licence;
 - (e) on its own initiative or on the request of the Secretary.
- (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).

SCAL's submissions

5. SCAL submitted, in summary, as follows:

Construction and design changes

- (a) It wants to create two new outdoor gambling areas where patrons can smoke and gamble. The first change is to convert an existing smoking deck on level 2 to an outdoor gambling area. The second change is to level 6, to develop it into an indoor and outdoor gambling area.
- (b) The conversion of the smoking deck into an outdoor gambling area would allow it to house 21 gaming machines. The proposed design features the installation of glass fins, similar to those installed in the casino's existing outdoor Gambling Area adjoining the Diamond Room. The glass fins are designed to provide some protection from the elements, but will conform to the requirements of an 'open area' as set out in the Smoke-free Act.
- (c) Level 6 currently comprises an indoor buffet eating area and a large outdoor roof deck. It wants to fully enclose just under half of the roof deck and convert the remaining 300 square metres to an outdoor gambling area. The outdoor gambling area will be bordered by glass fins similar to those installed in the area adjoining the Diamond Room. The area will comply with the requirements of an 'open area' as set out in the Smoke-free Act.
- (d) The proposed construction and design changes require the Commission's approval under conditions 6 and 7 of SCAL's venue licence. Under condition 7, SCAL is required to provide an assessment on the matters specified in that condition, as follows:
 - (i) *Integrity and fairness of games* – The conduct of gaming in an outdoor area has no impact on the integrity and fairness of games, which will be subject to the same rules and requirements as those operating in the indoor areas of the casino.
 - (ii) *Effectiveness of security and surveillance* – The games located outdoors will be subject to the same security and surveillance requirements as



those operating indoors and there will be no adverse impact on the effectiveness of security and surveillance.

- (iii) *Harm prevention, harm minimisation and responsible gambling* – The proposed design changes would enable gaming products to be played in areas where smoking is permitted. The Commission considered this issue in decision GC15/11, and took the view that the proposal would not increase the potential for harm for the reasons set out in that decision.

The outdoor Gambling Area in the Diamond Room has been operational for over a year. Reports from staff suggest that this area has not led to an increased level of observed indicators of customers who may be experiencing harm. No customers have been identified who have sought self-exclusion or been excluded for problem gambling as a consequence of their gambling in this area.

Nonetheless, it has revised its Host Responsibility Programme (“HRP”) in recognition of the development of outdoor gambling areas. The HRP now provides that information on problem gambling and responsible gambling will be displayed and made available to customers in such areas.

Prior to the introduction of the Smoke-free Act, a number of customers chose to smoke while gambling and its experience with the Diamond Room outdoor gambling area suggests that there is still demand to combine both activities. As noted in decision GC15/11, the Smoke-free Act recognises the possibility of combining such activities.

It does not believe that the introduction of further facilities will in any way undermine efforts to prevent and minimise harm caused by gambling. It will continue to be vigilant of customers using such facilities and intervene where appropriate.

Patrons playing gaming machines on level 2 would be subject to scrutiny from staff in the same way as those playing machines in the current outdoor Gambling Area.

While a final decision has yet to be made regarding the placement of gambling products on level 6, the fact that level 6 is only accessible from the VIP area directly below (which predominantly services table game players), it is most likely that the area would be used for the placement of player terminals associated with electronic table game types. Patrons



playing these games would be subject to scrutiny from staff in the usual manner.

- (iv) *Potential access to the gambling area by persons under 20 years of age* – The only access to the outdoor areas will be via existing Gambling Areas, so the proposed design changes have no adverse impact on the potential for access by minors.
 - (v) *Compliance by any person with the Act, including section 11* – The design changes have no relevance to section 11 of the Act as SCAL is not proposing to increase the number of machines or tables, or create potential for more persons to play gambling products by virtue of the expanded floor area.
- (e) Pursuant to condition 8 of SCAL's licence, SCAL must ensure that gambling activity is not visible from outside the casino venue. It does not anticipate any difficulties in doing so for either level.

Redesignation of the Gambling Area

- (f) It currently has five approved Schedules of alternative Gambling Areas and two further Schedules are currently before the Commission for consideration. This application entails a change to the designated Gambling Area on level 2, and the addition of a new gambling area on level 6 in each of the seven Schedules. No changes are necessary to condition 9 itself.
- (g) The proposal for the smoking deck will result in a slight enlargement to the Gambling Area on level 2 of approximately 37 metres, while the redesignation on level 6 will add approximately 900 square metres to the Gambling Area.
- (h) The proposed new gambling area on level 2 is intended to house 21 gaming machines, and a separate application for the approval of a new floor plan permitting the relocation of these machines will follow should the Commission approve the current application.
- (i) No decision has yet been made on the placement of gambling product on level 6.
- (j) The licence condition complies with the section 139(2) requirements.

PGF's submissions

6. PGF submitted, in summary, as follows:
- (a) This application needs to be considered in conjunction with SCAL's separate application to convert the Jade Dragon restaurant into gambling area. SCAL is seeking to massively expand its Gambling Area and to relocate its existing gambling products to these areas. This could be in preparation for a significant expansion of gambling as a result of negotiations with the Government on the proposed Convention Centre.
 - (b) However there is one further change, which is the major expansion of smoking areas with SCAL creating smoking and non-smoking areas across each of its customer segments.
 - (c) The Commission has previously accepted the construction of smoking areas containing gambling on the basis that both are legal activities and that SCAL has satisfied the requirements of the open air calculator devised by the MoH to interpret open air legislation. In doing so, the Commission has enabled SCAL to start down the path now shown in these applications.
 - (d) It objects to this move. It is a setback to New Zealand's national approach on tobacco, and the Government's clear objectives in this area. It also acts as a precedent and will enable other venues to create smoking areas where gambling can continue. It does not allow smokers a "time out" in which they can consider the impact of their gambling.
 - (e) It is clear that SCAL is deliberately targeting smokers who are gamblers. There is a strong correlation between smoking and gambling, with a high incidence of problem gamblers having smoking habits. The creation of a dedicated smoking area is targeting this group of people and offering them a venue which many would find attractive. As such it represents an increase in the opportunity of gambling at the casino.
 - (f) In addition, by significantly increasing the Gambling Area, SCAL is increasing the capacity (potential patron numbers) and therefore the opportunities for gambling.
 - (g) On this basis the Commission should decline both applications.
 - (h) Separately, if the Commission wants real evidence of SCAL's approach to corporate social responsibility, then this move, which places revenue above public



health considerations and the Government's objectives around health, should be noted.

SA's submissions

7. SA submitted, in summary, as follows:

- (a) It has, together with PGF and the Cancer Society, made a complaint to the Director-General of Health and the Auckland Regional Public Health Service regarding a suspected breach of the Smoke-free Act by SCAL in relation to the Diamond Room's outdoor Gambling Area. It believes that the test to ascertain whether an area is an 'open area' for the purposes of the Smoke-free Act has been incorrectly applied regarding the overall purpose of the Smoke-free Act. This is being followed up with a Judicial Review proceeding. It therefore requests that a hold be put on this decision until the Judicial Review proceeding is determined.
- (b) Casinos believe they should be permitted to operate EGMs in their smoking areas because many Class 4 establishments operate EGMs in their smoking areas. Only seven Class 4 venues are currently permitted to operate EGMs in smoking areas. This is also a concern and is the reason a Judicial Review is being sought.
- (c) The opportunity to smoke and play gaming machines/tables will improve the attractiveness of the casino as a destination venue. This is an enticement to attract more custom and therefore increase gambling opportunities through increased patronage.
- (d) Providing an opportunity to have a break from play, whether it is for smoking or anything else, is an opportunity for Host Responsibility staff to prevent and minimise gambling harm. If machines are placed in smoking areas then the opportunity is lost for a break in play where gamblers can take time out to reflect on their gambling.
- (e) The paucity of evidence showing that the separation of smoking and gambling would reduce the risk of harm caused by problem gambling does not remove the responsibility to do what is possible to prevent and minimise harm. New Zealand law is concerned with encouraging individual rights in society, which is fair so long as rights are linked with responsibilities. The whole community has a responsibility to protect the most vulnerable people. People who play gaming machines are vulnerable to gambling harm.

- (f) The addition of gambling machines in smoking areas can increase gambling opportunities, even when machine numbers are currently within overall approved limits, if there are additional gambling machines being relocated that are not currently operational or being used. Research shows that for every new EGM being played, there will be 0.8 extra gamblers.
- (g) In one of its earlier submissions to the Commission, it noted that enlarging/re-designating gaming areas can provide room for the future installation of gambling products. This may be the case here.
- (h) There are licence conditions which require that gambling activities are not to be visible by the public from outside the casino and this needs to be adhered to for the smoking areas as well.

MoH's submissions

- 8. MoH submitted, in summary, as follows:
 - (a) It has no substantive comments in relation to SCAL's proposal.
 - (b) Any changes agreed to as the result of SCAL's application must fully comply with New Zealand legislation.
 - (c) Its preference is that tobacco smoking should not be encouraged.

The Secretary's submissions

- 9. The Secretary submitted that an approval of SCAL's application would seem consistent with the Commission's past rulings that allowed for the operation of gambling activities in outdoor smoking areas.

SCAL's submissions in reply

- 10. In reply, SCAL submitted, in summary, as follows:

PGF's submission

- (a) PGF objects to the proposed expansion of the Gambling Area on the basis that an increase in floor capacity will increase opportunities for casino gambling. This argument has been advanced previously, and largely rejected by the Commission. Opportunities for casino gambling are primarily determined by the number and characteristics of each game and the number of players who may participate. In this sense, an increase in floor space is of no relevance to those games where the game rules restrict the number of players who may participate.



It could have some potential relevance to those games which are not subject to restrictions on player numbers, but only where the additional floor space creates wagering opportunities that would otherwise not be apparent.

- (b) In reality, the theoretical maximum player numbers that have been assigned to unrestricted games such as Roulette, Tai Sai and Money Wheel are not based on floor space considerations, but rather on how many persons could reasonably participate in those games, having regard to the size and shape of the tables and the position of the wagering areas. The proposed expansion to the gambling floor area would not enable a greater number of persons to play these unrestricted games and there will be no increase in casino gambling opportunities.
- (c) PGF is also opposed to the development of the two outdoor gambling areas and claims that this is contrary to the Government's clear objectives in this area. In fact, the Smoke-free Act specifically recognises the possibility of persons smoking while gambling, as noted by the Commission in decision GC15/11.
- (d) PGF also claims that approving the applications would create a precedent which would enable other venues to create smoking areas where gambling may be conducted. In fact the precedent for these developments was established in 2007 when the Commission allowed an appeal by the Lion Foundation against a decision by the Secretary to impose a condition on the venue licence for the Kilbirnie Tavern. Since that time a small number of venues, including SKYCITY Auckland, have developed outdoor Gambling Areas. The suggestion that these outdoor areas do not allow smokers a "time out" opportunity in which they can consider the impacts of their gambling ignores the fact that patrons can still obtain respite in other areas of the casino where gambling does not take place, such as bars, cafés or restaurants.
- (e) Contrary to PGF's claims, smokers who are gamblers are not being targeted. Rather, facilities are being enhanced for the convenience of customers.
- (f) It is not aware of any new research or evidence since the Commission's 2007 decision (and PGF has not cited any) which might suggest that the development of outdoor gambling areas will exacerbate problem gambling risk. Experience over the past year with SCAL's outdoor Gambling Area has not highlighted any issues to suggest that further outdoor gambling facilities will adversely impact on efforts to provide a safe gambling environment and facilitate effective host responsibility.



SA's submission

- (g) It is not aware of a Judicial Review proceeding in relation to its current outdoor Gambling Area. The advice it received from the Auckland Regional Public Health Service following investigation of an alleged breach confirms that the outdoor Gambling Area is an open area for the purposes of the legislation. The fact that SA and others may now be pursuing a Judicial Review is no reason to defer any decision in relation to the current application.
- (h) Its view that it should be able to deploy gambling products in outdoor areas is not so much based on the fact that a number of Class 4 establishments are able to do so, but rather that the Smoke-free Act contemplates such an arrangement and the Act does not prohibit it. There is a demand to combine both activities and it's experience with its current outdoor Gambling Area gives no reason to believe that the proposed introduction of further facilities will in any way undermine efforts to prevent and minimise harm caused by gambling.
- (i) SA's argument that the creation of outdoor gambling areas, and other initiatives which might make the destination more attractive to some customers, will increase the opportunities for casino gambling has previously been considered and rejected by the Commission.
- (j) Locating gaming products in outdoor gambling areas does not remove the opportunity for gamblers to take a break in play. Patrons can still obtain respite in other areas of the casino where gambling does not take place.
- (k) It disagrees with SA's suggestion that the paucity of research to support the notion that the separation of smoking and gambling activities is necessary to reduce the risk of harm caused by gambling is reason enough to take a precautionary approach to this issue. A robust HRP is in place which includes processes for identifying persons exhibiting signs of problem gambling and carrying out appropriate interventions. Its experience over the past year with the outdoor Gambling Area has not highlighted any concerns that would discourage it from developing further facilities.
- (l) In terms of the proposed expansion to the Gambling Area, these developments are designed to accommodate existing gambling products and to provide for a more comfortable and spacious environment. If the law was to change and it was permitted to acquire additional products, then clearly the new areas could be used to house those new products as well.



Analysis

11. SCAL has applied to the Commission for approval of construction and design changes and to redesignate the casino's Gambling Area. If the applications are approved, the result will be the creation of two additional areas at the Auckland casino and their designation as part of the casino's total Gambling Area (which includes a series of alternative designations), producing an increase in the designated total Gambling Area of in excess of 900 square metres. However, neither the changes nor the increase in size of the designated Gambling Area by themselves will allow either smoking or gambling activity in the additional areas. Such activities depend on subsequent assessments of which only one, approval of floor plans showing the permitted location of all gambling equipment within the casino, will come before the Commission. It is not a function of the Gambling Commission to decide whether something is an "open area" under the Smoke-free Act. These applications, like others before them, are brought on the basis that the applicant assumes the risk and responsibility of satisfying the relevant authority of its compliance with that legislation before it allows smoking in any part of the casino.

Smoking and Gambling at the Auckland casino

12. The Commission considered a similar application by SCAL in 2011, which culminated in decision GC15/11. Aspects of the Commission's analysis from that decision are relevant to the present applications and are repeated below, as follows.
18. Section 13A of the Smoke-free Act provides for smoking in casinos, as follows:
- 13A. Smoking in casinos**
- (1) The holder of the casino operator's licence in respect of a casino must take all reasonably practicable steps to ensure that no person smokes at any time in any part of the casino that is not an open area.
- (2) Subsection (1) does not prevent the holder of the casino operator's licence in respect of a casino from prohibiting smoking in a part of the casino that is an open area.
- (3) No person may smoke at any time in any part of a casino that is not an open area.
19. The Smoke-free Act, like the Gambling Act, is silent on the question of smoking while gambling. The Commission has not previously considered section 13A of the Smoke-free Act nor, as noted above, did the Commission, in its early decisions relating to smoking balconies at casinos, consider whether smoking and gambling could co-exist.
20. However, the Commission has considered both the equivalent provision of the Smoke-free Act and the question of smoking while gambling in relation to a Class 4 gambling venue, the Kilbirnie Tavern. The licence holder for the Kilbirnie Tavern, The Lion Foundation, appealed against a licence condition

imposed by the Secretary preventing gaming machines from being played in areas in which patrons could smoke. As part of the Kilbirnie Tavern appeals, the Commission considered whether the Smoke-free Act prohibits the simultaneous participation in smoking and gambling at Class 4 venues in New Zealand and held that it does not.

21. Sections 13B of the Smoke-free Act, which was inserted by the Smoke-free Environments Amendment Act 2003, provides as follows:

13B Smoking in certain gaming machine venues

- (1) The holder of a class 4 gambling venue licence in respect of a place must take all reasonably practicable steps to ensure that no person smokes at any time in any part of the place that is not an open area.
- (2) Subsection (1) does not prevent the holder of a class 4 gambling venue licence in respect of a place from prohibiting smoking in a part of the place that is an open area.
- (3) No person may smoke at any time in any part of a place in respect of which a class 4 gambling venue licence is held that is not an open area.

22. The effect of this section is to ban smoking in Class 4 gambling venues in other than "open areas" at these venues. An open area is defined in the Smoke-free Act as "...a part of the premises that is not an internal area." An internal area is defined as:

... an area within or on the premises ... that, when all its doors, windows, and other closeable openings are closed, is completely or substantially enclosed by –

- (a) a ceiling, roof, or similar overhead surface; and
- (b) walls, sides, screens or other similar surfaces; and
- (c) those openings.

23. From this, the Commission concluded that Parliament had chosen not to prohibit smoking and gambling at Class 4 venues absolutely, and instead provided for the possibility remaining open through the use of "open areas". At paragraph 30 of decision GC03/07, the Commission held:

The Amendment Act did not completely prohibit smoking in class 4 venues, as Parliament could have done if that were its intention, but rather provided for the circumstances in which smoking could take place.

24. The same conclusion was reached by Clifford J in the declaratory judgment proceeding commenced by the Secretary following decision GC03/07. At paragraph 63 of *The Secretary for Internal Affairs v Kilbirnie Tavern Limited & Ors*, (HC Wellington CIV-2007-485-1988, 14 November 2008), Clifford J said:

... the scheme of the Smoke-free Environments Act would appear to allow, and perhaps indeed contemplate, that under the legislation class 4 gambling and smoking may co-exist in open areas.

25. This analysis was conducted in relation to smoking and gambling at Class 4 venues, and in particular smoking and gambling in the specific circumstances of the Kilbirnie Tavern but applies equally to casinos, with sections 13A and 13B of the Smoke-free Act being identical in tenor.

26. Accordingly, applications and appeals regarding the placement and use of gaming machines in smoking areas fall to be decided upon the same criteria as other applications and appeals. As the Commission noted in decision GC31/10, approval depends on exactly what is proposed at the venue in question. The Commission needs to be satisfied that the proposal is consistent with the Gambling Act and its purpose, with the key consideration being the likely effect of the proposal on the potential for harm. ...
13. These conclusions apply equally to the current applications. There is no legal impediment to casino operators offering a facility in which patrons can both smoke and gamble provided that the smoking takes place in an "open area" as defined by the Smoke-free Act (a matter which is the responsibility of the public health authorities) and the gambling activity is in accordance with the Act and relevant licence conditions. Accordingly the Commission's consideration of this matter falls to be decided upon the same criteria as any other application for construction and design changes, and redesignation of Gambling Area. That is, the Commission must look at what is proposed and be satisfied that:
- (a) the construction and design changes satisfy the requirements of condition 7 of SCAL's venue licence;
 - (b) the redesignation is within the casino venue and the licence condition defining the designated area is consistent with section 139 of the Act; and
 - (c) more generally, the proposal is consistent with the Act and its purposes.

Construction and design changes

14. SCAL is proposing construction and design changes to levels 2 and 6 of the casino. These changes must be assessed against matters specified in licence condition 7 of SCAL's venue licence.
15. The Commission was satisfied that the proposed changes would not adversely impact upon conditions 7(a), (b) or (d). PGF and SA implied that the changes could adversely affect condition 7(c) – harm prevention, harm minimisation and responsible gambling. They submitted that the creation of smoking areas where patrons can gamble does not allow smokers any "time out" to consider the impact of their gambling, and that there is a strong correlation between smoking and gambling with a high incidence of problem gamblers having smoking habits.
16. SCAL submitted that its current outdoor gambling area has been operational for over one year and has not led to an increased level of observed indicators of customers who may be experiencing harm. SCAL also submitted that it has a robust HRP in place which includes processes for identifying persons exhibiting signs of problem gambling and carrying out appropriate interventions.



17. The Commission was satisfied that SCAL's proposal would not have an adverse impact on condition 7(c) for the following reasons:
- (a) In previous decisions, the Commission considered evidence on the relationship between smoking and gambling, none of which established a clear benefit for the minimisation of problem gambling harm from banning smoking while gambling. As the Commission noted in decision GC15/11, the existence of some correlation between smoking and problem gambling does not lead it to the view that controlling the correlated activity (smoking) is an effective or appropriate means of reducing gambling harm. It considers that minimisation of problem gambling harm is most effectively achieved by detecting and addressing problem gambling directly. No new information was put before the Commission in this application to lead the Commission to change its view.
 - (b) All information before the Commission suggests that the current outdoor Gambling Area has not increased the incidence of harm over and above its occurrence elsewhere at the casino. The Commission does not expect that the addition of new smoking areas will have any different effect. If the position changes in the future, there are means for any developing harm concerns to be addressed in the context of the casino's HRP and its periodic review.
 - (c) The host responsibility obligations imposed by the present HRP at the Auckland casino are already extensive (and the HRP is currently in the process of review). Upon the observation of any signs of problem gambling, including while smoking, the appropriate intervention must occur.
 - (d) Although smoking decks have been used by patrons as respite areas from gambling, patrons can still obtain respite in other areas of the casino where gambling does not take place.
18. The Commission is also satisfied that the construction and design changes would not have an adverse impact on condition 7(e); compliance by any person with the Act, including condition 11. This is addressed further below.

Redesignation of the Gambling Area

19. The Commission has previously considered whether it has power to redefine a casino's Gambling Area, holding that it can do so, provided that the amended area does not extend beyond the casino venue as defined in the casino venue licence and the licence conditions defining the new area are consistent with section 139(2) of the Act.

20. SCAL's venue licence defines the casino venue as the block bounded by Hobson Street, Wellesley Street West, Federal Street and Victoria Street West, less four specifically excluded areas within the block; namely the underground carpark, the Sky Tower, the bus station and the walkway between Sky Tower and the casino complex. The Commission is satisfied that the proposed new gambling areas are within the defined casino venue.
21. PGF and SA both submitted that an increase in gambling area will increase opportunities for casino gambling. In part, these submissions treat an assumed increase in the likely appeal of the gambling facilities as an increase in the opportunities for casino gambling. The Commission has dealt at length with this distinction in several earlier decisions. The language of the Act makes clear that it is the latter increase that is prohibited; section 11 of the Act does not prevent casinos from making existing opportunities more appealing to customers.
22. In other respects, the submissions were concerned with the increase in designated gambling area. The Commission is satisfied that even a significant expansion of the Gambling Area does not, of itself, increase opportunities for casino gambling. The proposed re-designation will not allow SCAL to place any gambling equipment in the expanded areas. Any relocation of gambling equipment within the casino will require approval by the Commission of new floor plans. The Commission will further consider the issue of increased opportunities when SCAL seeks approval of a floor plan that provides for the relocation of gambling products into the newly extended areas.
23. As a result, granting the present application does not of itself permit the additional gambling area to be used for gambling. SCAL will undertake the construction and design changes at its own risk in the knowledge that it has no effective approval to use the new space for gambling until the Commission has approved a floor plan incorporating the new area.

Purposes of the Act

24. The purposes of the Act are set out in section 3, as follows:

3. Purpose

The purpose of this Act is to—

- (a) control the growth of gambling; and
- (b) prevent and minimise the harm caused by gambling, including problem gambling; and
- (c) authorise some gambling and prohibit the rest; and
- (d) facilitate responsible gambling; and
- (e) ensure the integrity and fairness of games; and
- (f) limit opportunities for crime or dishonesty associated with gambling; and
- (g) ensure that money from gambling benefits the community; and

- (h) facilitate community involvement in decisions about the provision of gambling.

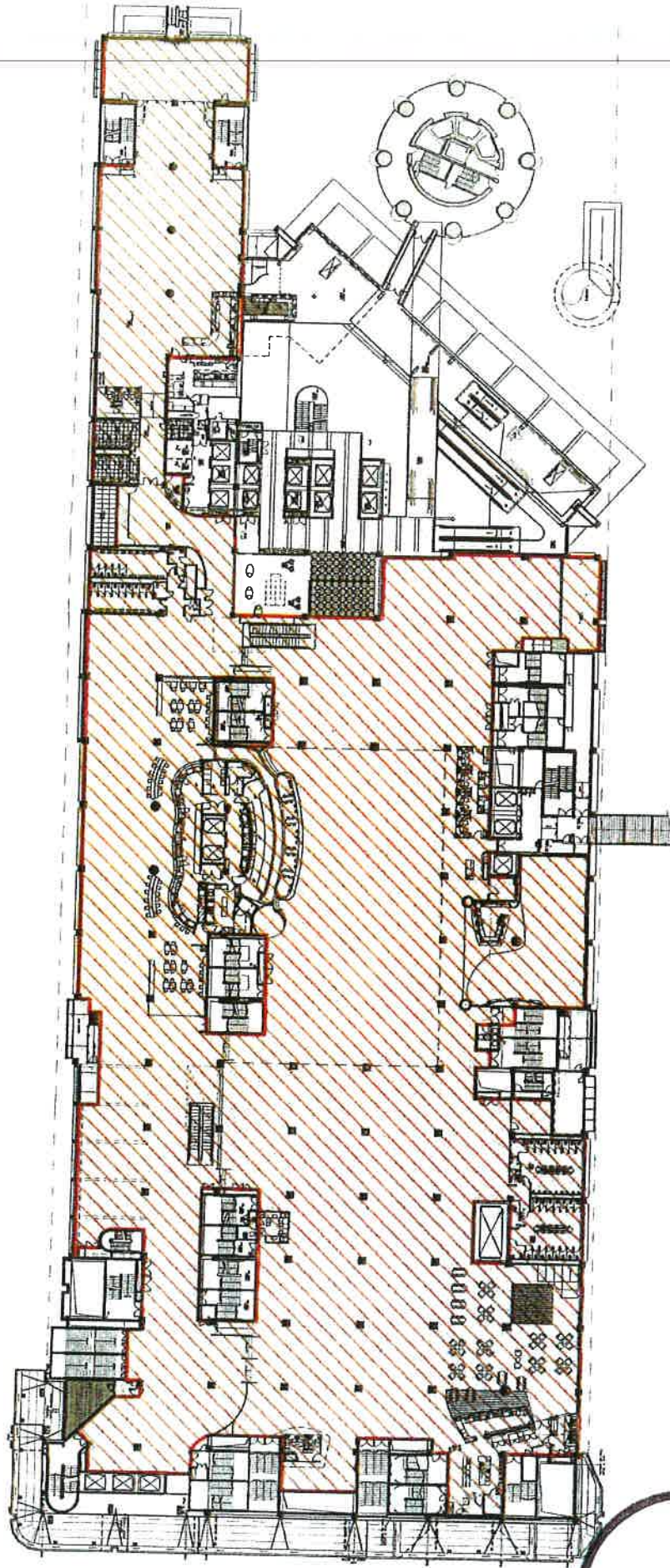
25. SCAL's proposal is not inconsistent with Purposes 3(a) and (c)-(h) of the Act. The Commission is also satisfied that the proposal is not inconsistent with Purpose 3(b) for the same reasons as those set out above in relation to condition 7(c) of SCAL's venue licence.
26. SA raised an additional issue in relation to condition 8 of SCAL's venue licence, which provides that SCAL must ensure that gambling activity is not visible from the street or other public areas outside the casino. That obligation is not changed by the applications so SCAL must continue to comply with condition 8. SCAL submitted that it does not anticipate any difficulties in doing so.
27. SA also submitted that these applications should be put on hold pending a Judicial Review proceeding in which SA and others seek clarification of the appropriate test to be applied "to ascertain whether an area is an 'open area' for the purposes of the [Smoke-free] Act." The Commission sees no need to delay its decision as it is not affected by the pending issue. The applications before the Commission involve approval of construction and design changes to the Auckland casino, and the redesignation of its Gambling Area. SCAL has appropriately disclosed the purpose and likely effect of the changes, including its expectation that, under the Smoke-free Act, smoking will be permitted in certain areas. The applications have been considered on that assumption but deciding whether or not the premises comply is not a matter for the Commission but for another agency. SCAL will be able to use the areas for smoking as it intends only if it satisfies those separate statutory requirements. Approval of the applications by the Commission involves no assessment by the Commission against those requirements.

Decision

28. The Commission approved:
- (a) SCAL's application for approval of construction and design changes, under conditions 6 and 7 of SCAL's venue licence; and
 - (b) SCAL's application to redesignate the Gambling Area, under condition 9 of SCAL's venue licence.

Schedules 1, 2, 3, 4, 5, 6 and 7 are **attached**.





GAMING AREA: 6,874m²



CLIENT AND PROJECT

Client: Sky City Entertainment Group
 Project: Gaming Layouts

SKY CITY
 ENTERTAINMENT GROUP

Moller Architects

1000 West 10th Avenue, Suite 1000
 Denver, CO 80202
 Phone: 303.733.1111
 Website: www.moller-architects.com

REVISIONS

No.	Date	Description
1	2/11/2012	Current

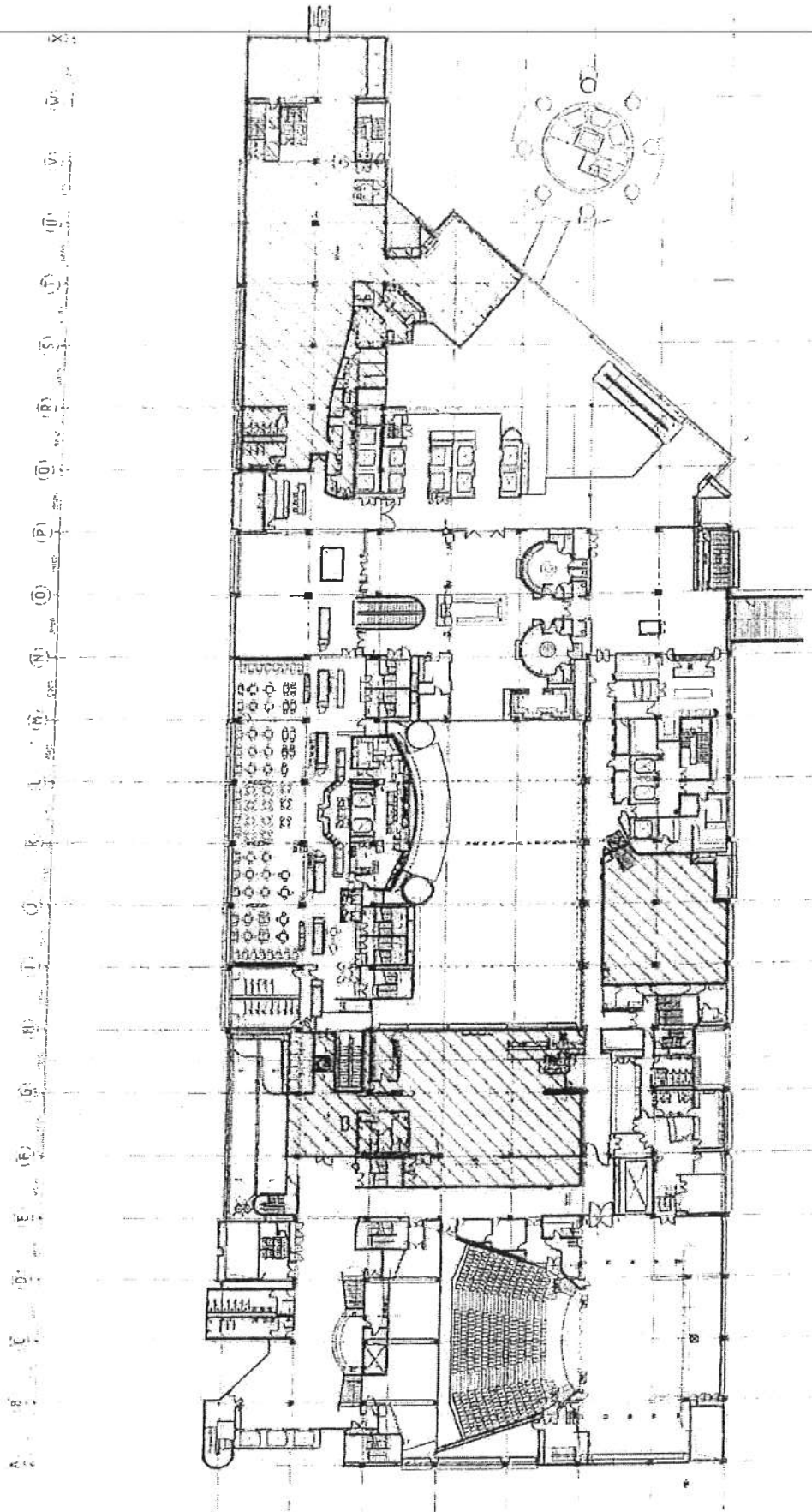
SKY CITY - PODIUM LEVEL 2 GAMING AREAS CURRENT
 2/11/2012

PREPARED BY: [Name]
CHECKED BY: [Name]
DATE: 2/11/2012

SCALE: 1/8" = 1'-0"

NOTES:

- 1. Refer to Schedule 1 for General Specifications.
- 2. All dimensions are in feet and inches.
- 3. The drawing shall be used in conjunction with all relevant documents.
- 4. Sky City Entertainment Group is not responsible for any errors or omissions.



GAMING AREA: 2,000m²



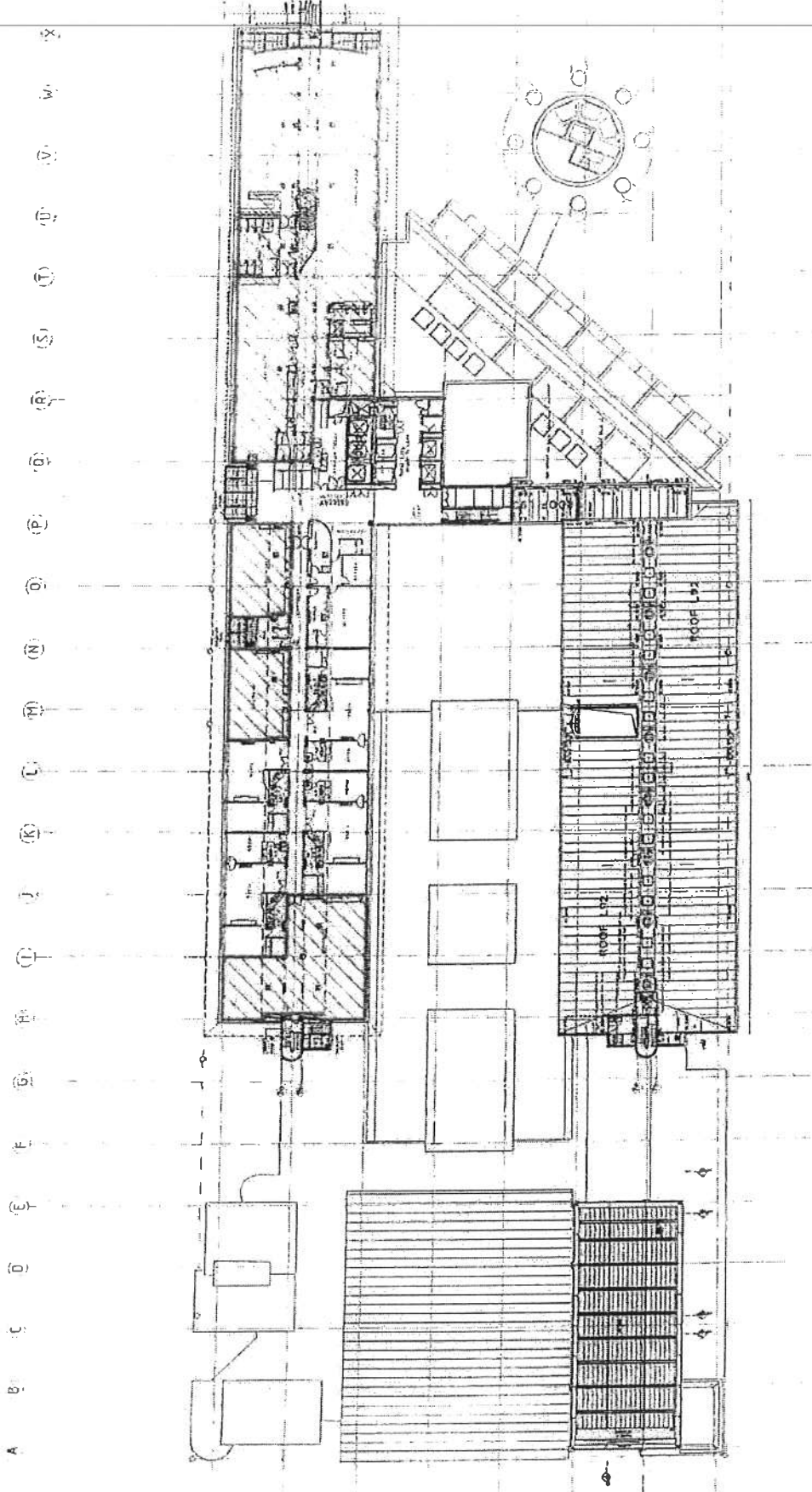
CALL: 03 9379 9999
 FAX: 03 9379 9999
 100 Market Street
 Melbourne, VIC 3000
 www.moller.com.au

Moller Architects
 Moller Architects
 100 Market Street
 Melbourne, VIC 3000
 Australia
 Tel: 03 9379 9999
 Fax: 03 9379 9999
 www.moller.com.au

SKY CITY
 ENTERTAINMENT GROUP
 Sky City Entertainment Group
 Gaming Layouts

SKY CITY - PODIUM
 LEVEL 3
 GAMING AREAS
 15/10/2012

DATE:	15/10/2012
PROJECT:	SKY CITY - PODIUM LEVEL 3 GAMING AREAS
CLIENT:	SKY CITY ENTERTAINMENT GROUP
DESIGNER:	MOLLER ARCHITECTS
SCALE:	AS SHOWN
DRAWN BY:	[Name]
CHECKED BY:	[Name]
APPROVED BY:	[Name]



GAMING AREA: 1,309MT²



PROJECT NO.	15/10/2012
DATE	15/10/2012
SCALE	AS SHOWN
PROJECT	SKY CITY - VIP GAMING LEVEL 145 GAMING AREAS
CLIENT	SKY CITY ENTERTAINMENT GROUP
ARCHITECT	MOLLER ARCHITECTS

SKY CITY - VIP GAMING
LEVEL 145
GAMING AREAS
15/10/2012

1. This drawing is for the proposed construction of the Sky City - VIP Gaming Level 145. It is subject to the approval of the relevant authorities. The client shall be responsible for obtaining all necessary approvals. The architect shall be responsible for ensuring that the design complies with all applicable codes and standards.

PROJECT NO.	15/10/2012
DATE	15/10/2012
SCALE	AS SHOWN
PROJECT	SKY CITY - VIP GAMING LEVEL 145 GAMING AREAS
CLIENT	SKY CITY ENTERTAINMENT GROUP
ARCHITECT	MOLLER ARCHITECTS

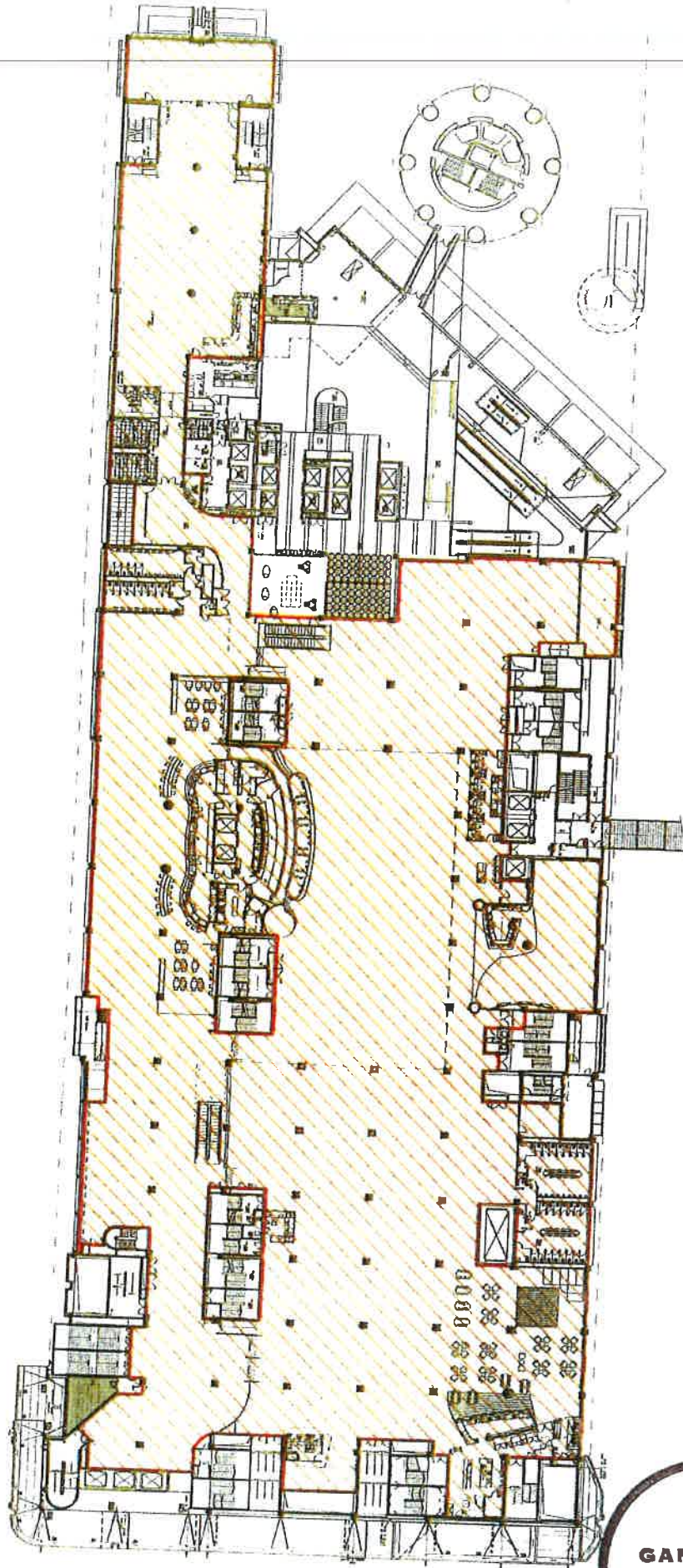
Sky City Entertainment Group
Gaming Layouts

SKY CITY ENTERTAINMENT GROUP

FOR ALL INFORMATION
CONTACT THE ARCHITECT
MOLLER ARCHITECTS
15/10/2012

Moller Architects

MOLLER ARCHITECTS



GAMING AREA: 6,874m²



Call: 613 3570488
 Fax: 613 3570488
 100 York Street
 Adelaide, South Australia
 www.mollerarchitects.com

moller. Architects

CLIENT AND PROJECT
SKY CITY
 FEDERAL HOUSE GROUP
 Sky City Entertainment Group
 Gaming Layouts

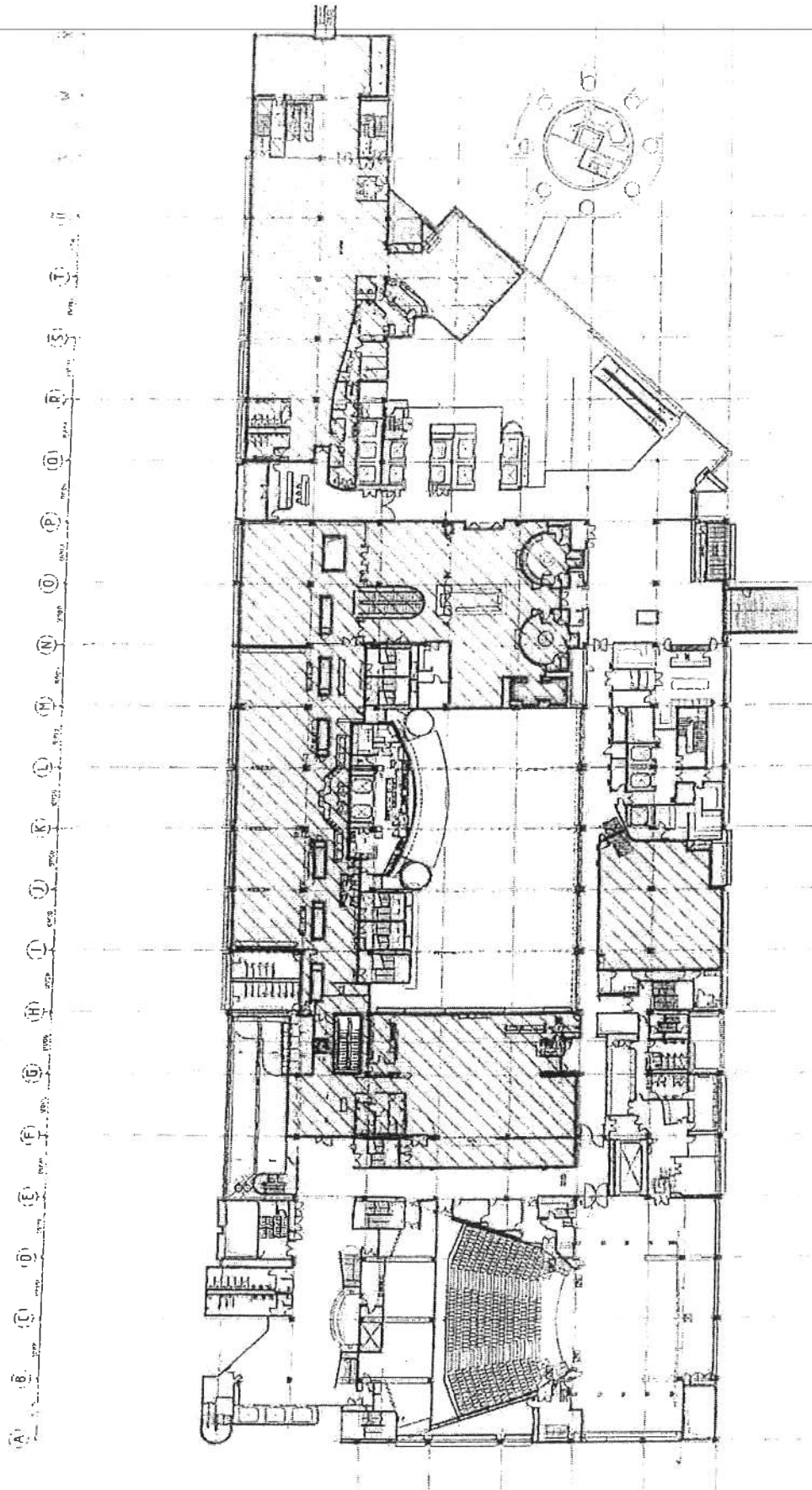
PROPOSED QUANTITIES

Range	000	001	002
Quantity	000	001	002
Unit	000	001	002
Material	000	001	002
Notes	000	001	002

SKY CITY - PODIUM
 LEVEL 2 - GAMING AREAS
 CURRENT
 2/11/2012

REVISIONS

No.	Description	Date



GAMING AREA: 3,422m²



SKY CITY
 SKY CITY - PODIUM
 LEVEL 3
 GAMING AREAS Version 2
 15/10/2012

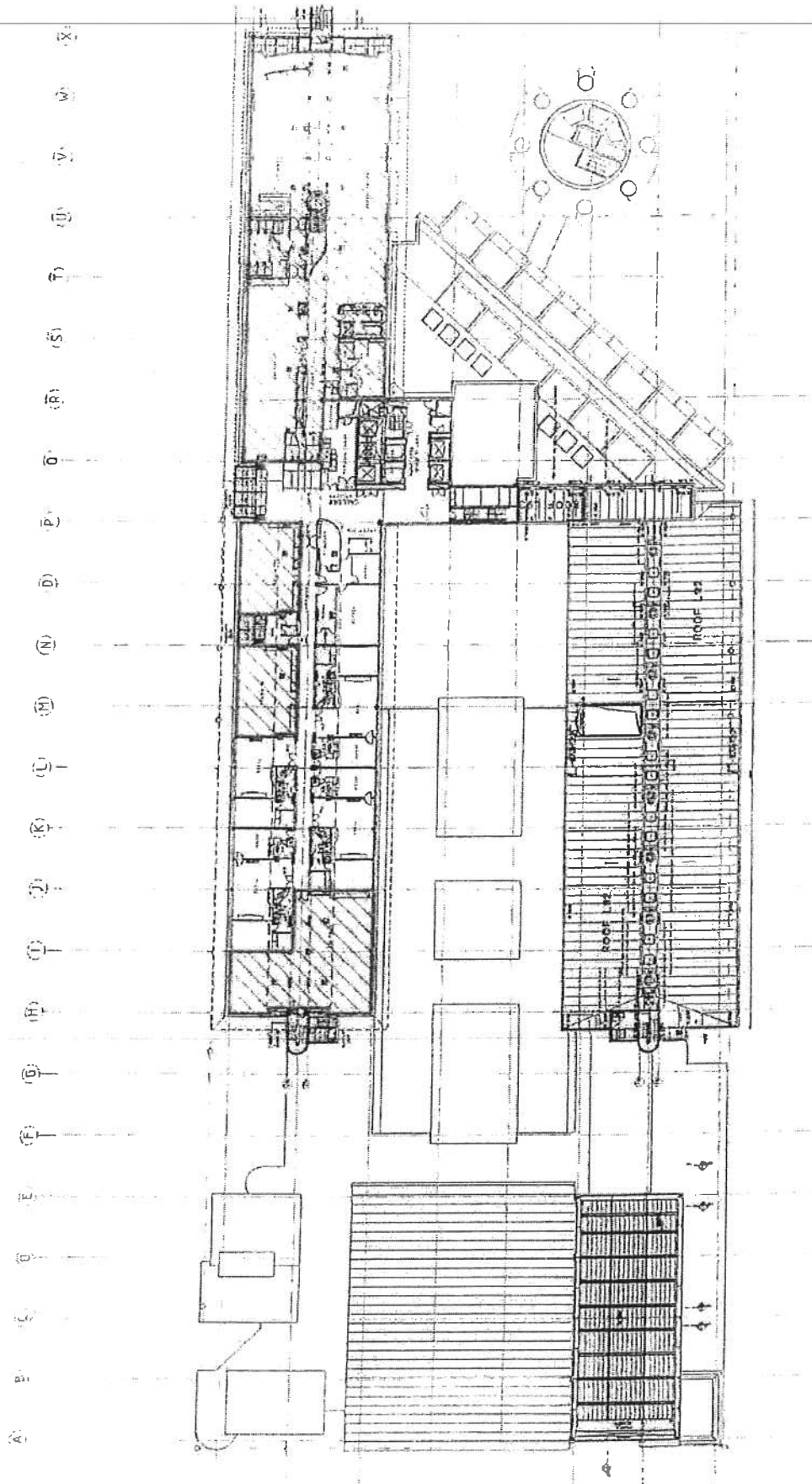
SKY CITY ENTERTAINMENT GROUP
 GAMING LAYOUTS

SKY CITY
 SKY CITY ENTERTAINMENT GROUP

SKY CITY
 SKY CITY ENTERTAINMENT GROUP

Moller Architects
 GAMBLING COMMISSION







GAMING AREA: 1,309m²

Project No.	15-102012
Client	Sky City Entertainment Group
Location	Las Vegas, NV
Scale	As Shown
Date	15/10/2012

SKY CITY - VIP GAMING
LEVEL H5
GAMING AREAS
15/10/2012

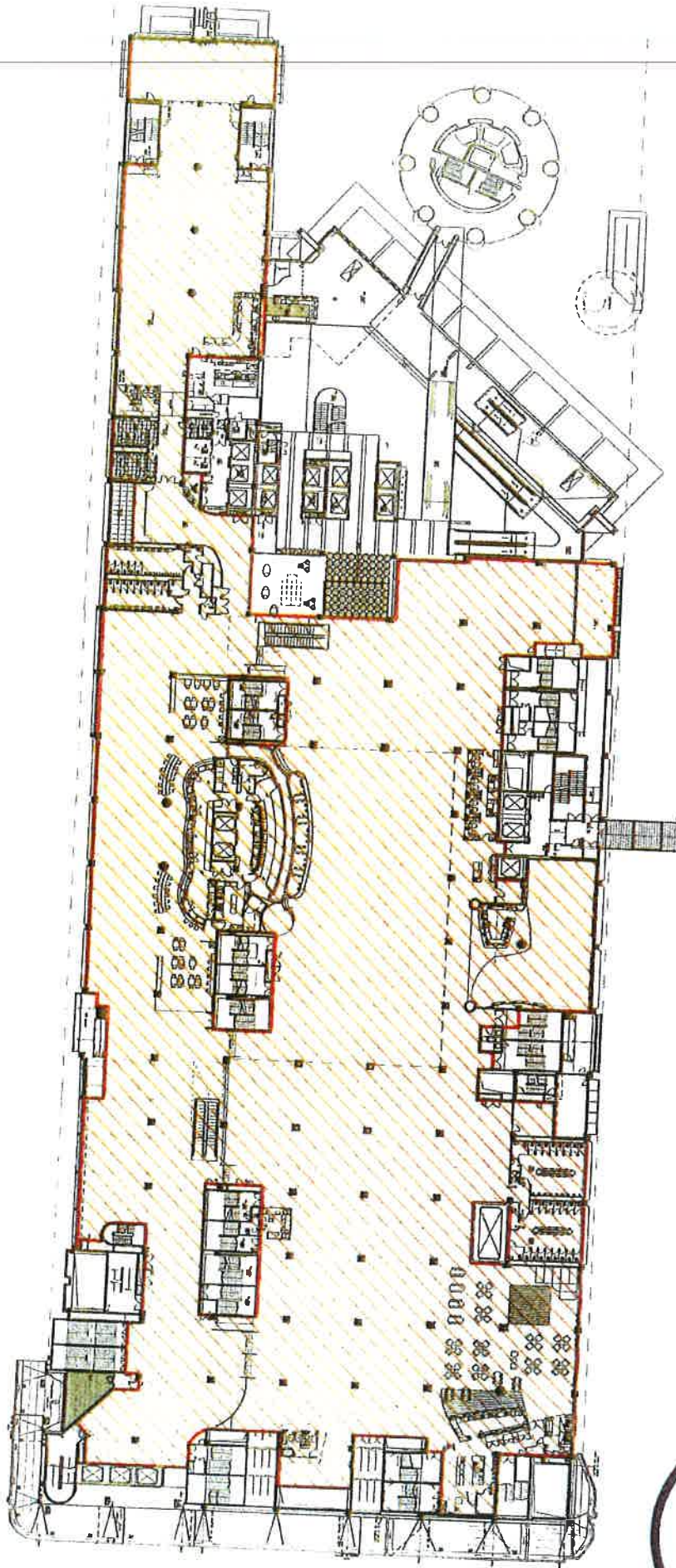
Project No.	15-102012
Client	Sky City Entertainment Group
Location	Las Vegas, NV
Scale	As Shown
Date	15/10/2012


Sky City Entertainment Group
 Gaming Layouts

 SKY CITY
 ENTERTAINMENT GROUP

15-102012
 15-102012
 15-102012
 15-102012


Moller Architects
 ARCHITECTS





GAMING AREA: 6,874m²



Moller Architects

City of Christchurch
 222 Victoria Street
 Christchurch 8011
 Phone: +64 3 366 2000
 Fax: +64 3 366 2005



Sky City Entertainment Group
 Gaming Layouts

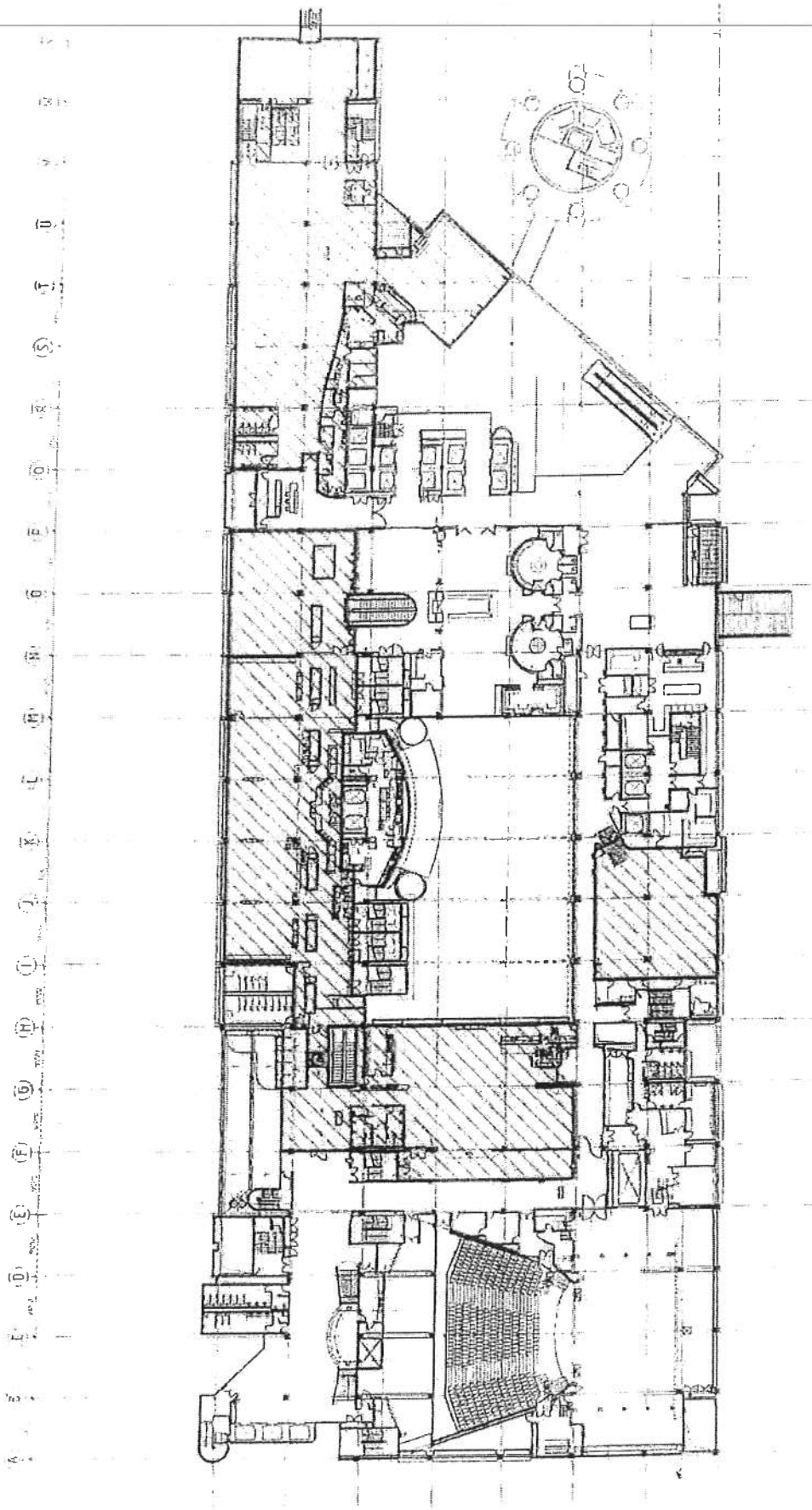
SKETCH AND DRAWING

Sheet	GM
Drawn	GM
Scale	1:100
Project No.	2011-001
Client	SkyCity Entertainment Group
Contract	2011-001
Revision	01
Date	21/11/2012

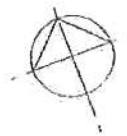
1. Page 18 Section 1 for City of Christchurch
 New Zealand's most exciting and entertainment venue in the heart of the city.
 Christchurch City Council, 2011-001 (18/11/2012)

SKY CITY - PODIUM
 LEVEL 2
 GAMING AREAS
 CURRENT
 21/11/2012

Project No.	2011-001
Client	SkyCity Entertainment Group
Contract	2011-001
Revision	01
Date	21/11/2012



GAMING AREA: 2,972m²



DATE	15/10/2012
BY	[Signature]
FOR	SKY CITY - PODIUM LEVEL 3 GAMING AREAS
VERSION	Version 1

SKY CITY - PODIUM
 LEVEL 3
 GAMING AREAS Version 1
 15/10/2012

PROJECT NO.	10000000000000000000
CLIENT	SKY CITY ENTERTAINMENT GROUP
ARCHITECT	MOLLER ARCHITECTS
DATE	15/10/2012
BY	[Signature]
FOR	SKY CITY - PODIUM LEVEL 3 GAMING AREAS

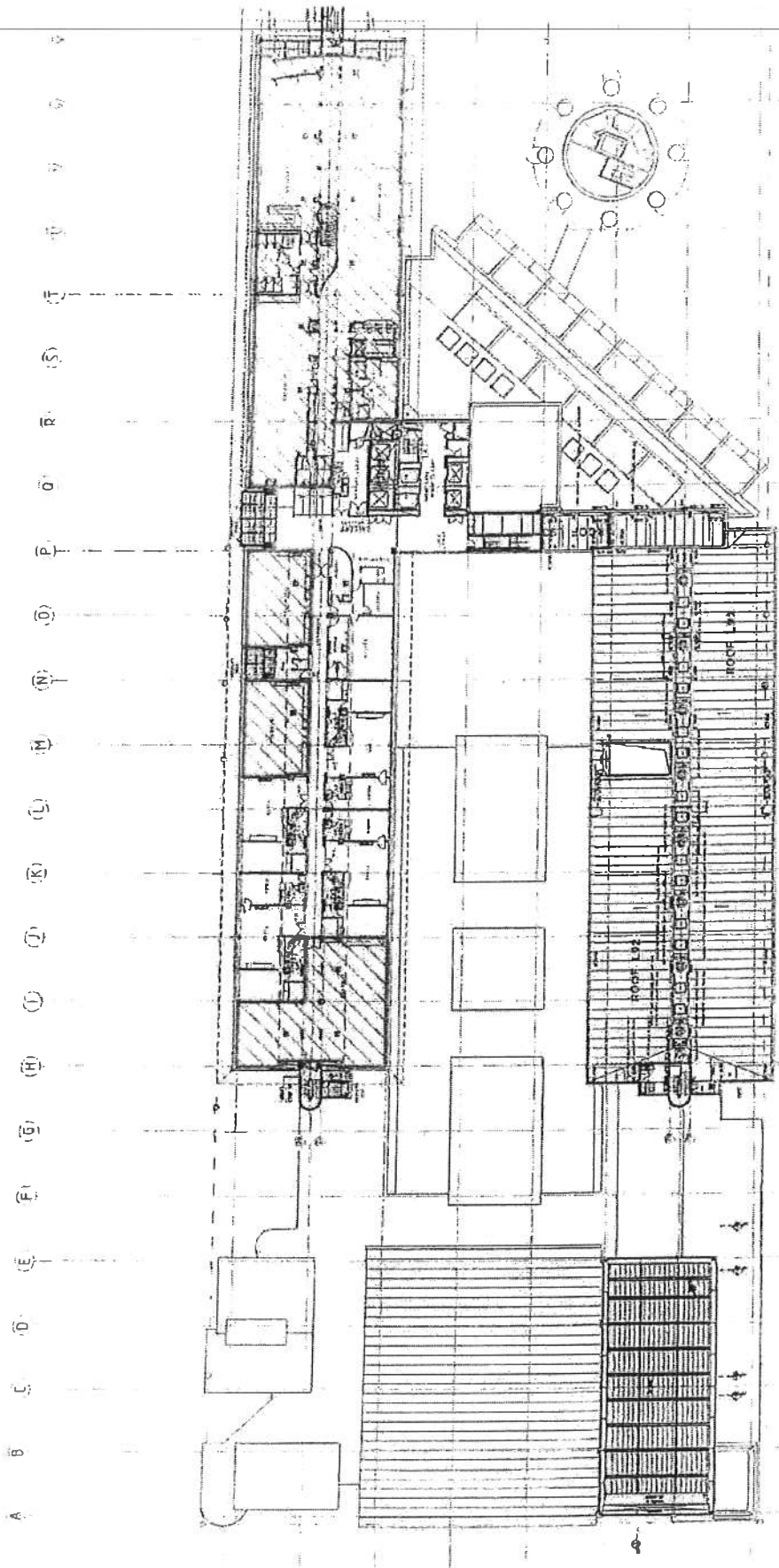
Sky City Entertainment Group
 Gaming Layouts

SKY CITY
 ENTERTAINMENT GROUP

2011-12-31
 10000000000000000000

MOLLER Architects

GAMBLING
 COMMISSION



GAMING AREA: 1,509RT²

Project No.	151102012
Client	SkyCity - VIP Gaming
Level	LEVEL H5
Date	15/10/2012

SKY CITY - VIP GAMING
LEVEL H5
GAMING AREAS
15/10/2012

Project No. 151102012
Project Name SkyCity - VIP Gaming
Level H5
Date 15/10/2012

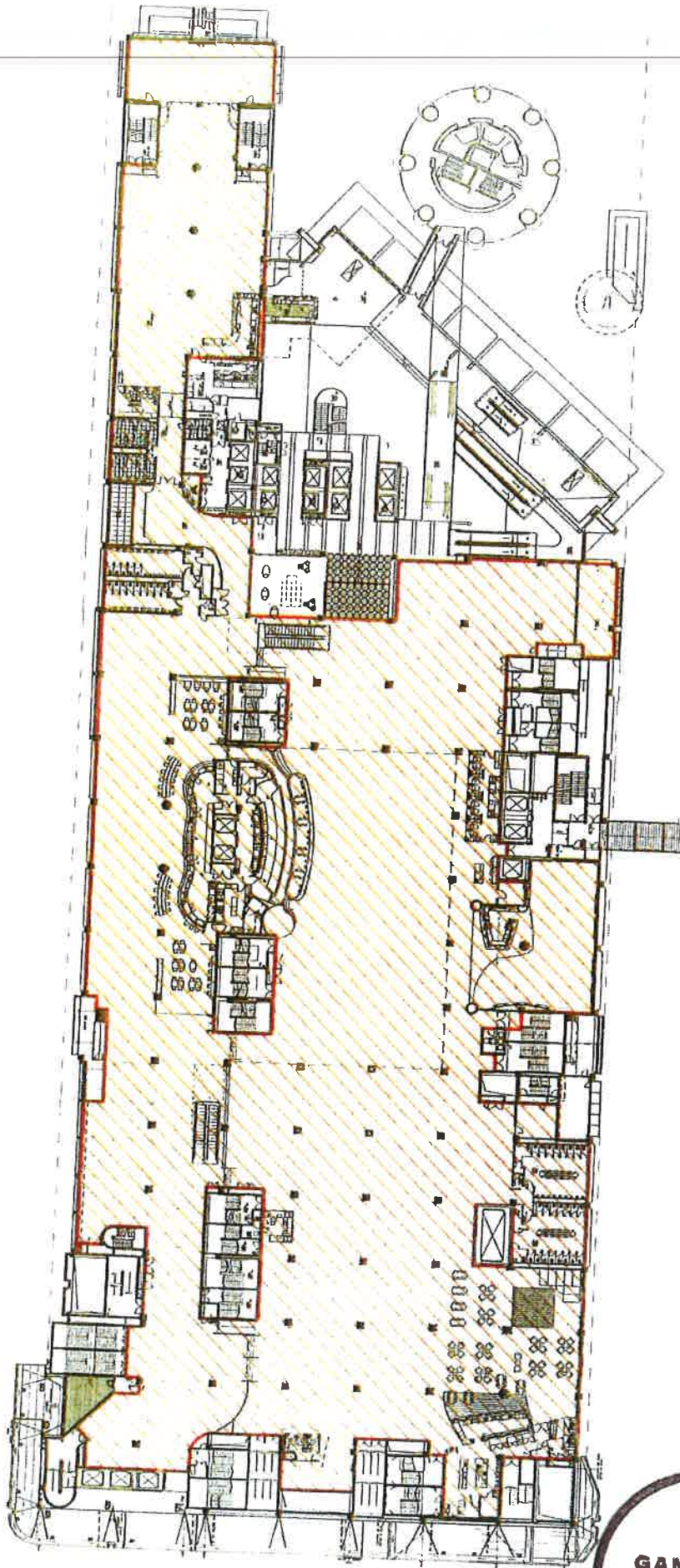
Sky City Entertainment Group
Gaming Layouts



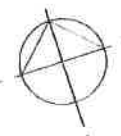
Preparatory drawing

Moller Architects





GAMING AREA: 6,874m²



Conf: 64 9 3570886
 Fig: 64 9 3570889
 Level: 2
 Date: 21/11/2012
 Author: [Name]
 Check: [Name]

moller. Architects

SKY CITY ENTERTAINMENT GROUP
 GAMING LAYOUTS

SKY CITY - PODIUM LEVEL 2
 GAMING AREAS
 CURRENT

Project Name	SKY CITY - PODIUM LEVEL 2
Client	SKY CITY ENTERTAINMENT GROUP
Architect	MOLLER ARCHITECTS
Date	21/11/2012
Scale	1:100
Sheet No.	SKY CITY - PODIUM LEVEL 2 - GAMING AREAS - CURRENT
Project No.	64 9 3570886
Fig. No.	64 9 3570889

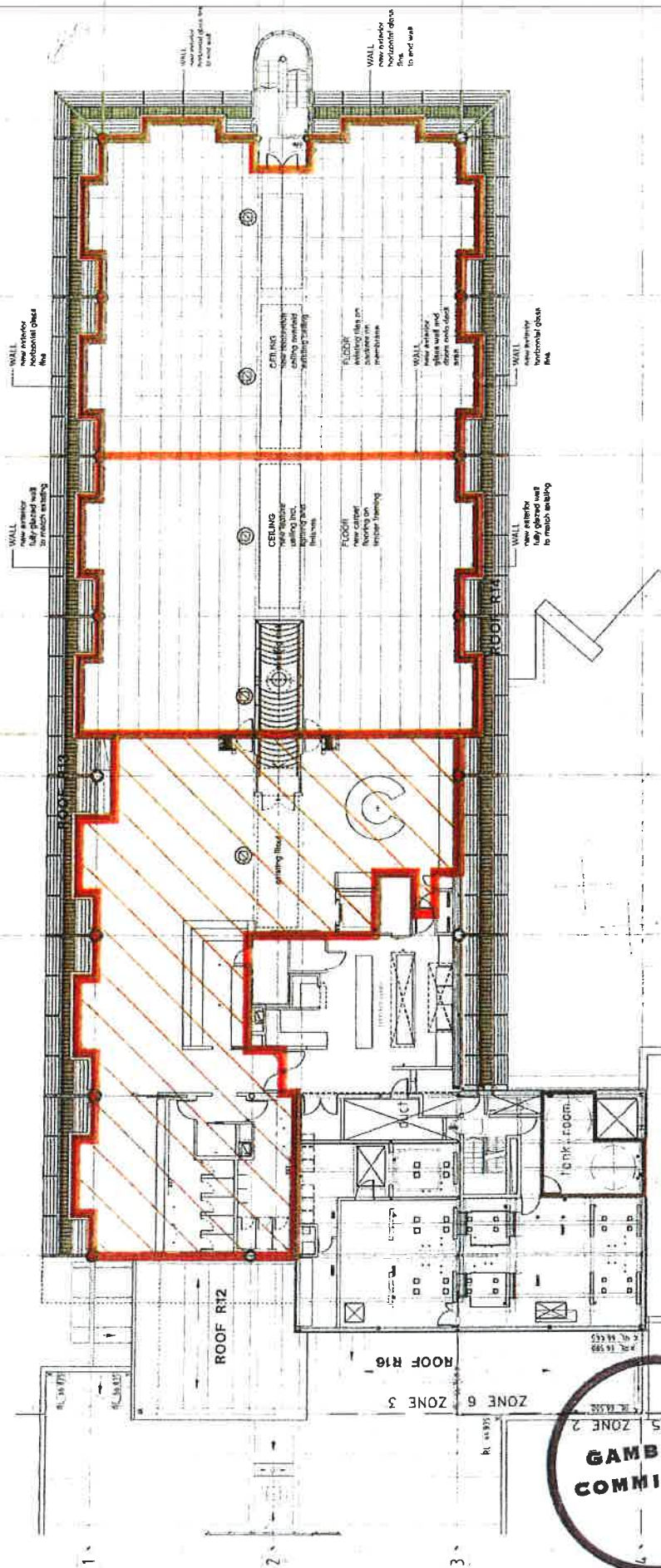
P Q R S T U V W X

ZONE 2
ZONE 3

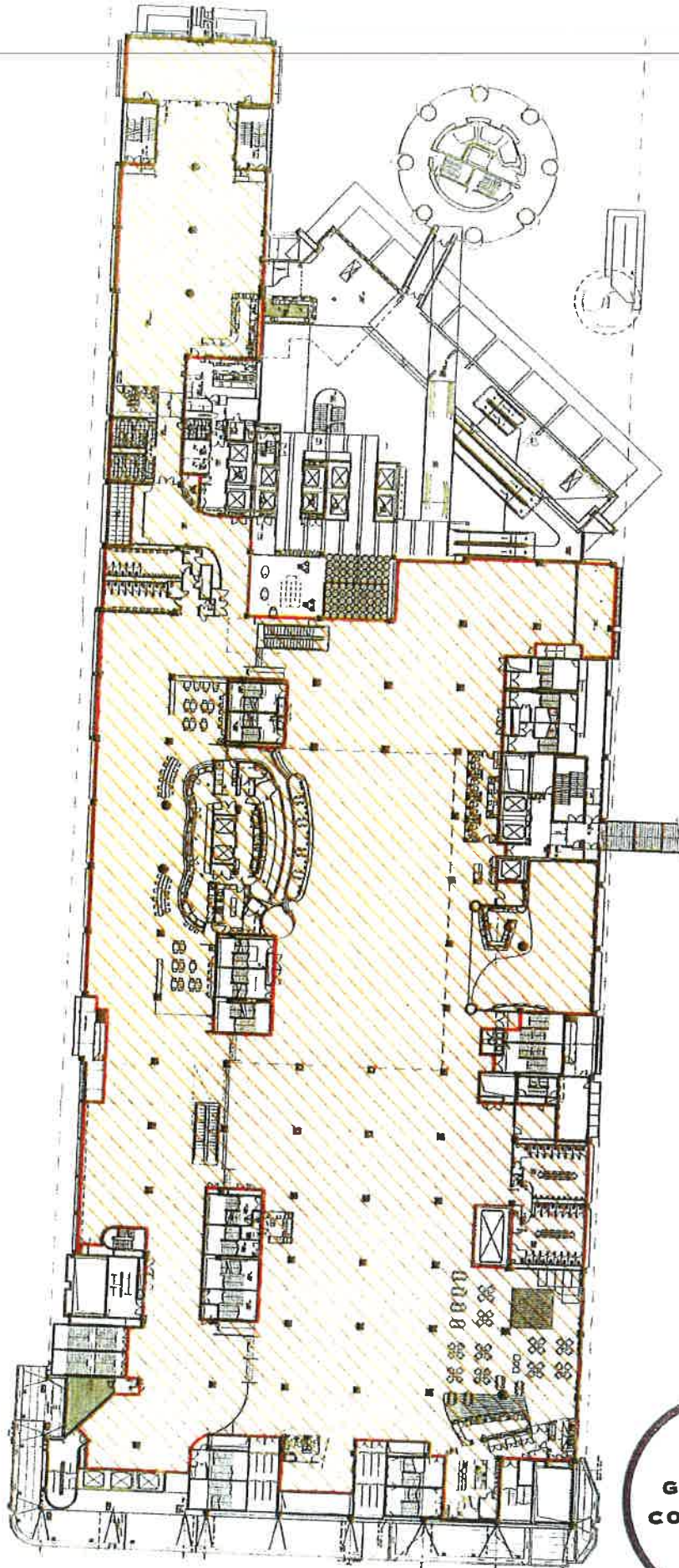
ANCILLARY
AREA: 320m²

INTERNAL
NON SMOKING
AREA: 263m²

EXTERIOR
SMOKING
AREA: 303m²



<p>Call: 416 937-7888 Fax: 416 937-7889 Level 13, 100 King Street West Toronto, Ontario M5X 1C7 Canada www.mollerarchitects.com</p>	<p>Moller Architects</p>	<p>SKY CITY ENTERTAINMENT GROUP</p>	<p>Sky City Entertainment Group Gaming Layouts</p>	<p>SKY CITY ENTERTAINMENT GROUP</p>	<p>SKY CITY - VIP GAMING LEVEL H6 GAMING AREAS 4/12/2012</p>
---	---------------------------------	---	--	---	--



GAMING AREA: 6,874m²



GAMBLING COMMISSION

moller. Moller Architects

Call: 04 8 3570868
 Fax: 04 8 3570869
 Level 15, 150 Market Street
 Auckland, New Zealand
 www.mollerarchitects.com

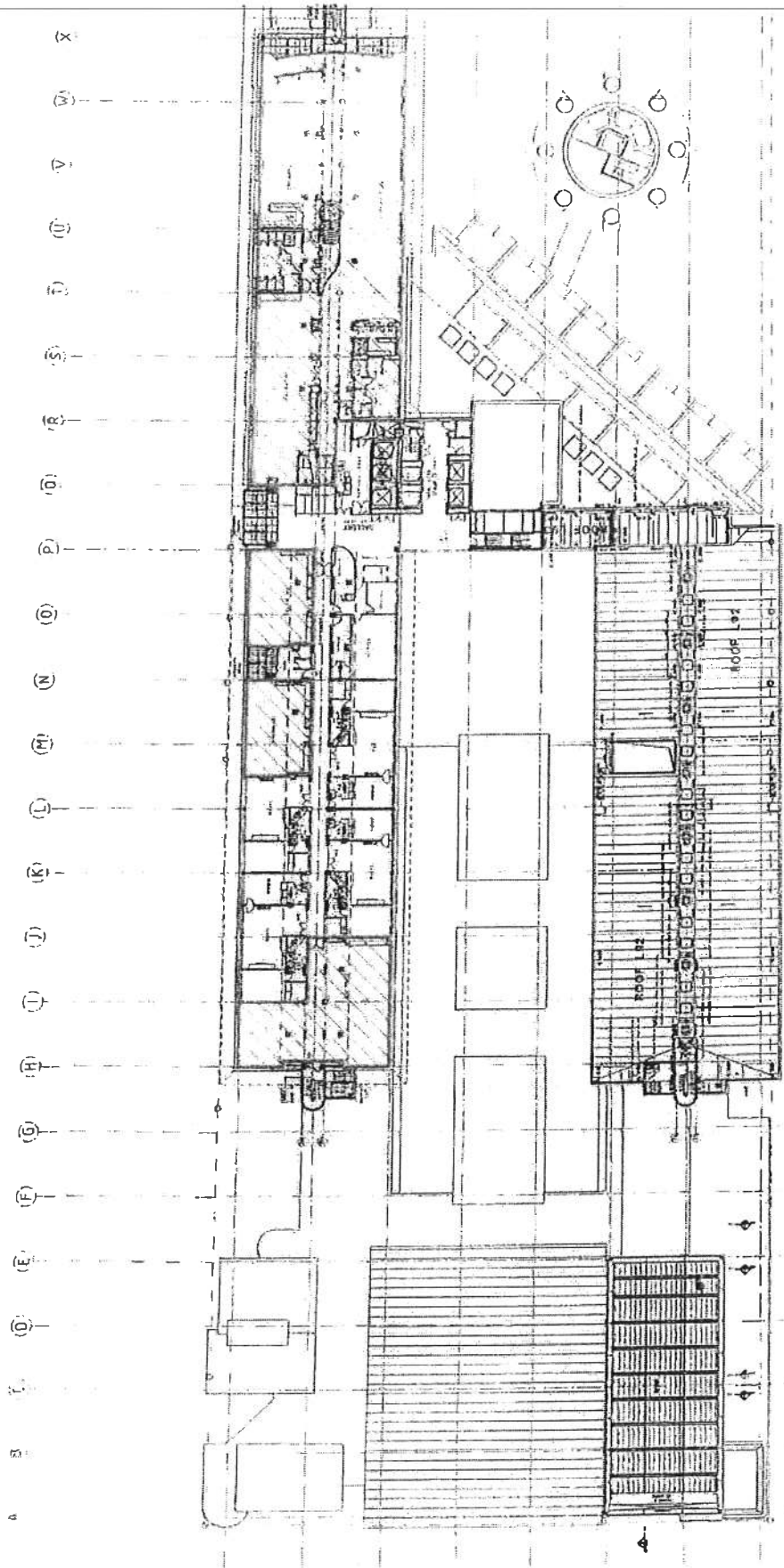


Sky City Entertainment Group
 Gaming Layouts

SKY CITY ENTERTAINMENT GROUP
 PROJECT AND PROJECT
 Name: SKY CITY
 Client: SKY CITY
 Date: 2012
 Scale: 1:500
 Author: [Name]
 Checked: [Name]
 Date: [Date]


SKY CITY - PODIUM
 LEVEL 2 GAMING AREAS
 CURRENT
 12/11/2012

NO.	REVISION	DATE
1	ISSUED FOR PERMIT	12/11/2012
2	ISSUED FOR PERMIT	12/11/2012
3	ISSUED FOR PERMIT	12/11/2012
4	ISSUED FOR PERMIT	12/11/2012
5	ISSUED FOR PERMIT	12/11/2012



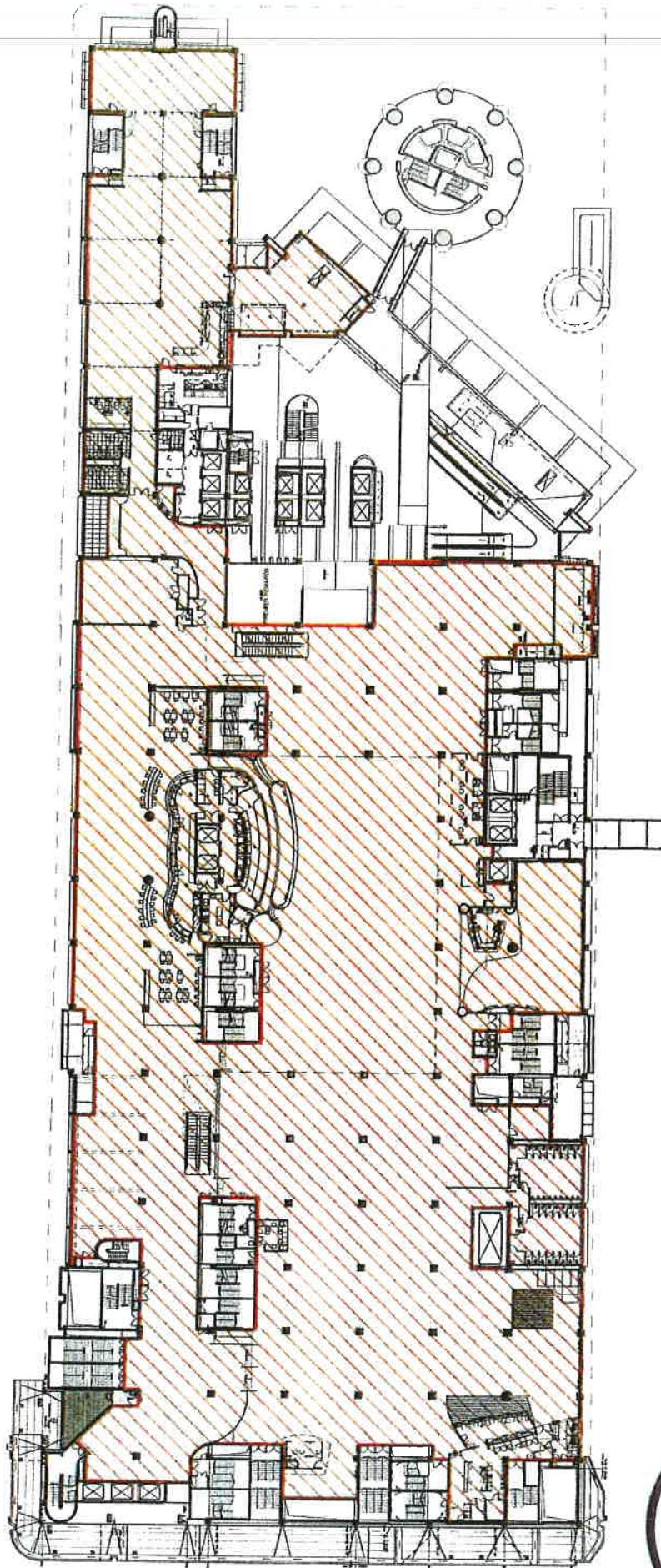
GAMING AREA: 1,309m²

SKY CITY - VIP GAMING LEVEL H5 GAMING AREAS 15/10/2012	
Project Name: SKY CITY - VIP GAMING Project No: 15/10/2012 Date: 15/10/2012	Client: SKY CITY ENTERTAINMENT GROUP Architect: MOLLER ARCHITECTS


 Sky City Entertainment Group
 Gaming Layouts


 Moller Architects





GAMING AREA: 7,031 m²



Moller Architects

Call 416 937-0886
Fax 416 937-0889
100 King Street West
Toronto, Ontario M5X 1C5
www.mollerarchitects.com



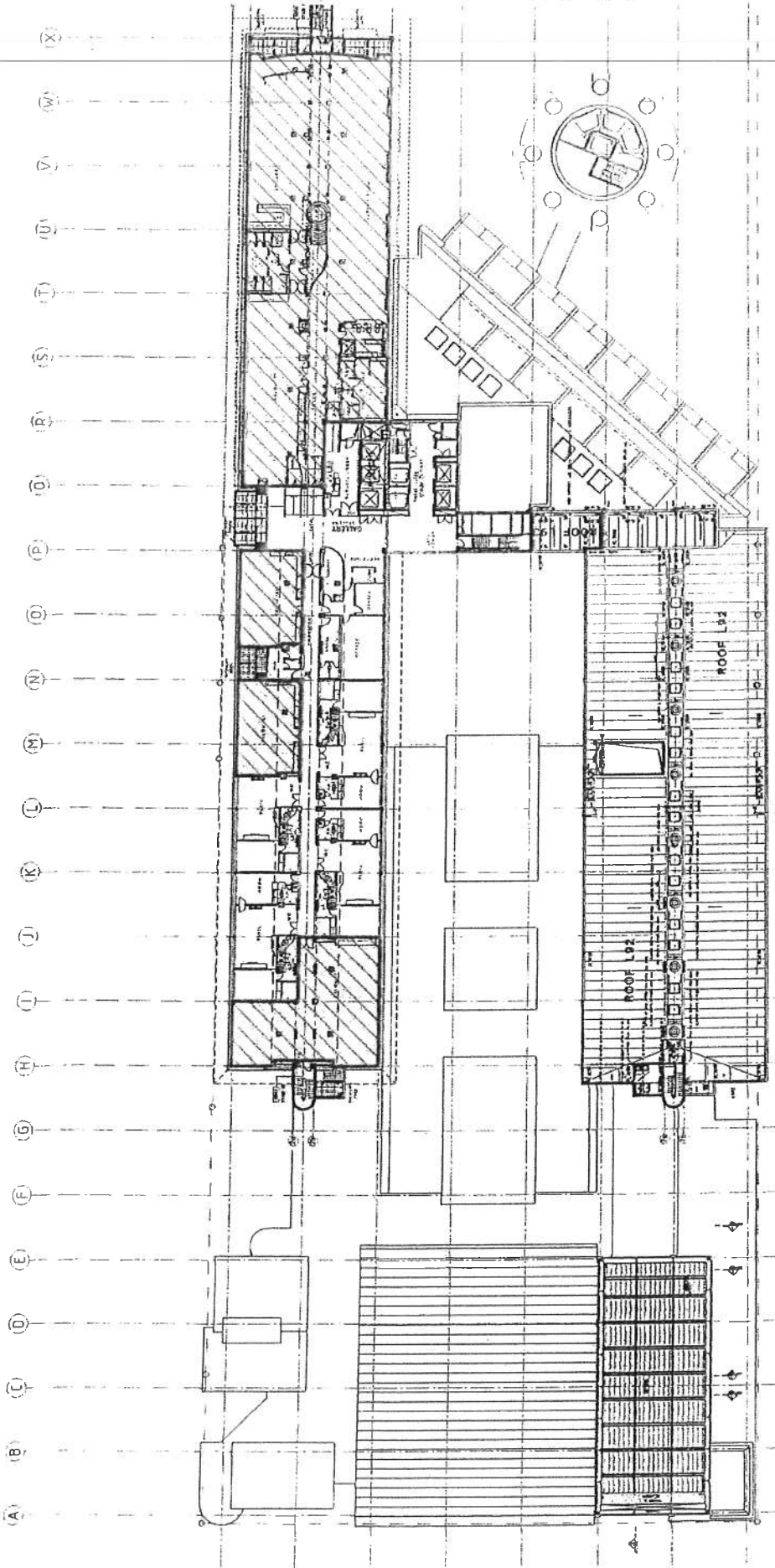
Sky City Entertainment Group
Gaming Layouts

CLIENT AND PROJECT
Client: Sky City Entertainment Group
Project: Sky City Entertainment Group
Gaming Layouts

BARBERS INFORMATION
Barber: [Blank]
Date: [Blank]
Scale: [Blank]
Sheet No.: [Blank]
Revision: [Blank]

SKETCH TITLE
SKY CITY - PODIUM
LEVEL 2 GAMING AREAS incl.
Diamond Room Extension
2/1/12012

NO.	DATE	BY	CHKD.



GAMING AREA: 1,309m²



Project No.	1510/2012
Client	Sky City Entertainment Group
Architect	Moller Architects
Date	15/10/2012

SKY CITY - VIP GAMING
LEVEL H5
GAMING AREAS
15/10/2012

1. Right to Pardon, for Criminal Offences
Not applicable for this development
Copyright © Moller Architects Limited 2007

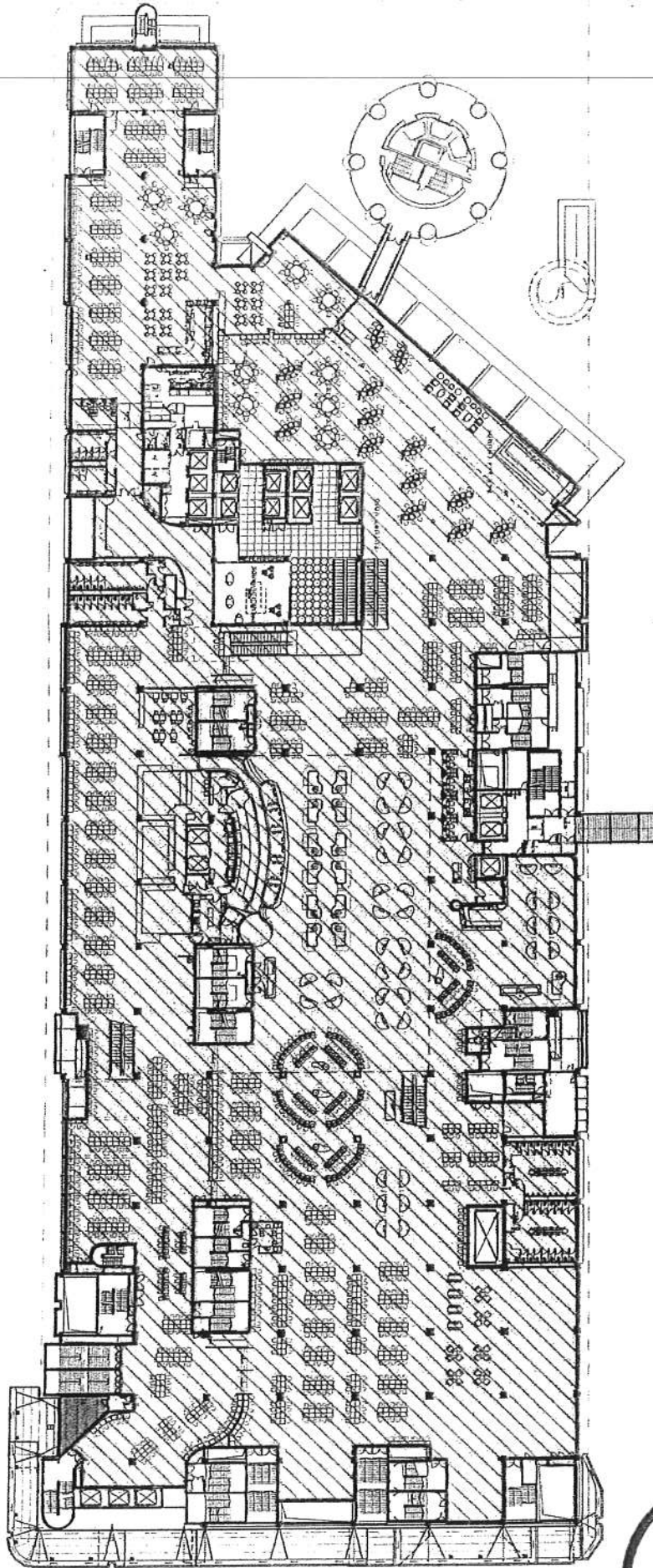
Project No.	1510/2012
Client	Sky City Entertainment Group
Architect	Moller Architects
Date	15/10/2012

Sky City Entertainment Group
Gaming Layouts



Call 04 9 257 0000
Fax 04 9 257 0009
177 Collins Street
Melbourne, VIC 3000
www.mollerarchitects.com





GAMING AREA: 7,873m²



NO.	DATE	BY	REVISION
1	08/10/2013		ISSUE FOR PERMIT

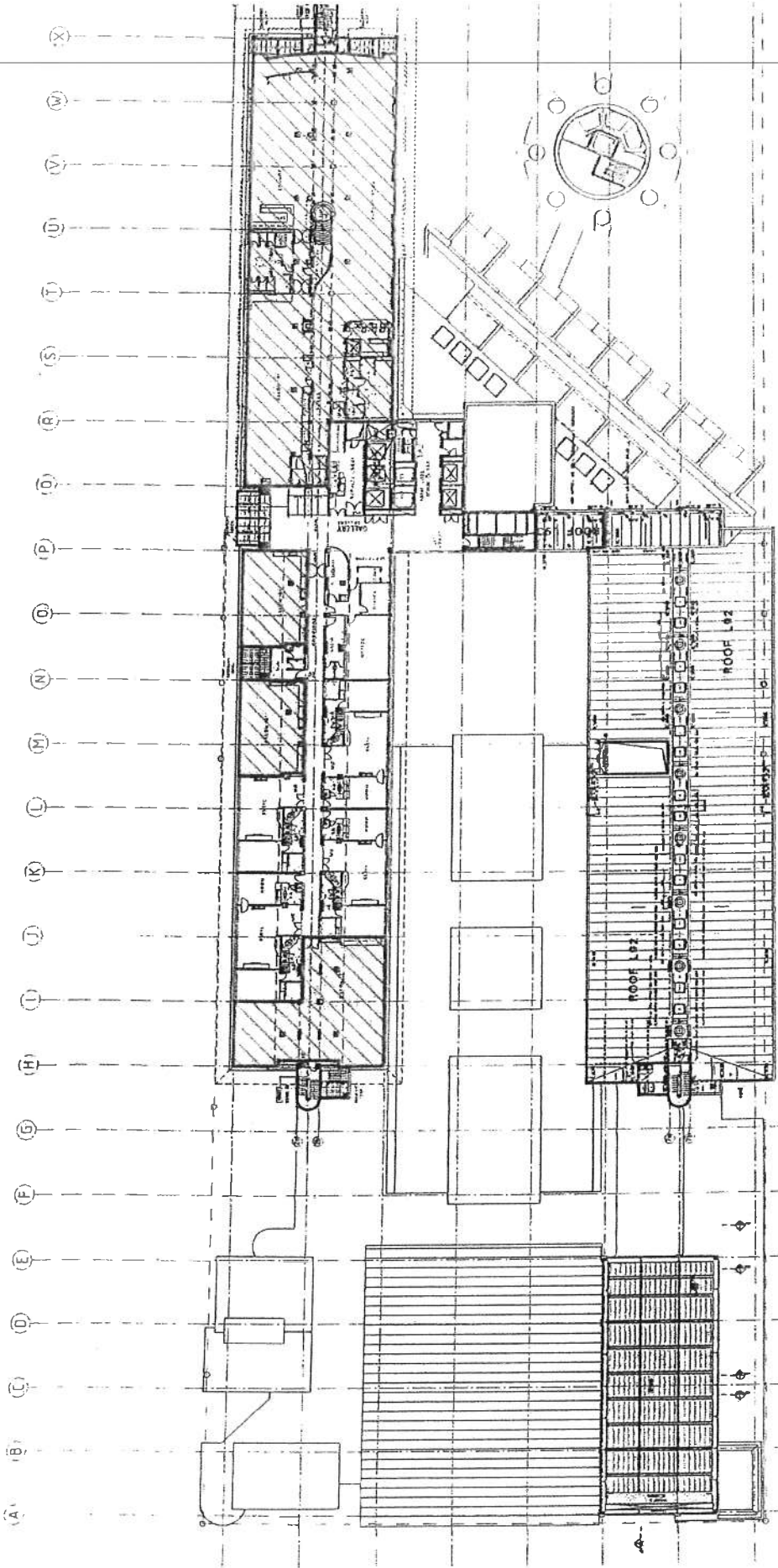
SKY CITY - PODIUM
LEVEL 2 GAMING AREAS incl.
Diamond Extension & Atrium Infill
08/10/2013

DATE: 08/10/2013
DRAWN BY: [Name]
CHECKED BY: [Name]
SCALE: 1:100
PROJECT: SKY CITY - PODIUM
SHEET: 08/10/2013 - 08/10/2013

SKY CITY
ENTERTAINMENT GROUP
GAMING LAYOUTS

Call: 441 9 3570888
Fax: 441 9 3570889
Unit 13 Woodhouse
100 Waterhouse Drive
Auckland, New Zealand
www.mollerarchitects.com

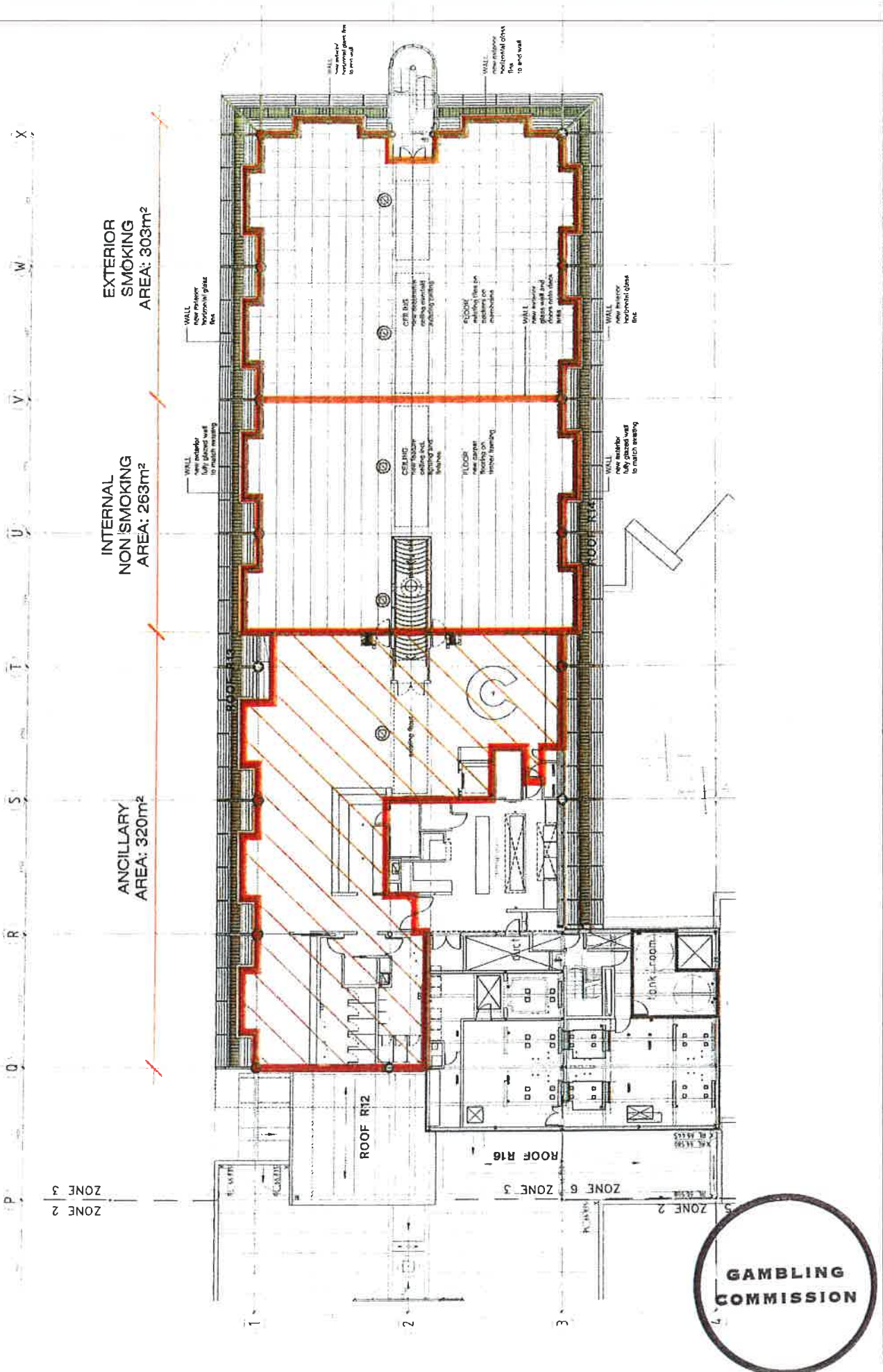
Moller Architects
Architects



————— GAMING AREA: 1,309m²



<p>SKY CITY - VIP GAMING LEVEL H5 GAMING AREAS 15/10/2012</p>	
<p>GRANTING INFORMATION:</p> <p>Project: Sky City Client: Sky City Entertainment Group Design: Moller Architects Date: 15/10/2012</p>	<p>SKY CITY ENTERTAINMENT GROUP GAMING LAYOUTS</p>
<p>SKY CITY ENTERTAINMENT GROUP GAMING LAYOUTS</p>	<p>MOLLER ARCHITECTS</p>



EXTERIOR SMOKING AREA: 303m²

INTERNAL NON SMOKING AREA: 263m²

ANCILLARY AREA: 320m²



GAMBLING COMMISSION
 Call 464 9 3370989
 Fax 464 9 3370989
 Level 10, 100
 100 Albert Street
 Auckland, New Zealand
 www.gamblingcommission.govt.nz

Moller Architects
 Call 464 9 3370989
 Fax 464 9 3370989
 Level 10, 100
 100 Albert Street
 Auckland, New Zealand
 www.mollerarchitects.co.nz

SkyCity Entertainment Group
 Gaming Layouts
 SKYCITY ENTERTAINMENT GROUP

CLIENT: SKYCITY ENTERTAINMENT GROUP
 PROJECT: SKYCITY - VIP GAMING LEVEL H6 GAMING AREAS
 DATE: 4/12/2012