

IN THE MATTER of the Gambling Act 2003
AND of an application by **SKYCITY AUCKLAND LIMITED** to vary the designated Gambling Area, and for approval of construction and design changes to the Auckland casino

BEFORE THE GAMBLING COMMISSION

Members: G L Reeves (Chief Gambling Commissioner)
L M Hansen
R D Bell
D C Matahaere-Atariki
W N Harvey

Date of Application: 2 February 2018

Date of Decision: 16 March 2018

Date of Notification
of Decision: 28th March 2018

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

Application

1. SKYCITY Auckland Limited ("**SCAL**") applied to the Commission:
 - (a) to vary the designated Gambling Areas on levels 2 and 3 of the casino, pursuant to conditions 9 and 9A of SCAL's venue licence and section 139(1)(d) of the Gambling Act 2003 (the "**Act**"); and
 - (b) for approval of construction and design changes to level 2, pursuant to conditions 6 and 7 of SCAL's venue licence.

Licence conditions

2. The relevant licence conditions are as follows:

SCAL's venue licence (Auckland)

6. The Licence Holder must obtain the approval of the Commission prior to:
 - (a) construction or design changes to Levels 1, 2, 3, 5 and 6 of the Original Casino Site, including the Gambling Area but excluding the

Sky Tower, 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) construction and design changes to level 7 of the Grand Hotel on the NZICCA Additional Site, including the Gambling Area but excluding restaurant and bar areas outside the Gambling Area 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).
- (c) the construction or relocation outside the Gambling Area and within the Original Casino Site or the NZICCA Additional Site of bank facilities available to the public excluding ATMs, EFTPOS and like devices;
- (d) the addition or alteration of signage relating to the casino business on any building, road or structure within the Original Casino Site or the NZICCA Additional Site, including, walkways between any of the Original Casino Site and the NZICCA Additional Site.

The process by which the Licence Holder may obtain approval for construction or design changes to Levels 1, 2, 3, 5 and 6 of the Original Casino Site, and Level 7 of the Grand Hotel on the NZICCA Additional Site, including the Gambling Area (paragraphs (a) and (b) above) is set out in condition 7. The Commission will determine any application for approval under 6(c). The Executive Director may approve the addition or alteration of signage relating to the casino business on any building, road or structure within the Original Casino Site or the NZICCA Additional Site (paragraph (d) above) if satisfied that the proposed changes will have no potentially adverse effects. The proposed changes must otherwise 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 1, 2, 3, 5 and 6 of the Original Casino Site, and Level 7 of the Grand Hotel on the NZICCA Additional Site, including the Gambling Area, but excluding Sky Tower, SKYCITY Theatre and foyer area, restaurant and bar areas outside the Gambling Area, hotel rooms, 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 satisfied that there are no adverse impacts in relation to the matters specified in (a)-(e) above. The Executive Director must otherwise 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 standard Gambling Area for the casino venue is delineated in the plans attached as Schedule 1 to these conditions. An additional Gambling Area for level 3 of the casino is delineated in the plan attached as Schedule 2 and will form part of the Gambling Area only after being activated as provided for in condition 9A.
- 9A. The additional Gambling Area depicted in the plan attached as Schedule 2 will take effect subject to the following:
- (a) the Licence Holder providing the Commission and the Inspectorate with a minimum of two working days' notice in writing of its intention to use the additional Gambling Area; and
 - (b) the Licence Holder specifying in the notice, the date and time at which the additional Gambling Area will take effect and the date and time it will terminate. At the end of the notified period the Gambling Area will revert to the area delineated in Schedule 1.

Relevant sections of the Act

3. The relevant sections of the Act are as follows:

Gambling Act 2003

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).

140 Procedure for specifying, varying, or revoking casino licence conditions

- (1) The Gambling Commission must notify the holder of the relevant casino licence, the Secretary, and any other person who it considers is affected by a proposal to specify, vary, or revoke the conditions of a casino licence.
- (2) Notification under subsection (1) must include—
 - (a) the reason for the proposal; and

- (b) the procedure to be followed before the Gambling Commission makes a decision relating to the proposal.
- (3) The holder of the casino licence, the Secretary, and any other person affected may make written submissions to the Gambling Commission concerning the proposal within 20 working days after the date of the notice under subsection (1) or within any longer period that the Gambling Commission allows.
- (4) The Gambling Commission must consider any submissions made under subsection (3) and may, if it considers it appropriate, seek comment from the casino licence holder on the submissions received from the Secretary or other persons affected.
- (5) The Gambling Commission must notify the holder of the casino licence, the Secretary, and other persons affected of—
 - (a) its decision concerning the proposal and the reasons for the decision; and
 - (b) the right to appeal the decision and the process for an appeal.

303 Age restriction on gambling in casinos

- (1) Every person under 20 years commits an offence who—
 - (a) participates in casino gambling; or
 - (b) is found in the gambling area of a casino.
- (2) Every holder of a casino operator's licence commits an offence who allows a person under 20 years—
 - (a) to participate in casino gambling; or
 - (b) to enter, or remain in, the gambling area of a casino.
- (3) It is a defence to a charge under subsection (2) if the defendant proves that the defendant had reasonable grounds to believe that the person to whom the charge relates was 20 years or over.
- (4) Without limiting subsection (3), reasonable grounds exist for the purposes of that subsection if the defendant proves that the defendant had sighted an evidence of age document of the person to whom the charge relates, indicating that the person was 20 years or over.
- (5) Every person who commits an offence—
 - (a) against subsection (1) is liable on conviction to a fine not exceeding \$500;
 - (b) against subsection (2) is liable on conviction to a fine not exceeding \$5,000.

Submissions by SCAL

4. SCAL submitted, in summary, as follows:

- (a) It wants to make changes to the designated Gambling Areas on levels 2 and 3 of the casino, as follows:
 - (i) to enable a small number of gaming machines to be deployed on open area decks on levels 2 and 3; and
 - (ii) to carve out a small section of Gambling Area at the theatre end of level 2, near the lifts, so that people entering that area can be assessed for age

by casino staff (to ensure that patrons satisfy the age restriction without committing an offence), before they enter the casino's Gambling Area.

- (b) It also seeks approval for a construction and design change involving one of the open areas on level 2. The change involves repositioning the wind lobby and utilising the space created for the placement of gaming machines.
- (c) The open decks on levels 2 and 3 are currently used by persons who wish to smoke. At present they are not designated as Gambling Areas but it wants to deploy a small number of gaming machines in these areas and needs them to be designated as part of the casino's Gambling Area.
- (d) Further cosmetic changes will be necessary to create the electrical connections to the gaming machines.
- (e) No substantive design changes are proposed to the open area on level 3, although there will be cosmetic alterations to create the electrical connections for the deployment of gaming machines.
- (f) It has no such facilities at present on level 3 and none on the western side of level 2.
- (g) It currently has three open areas at the casino which are designated as Gambling Areas. They have proved to be popular and as such, it wants to expand the number of these facilities.
- (h) The areas in question are not accessible to minors and the gaming machines will be deployed in positions which satisfy visibility restrictions. It will submit an application for the approval of new floor plans in due course.
- (i) The proposed changes have no adverse impact on the matters set out in condition 7. Gaming machines have previously been deployed in open areas of the casino venue without having any adverse impact on the section 7 matters specified. It is satisfied that the current proposal does not raise any new issues. It will ensure that gambling activity is not visible from outside the casino venue when deploying machines to the new locations.
- (j) In relation to the reduction in gambling area proposed on level 2, this is designed to address the reality that persons alighting from the lifts may be under 20 years of age and therefore commit an offence under section 303 of the Act, as does the casino. It wants to create a "neutral zone", as it has done elsewhere in the

casino, to allow security staff to age check people before they enter the Gambling Area of the casino.

Submissions by the Secretary

5. The Secretary submitted, in summary, as follows:
 - (a) SCAL's application has been reviewed and the specific changes inspected on the gaming floor. He has no regulatory concerns with the proposal.
 - (b) The change proposed to the theatre end of level 2, for the purposes of security staff being able to carry out their vetting duties for entry, actually decreases the designated Gambling Area. The other two areas are both smoking balconies directly off the gaming floor. It would appear that SCAL wishes to replicate the other smoking balconies by including these areas in the Gambling Area for the placement of gaming machines. The relocation of gaming machines will be the subject of another application.

Analysis

6. SCAL's application to reduce the Gambling Area near the lifts at the Theatre end of level 2 raises no issues of regulatory concern. The amendment is designed to allow casino staff to assess patrons for age before they enter the casino proper. At present, a technical offence is committed by underage patrons (and the casino itself) every time those patrons exit the lifts deliberately or inadvertently. The proposed amendment will remedy this.
7. The application to convert outdoor smoking areas into areas where patrons can play gaming machines while smoking also raises no issues of regulatory concern. The Commission has previously approved such areas on several occasions, including the three existing open areas.
8. The proposed construction and design changes are minor and will not adversely impact upon the matters specified in licence condition 7(a)-(e).
9. It is incumbent upon the applicant to ensure that gambling activity is not visible from outside the casino (licence condition 8), but it is aware of this requirement and has ensured compliance at the other outdoor gambling areas.

Decision

10. Pursuant to conditions 9 and 9A of SCAL's venue licence, the Commission designated as Gambling Area at the Auckland casino, the areas shown on the replacement Schedules 1 and 2 to the venue licence attached to this decision.

11. Pursuant to conditions 6 and 7 of SCAL's venue licence, the Commission approved the construction and design changes proposed for level 2 of the Auckland casino.

Right of appeal

12. 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.

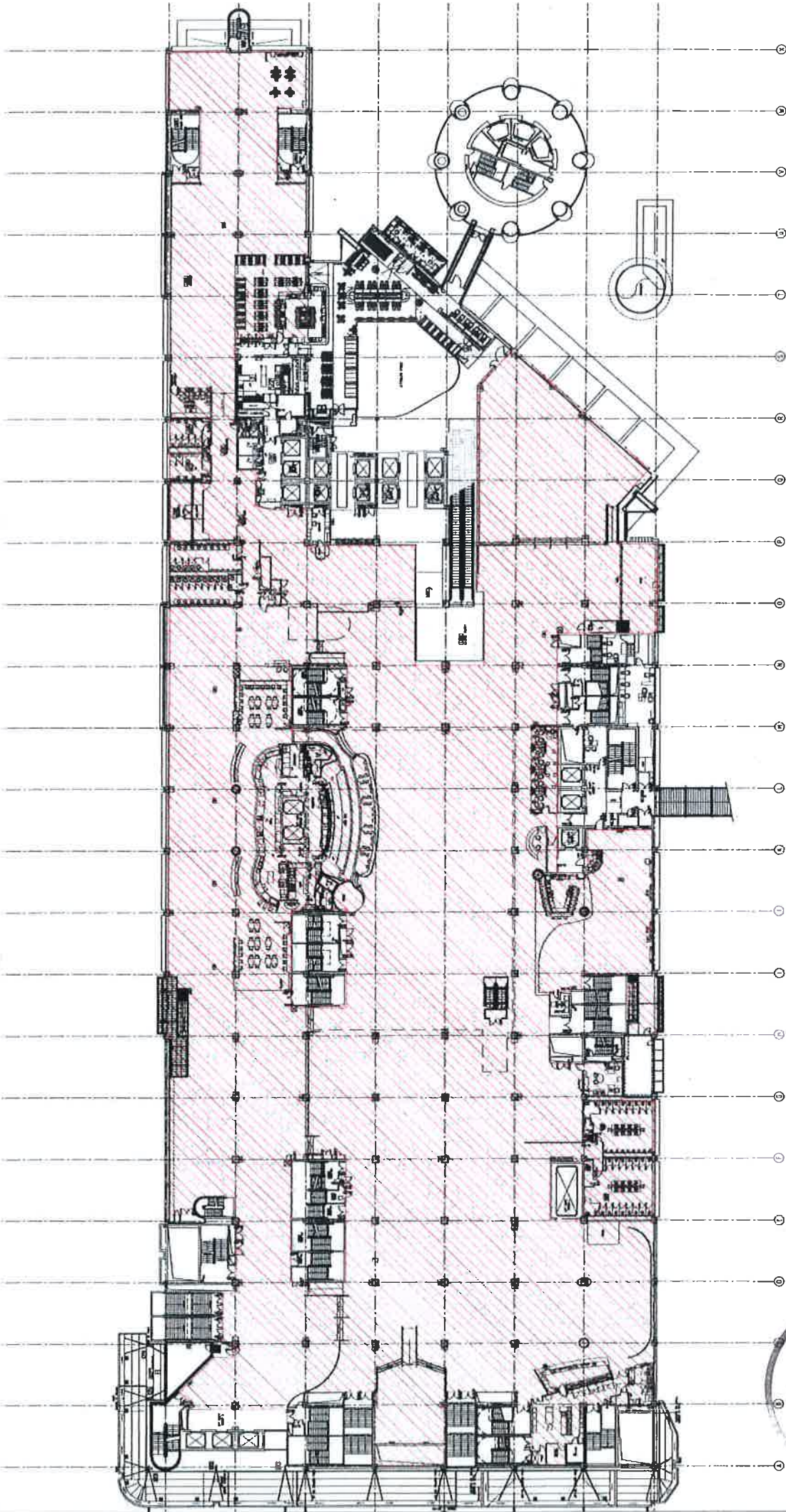


Graeme Reeves
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

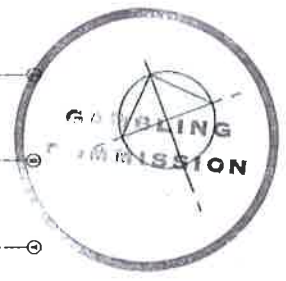
28th March 2018

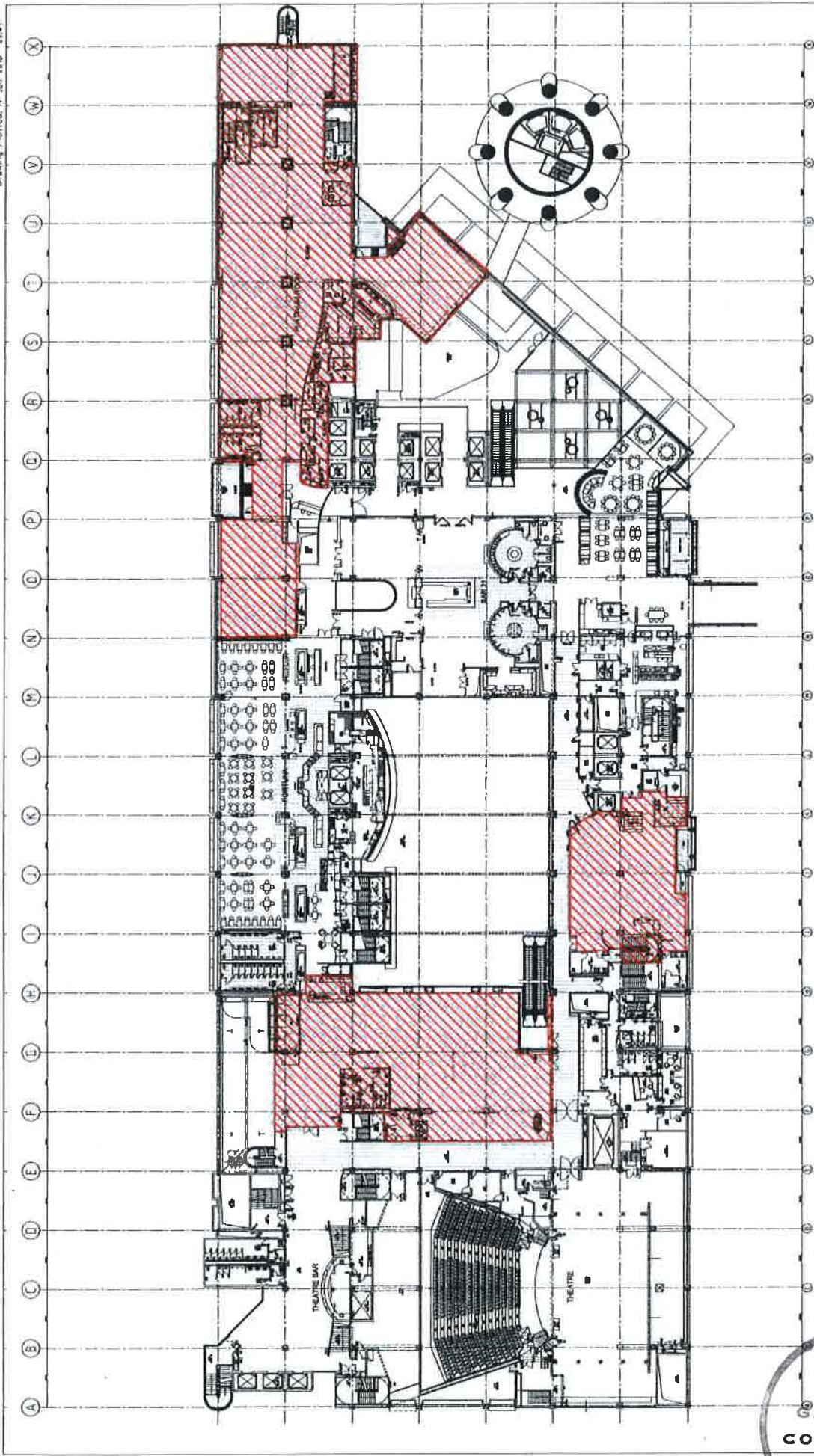




SKY CITY
Level 2

GAMING AREA - 7197m²



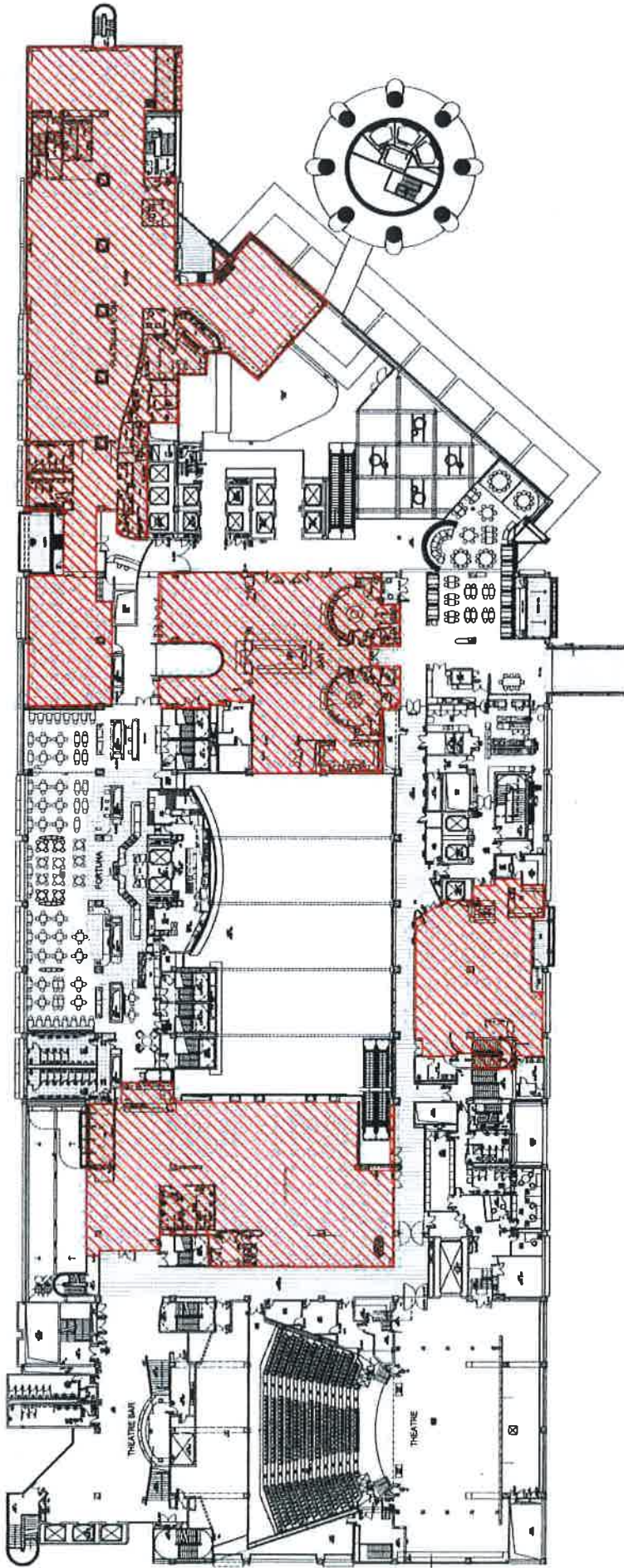



 GAMING AREA-2347m²

SKY CITY

Level 3





 GAMING AREA-2897m²

SKY CITY
Level 3

