

**IN THE MATTER** of the Gambling Act 2003

**AND** on an application by **SKYCITY  
AUCKLAND LIMITED** to  
redesignate the Gambling Area at  
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: 27 August 2014

Date of Decision: 10 October 2014

Date of Notification  
of Decision:  October 2014

**DECISION ON AN APPLICATION BY SKYCITY AUCKLAND LIMITED  
TO REDESIGNATE THE GAMBLING AREA AT THE AUCKLAND CASINO**

**Introduction**

1. SKYCITY Auckland Limited ("**SCAL**") applied to the Commission:
  - (a) to redesignate the Gambling Area at the Auckland casino, under condition 9 of SCAL's venue licence and section 139 of the Gambling Act 2003 (the "**Act**"); and
  - (b) to vary conditions 9 and 9A of SCAL's venue licence, under section 139(1)(d) of the Act, to incorporate the redesignated Gambling Area, and to remove redundant Gambling Area Schedules.

**Act and licence conditions**

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

**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).

### 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 he or she 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 he or she 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.

3. The relevant licence conditions, with the proposed variations to conditions 9 and 9A shown in mark-up, are as follows:

#### SCAL's venue licence

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 2A. A third alternative Gambling Area is delineated in the plan attached as Schedule 3. A fourth alternative Gambling Area is delineated in the plan attached as Schedule 4. A fifth alternative Gambling Area is delineated in the plan attached as Schedule 5. A sixth alternative Gambling Area is delineated in the plan attached as Schedule 6.
- 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, and 2, 2A, 3, 4, 5 and 6.

#### SCAL's submissions

4. SCAL submitted, in summary, as follows:

- (a) It wants to amend the designated Gambling Areas at the Auckland casino. It presently has approval for seven different Gambling Areas, three of which (Schedules 1, 2 and 2A) are now redundant. Two others (Schedules 5 and 6) reflect developments on levels 2 and 3 which have been deferred and are unlikely to proceed in the medium term. It wants to renumber the two remaining Schedules (Schedules 3 and 4) as Schedules 1 and 2.
- (b) It also wants to make a change to these Schedules, involving a slight reduction in the Gambling Area at the entrance to the Main Gaming Floor ("MGF") and across to the adjacent escalators joining levels 2 and 3.
- (c) Currently, any minor who accesses the escalators on level 2 in order to reach the Fortuna Restaurant (which is not subject to any age restrictions) on level 3 commits an offence. The casino operator also commits an offence by allowing a minor to enter the Gambling Area. The Secretary has expressed concern that there have been 9 incidents over the past 30 months in which underage persons have gained access to the Gambling Area on level 2 in an effort to get to Fortuna. The redesignation of the Gambling Area in the manner proposed means that on the rare occasions when minors breach the security cordon and enter level 2 to access the escalators to Fortuna, no offence would be committed.
- (d) This initiative is not designed to facilitate access to the restaurant by minors using the level 2 escalators; security staff would continue to police the age restriction from their current location, meaning anyone less than 20 years of age will be denied access to the restaurant via the MGF. However if a minor did gain access to the escalators (despite its best endeavours to stop that occurring) neither that person nor the casino licence holder would be liable under section 303 of the Act.
- (e) Further, following receipt of a letter from the Secretary, it wants to create more prominent signage on levels 2 and 3 to show that no-one under 20 years is permitted on the gaming floor. The ongoing diligence of security staff and more prominent signage on both levels will minimise, but not eliminate, the risk of minors entering the Gambling Area.
- (f) Reducing the Gambling Area in the manner proposed would not have implications for the placement of existing gaming product as the area in question is at the casino's main entry and it is not well suited to the location of gaming products.
- (g) It wants to amend conditions 9 and 9A of its venue licence to reflect these amendments.



**Secretary's submissions**

5. The Secretary submitted, in summary, as follows:
- (a) SCAL wants to move the Gambling Area boundary at the entrance of the MGF, with the rationale for the application being to ensure that, in instances where security staff do fail to stop an underage person, neither that person, nor the casino licence holder, would be liable under section 303 of the Gambling Act.
  - (b) There is no suitable rationale for making the proposed change. The DIA exercises appropriate discretion in prosecuting section 303 offences and it is unlikely that underage persons mistakenly accessing Fortuna would trigger such action in light of the public interest test in the DIA's prosecution policy. The escalators in question are on the MGF and as security staff would still seek to prohibit access, creating two legal standards to control the outcome of what would remain a single obligation on SCAL would be inappropriate. The proposal would only serve to confuse obligations, both legally and physically.
  - (c) He notes SCAL's intentions around continued diligence and improved signage and expects improved outcomes should result.

**SCAL's submissions in reply**

6. In reply, SCAL stated:
- (a) The application is simply to provide some insurance against liability under section 303 on those rare occasions when a minor gains access to the escalators on the MGF, despite its best endeavours to stop that occurring. It acknowledges the Secretary's comments that the prosecution of such offences is unlikely, but rather than relying on the Secretary's discretion, its preferred approach is to remove the risk altogether.
  - (b) It does not believe that the redesignation would be the source of any confusion. Rather the *status quo* would apply and security officers would continue to police the age restriction from the current location, meaning the public would know no difference. Transgressions involving minors would be reported to the Secretary in the same way that they are now.
  - (c) The area of the floor proposed to be redesignated as non-gambling is not required for casino gambling and in that sense it is exposed to an unnecessary liability on this part of the floor under section 303.



- (d) In the event that the Commission is unwilling to redesignate the Gambling Area to exclude this part of the floor, further plans will be submitted which restore the Gambling Area on level 2 to its former position.

### **Analysis**

7. SCAL has applied to the Commission to redesignate the Gambling Area at the Auckland casino, and to vary licence conditions to incorporate the redesignation, and the removal of redundant Gambling Area Schedules. The Secretary opposed the application, submitting that there is no suitable rationale for making the change, and because it would confuse obligations.
8. The Commission saw no such problems with SCAL's proposal.
9. SCAL seeks to redesignate a small part of the current Gambling Area as "non-gambling" but it has undertaken to continue to police that area, the MGF entrance, as if it were gambling area. By doing so, it aims to create a sort of regulatory compliance buffer. If its endeavours to prevent under-aged persons from coming through the MGF entrance fail, non-compliance would not be the immediate result; it would thus avoid the resulting adverse consequences without relying on the exercise of discretion by the Department. In the Commission's view, there is nothing objectionable about creating a regulatory buffer in order to aid efforts to avoid breaches of obligation under the Act and licence.
10. The Commission did not consider that undesirable confusion would arise. While entry through the MGF entrance would not result in patrons entering the Gambling Area in fact, SCAL has undertaken to the Commission that patrons will be told otherwise by both security staff and signage. They would continue to experience the current security arrangements unchanged, despite the change to the underlying designation. Security staff would continue to deny entry at the MGF entrance to all underage persons, including those simply intending to use the MGF entrance to access the lifts to reach the Fortuna restaurant. SCAL has also undertaken to place additional signage around the casino to clarify the appropriate entrance to the Fortuna restaurant.
11. It is important that the casino security staff continue to treat the MGF entrance as if it were the true gambling area boundary, despite the boundary having legally changed, because otherwise confusion about where the boundary lies would indeed arise. This is because the formal boundary is not otherwise marked. The approval of the proposal is granted on the basis of that undertaking. If the present security practice were to change, the matter must be brought back to the Commission immediately.



12. The application to vary licence conditions raised no other issues of regulatory concern for the Commission. The proposed amendments will simply recognise the removal of the redundant Gambling Area Schedules, and the newly redesignated Gambling Area.

#### **Decision**

13. The Commission approved:
- (a) the redesignation of the Gambling Area in the manner proposed, under condition 9 of SCAL's venue licence and section 139 of the Act; and
  - (b) a variation to conditions 9 and 9A of SCAL's venue licence, under section 139 of the Act. Conditions 9 and 9A now provide as follows:
    - 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.
    - 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 and 2.
14. Schedules 1 and 2 are **attached**.

#### **Right of appeal**

15. 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.

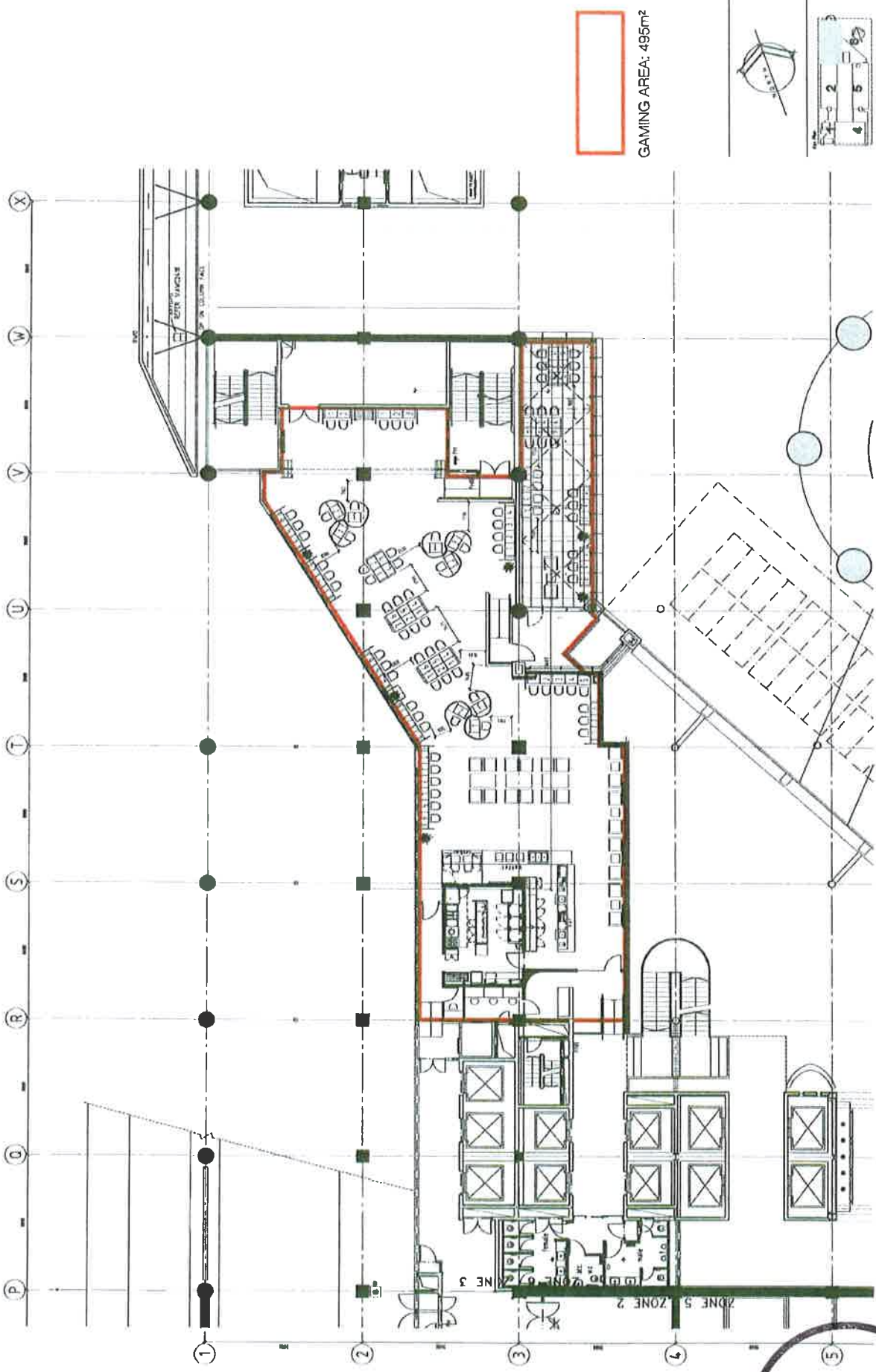


Graeme Reeves  
Chief Gambling Commissioner

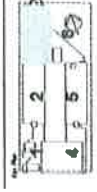
for and on behalf of the  
Gambling Commission

30<sup>th</sup> October 2014





GAMING AREA: 4956m<sup>2</sup>



PROJECT:	VIP PLATINUM BLACK GAMING AREA
DATE:	2 AUGUST 2013
SCALE:	AS SHOWN
PROJECT NO.:	A5335

VIP PLATINUM BLACK  
GAMING AREA  
2 August 2013

DATE:	2 AUGUST 2013
SCALE:	AS SHOWN
PROJECT NO.:	A5335
PROJECT NAME:	VIP PLATINUM BLACK GAMING AREA
CLIENT:	SKY CITY ENTERTAINMENT GROUP
ARCHITECT:	MOLLER ARCHITECTS

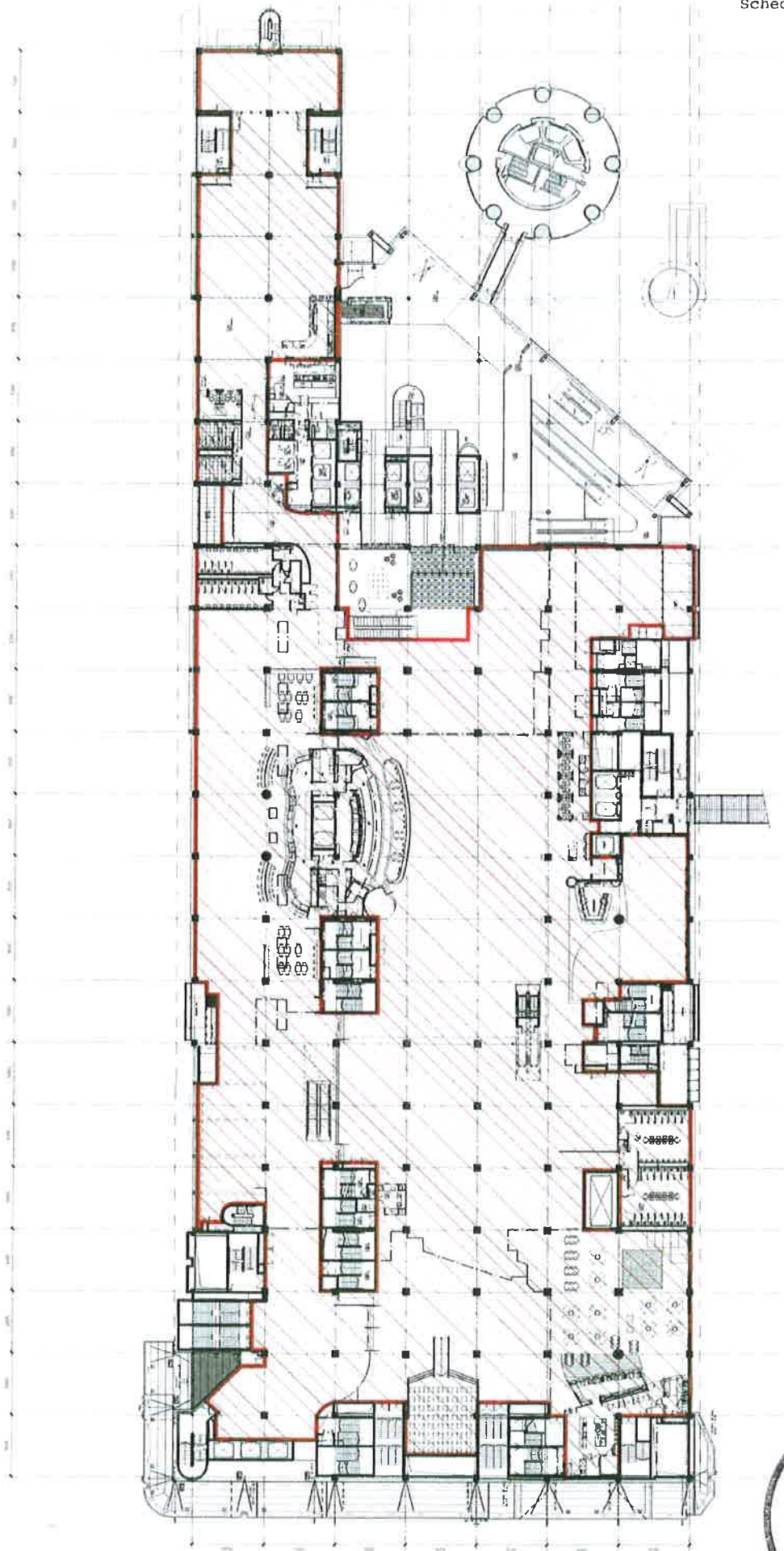
Sky City Entertainment Group



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Moller Architects





GAMING AREA: 6,821m<sup>2</sup>



PROJECT NO.	10000000000000000000
DATE	26/08/2014
SCALE	1:1000
PROJECT NAME	SKY CITY - PODIUM
CLIENT	SKY CITY ENTERTAINMENT GROUP

**SKY CITY - PODIUM**  
**LEVEL 2 GAMING AREAS**  
 Current Main Floor  
 26/08/2014

PROJECT NO.	10000000000000000000
DATE	26/08/2014
SCALE	1:1000
PROJECT NAME	SKY CITY - PODIUM
CLIENT	SKY CITY ENTERTAINMENT GROUP

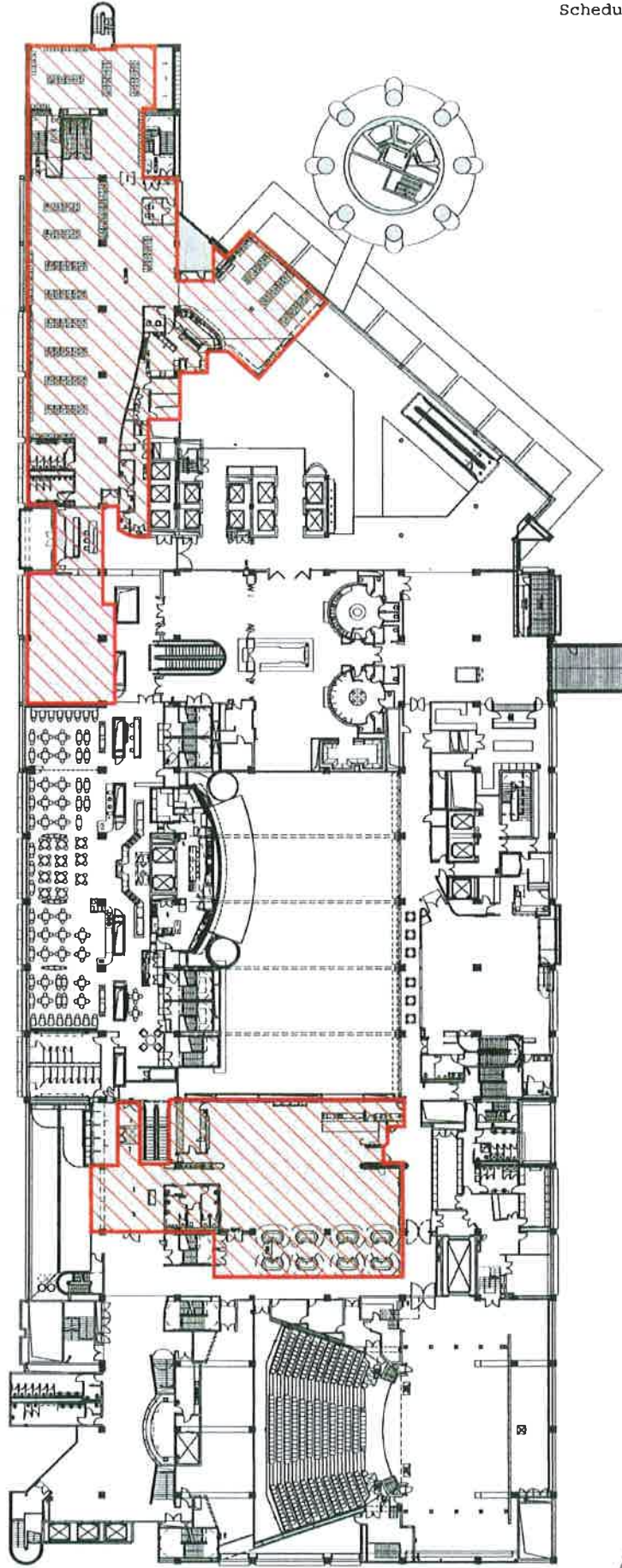
Sky City Entertainment Group  
 Gaming Layouts



Architect: [Faint text]  
 Project: [Faint text]

Waller  
 Architects



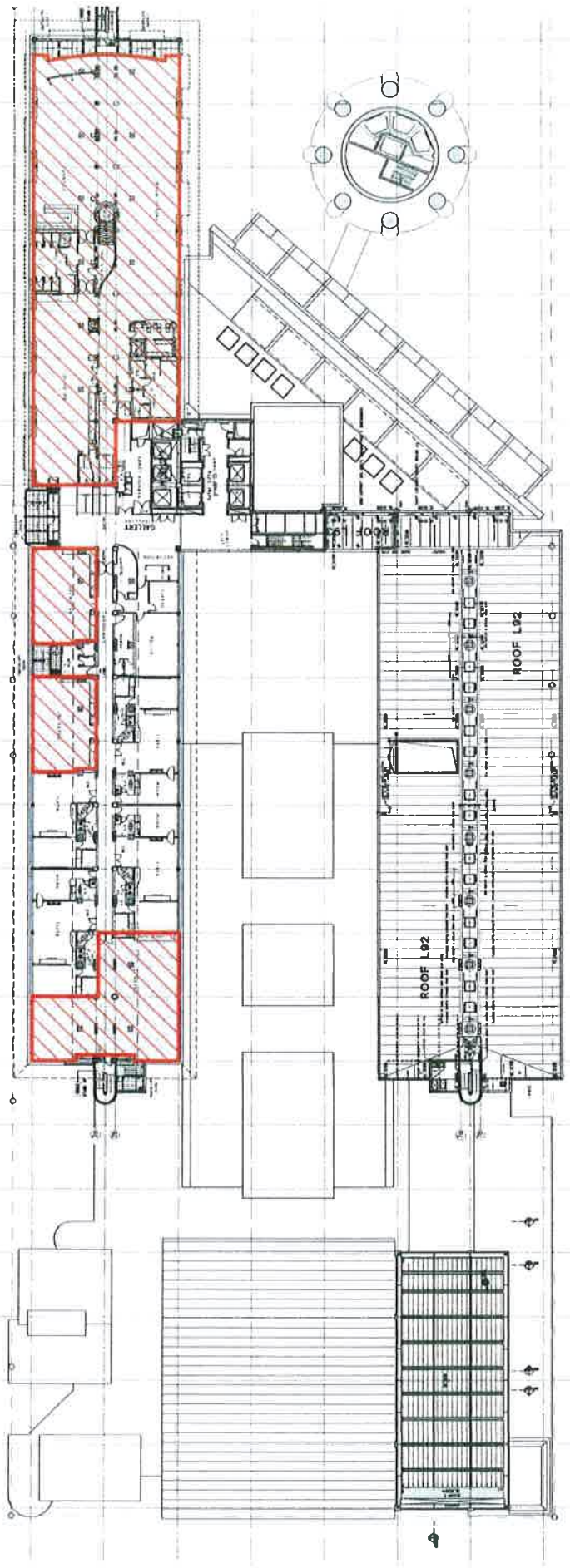


GAMING AREA: 1,994m<sup>2</sup>



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<p>Client: Sky City Entertainment Group                  Project: Gaming Layouts</p>		<p>Architect: Moller Architects</p>		<p>Scale: 1:500                  Date: 07/09/2013</p>	
<p>Drawn: [Name]                  Checked: [Name]                  Approved: [Name]</p>		<p>Discipline: Architectural                  Drawing No: [Number]</p>		<p>Revision: [Number]                  Description: [Text]</p>	

A B C D E F G H I J K L M N O P Q R S T U V W X



GAMING AREA: 1,309m<sup>2</sup>



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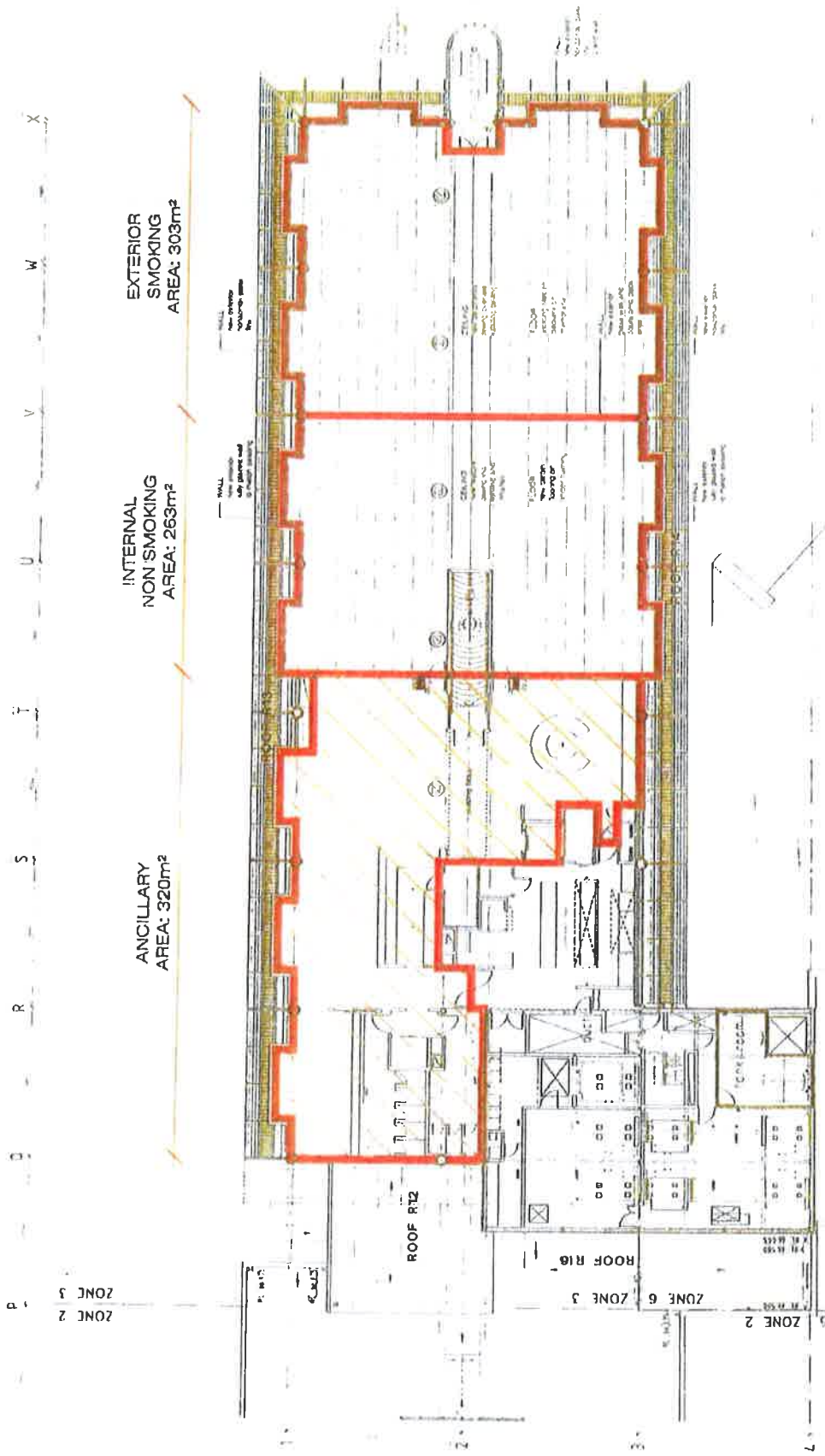
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**Sky City Entertainment Group**  
 Gaming Layouts

**SKY CITY**  
 SKY CITY ENTERTAINMENT GROUP

**GAMBLING COMMISSION**

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



SKYCITY V/P GAMING  
LEVEL H5  
GAMING AREAS  
2-12-2012

Sky City Entertainment Group  
Gaming Layouts

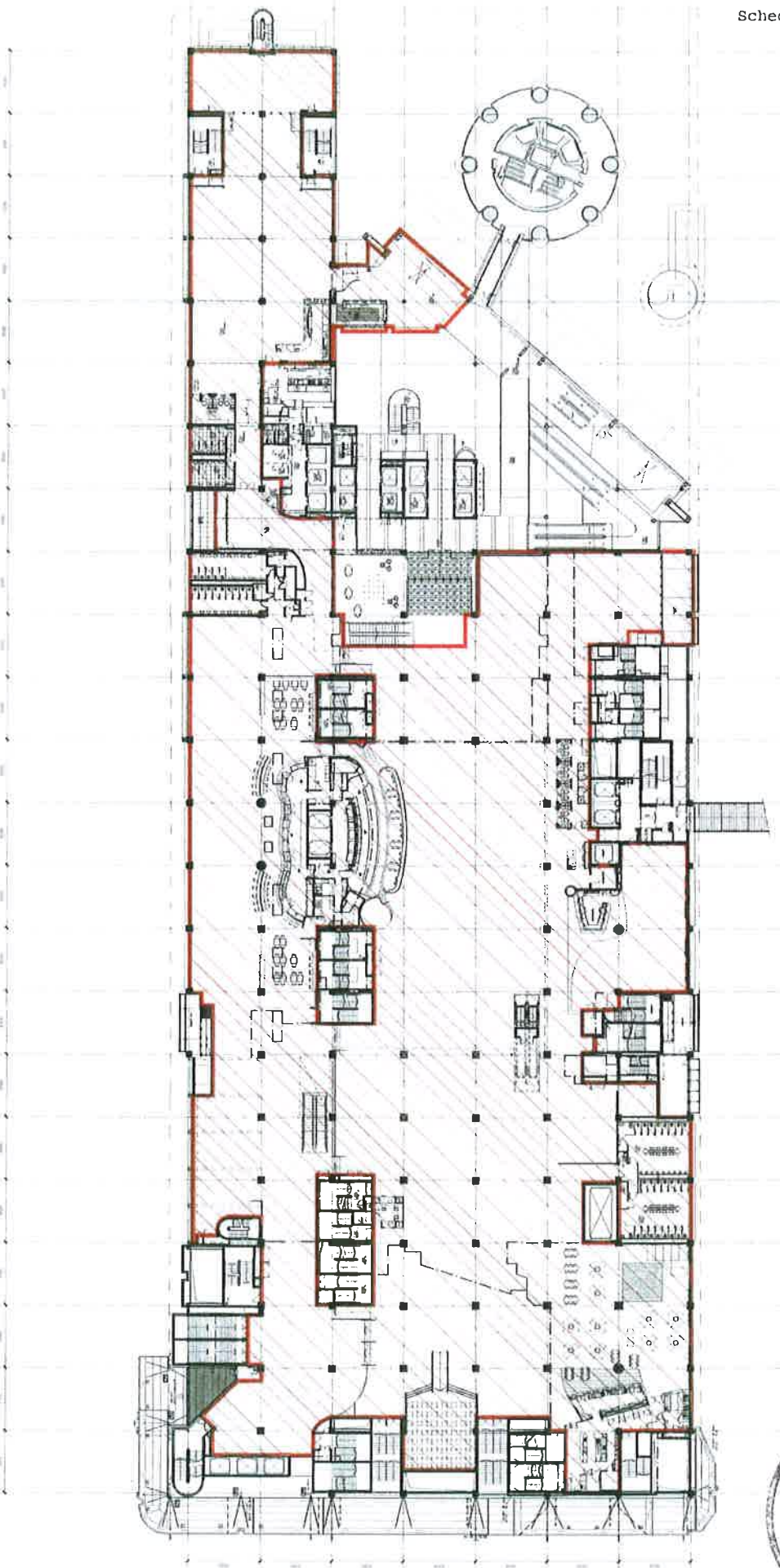


Part of the SkyCity  
Entertainment Group  
Gaming Layouts

Moller Architects







GAMING AREA: 6,975m<sup>2</sup>



REVISIONS	
NO.	DESCRIPTION

SKY CITY - PODIUM  
 LEVEL 2 GAMING AREAS incl.  
 Diamond Room Extension  
 06/11/2012

DRAWING INFORMATION	
Project Name	SKY CITY - PODIUM - LEVEL 2 GAMING AREAS
Client	SKY CITY ENTERTAINMENT GROUP
Architect	MULLER ARCHITECTS
Scale	AS SHOWN
Date	06/11/2012
Drawn By	
Checked By	
Project No.	
Sheet No.	

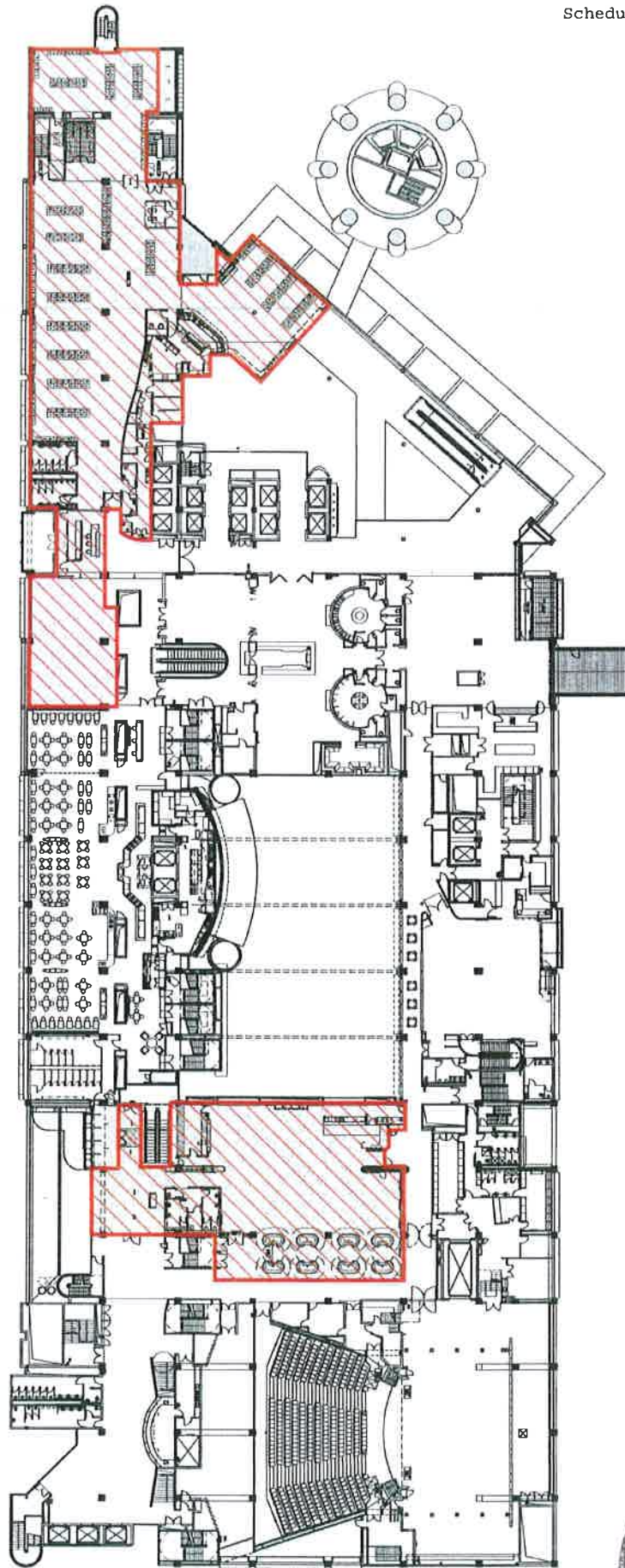
Sky City Entertainment Group  
 Gaming Layouts



EXISTING AND PROPOSED

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GAMING AREA: 1,994m<sup>2</sup>



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CLIENT AND PROJECT

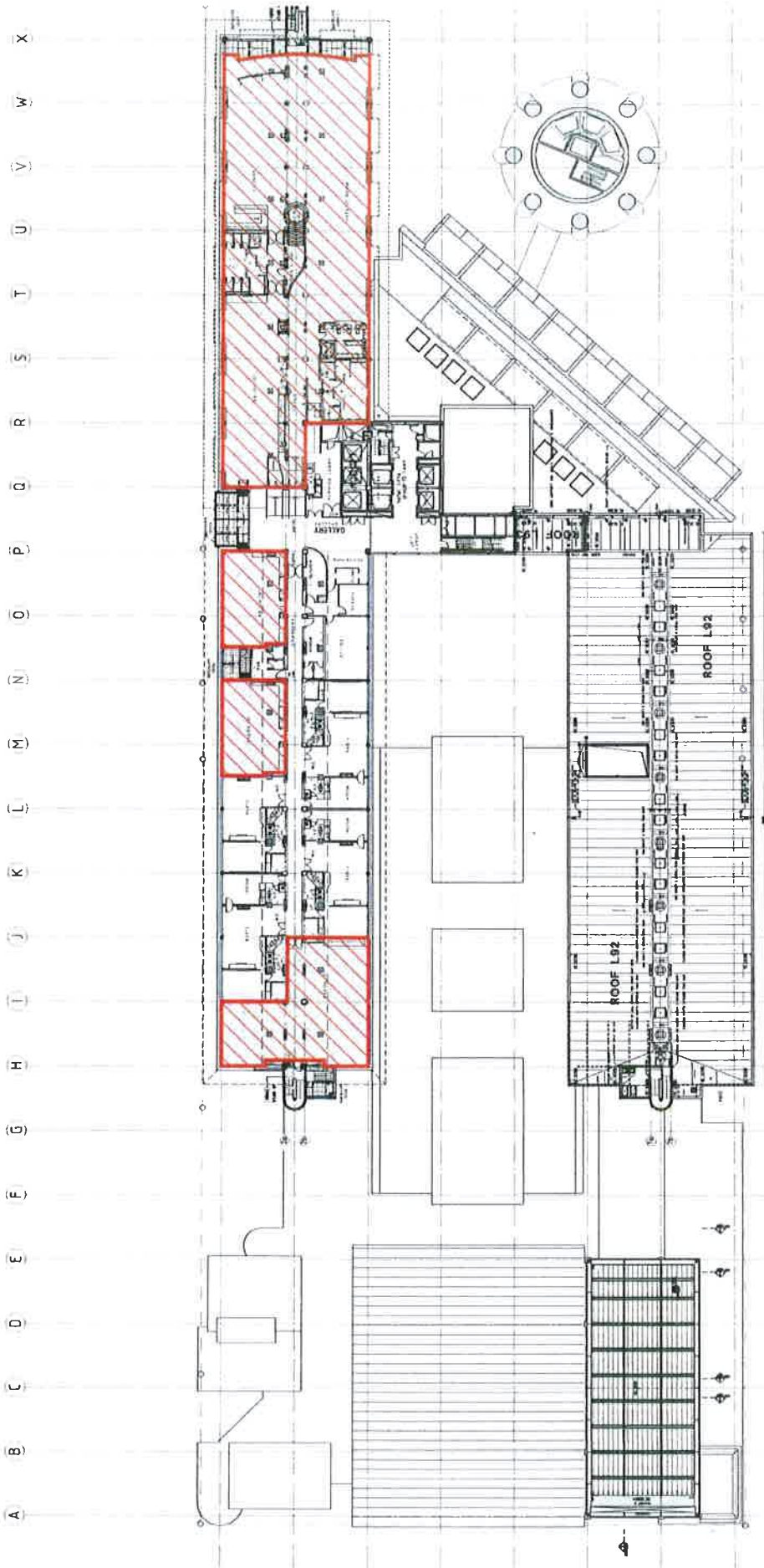
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Drawn	0900	017	200
Project Name	Sky City Entertainment Group		
Project No.	132 300		
Project Location	Auckland, New Zealand		
Project Date	01/07/2013		
Project Status	Approved for Construction		
Project Manager	John Chan		
Project Engineer	John Chan		
Project Architect	Moller Architects		
Project Designer	Moller Architects		
Project Drafter	Moller Architects		
Project Checker	Moller Architects		
Project Approver	Moller Architects		

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SKY CITY - PODIUM  
 LEVEL 3 GAMING AREAS incl.  
 Nations Club & Platinum Rm Extn.  
 07/08/2013

REVISIONS

No.	Description	Date
1	Issue for RFP	07/08/2013
2	Issue for Construction	07/08/2013
3	Issue for Construction	07/08/2013
4	Issue for Construction	07/08/2013
5	Issue for Construction	07/08/2013



GAMING AREA: 1,309m<sup>2</sup>



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REVISIONS

No.	Revision	Date

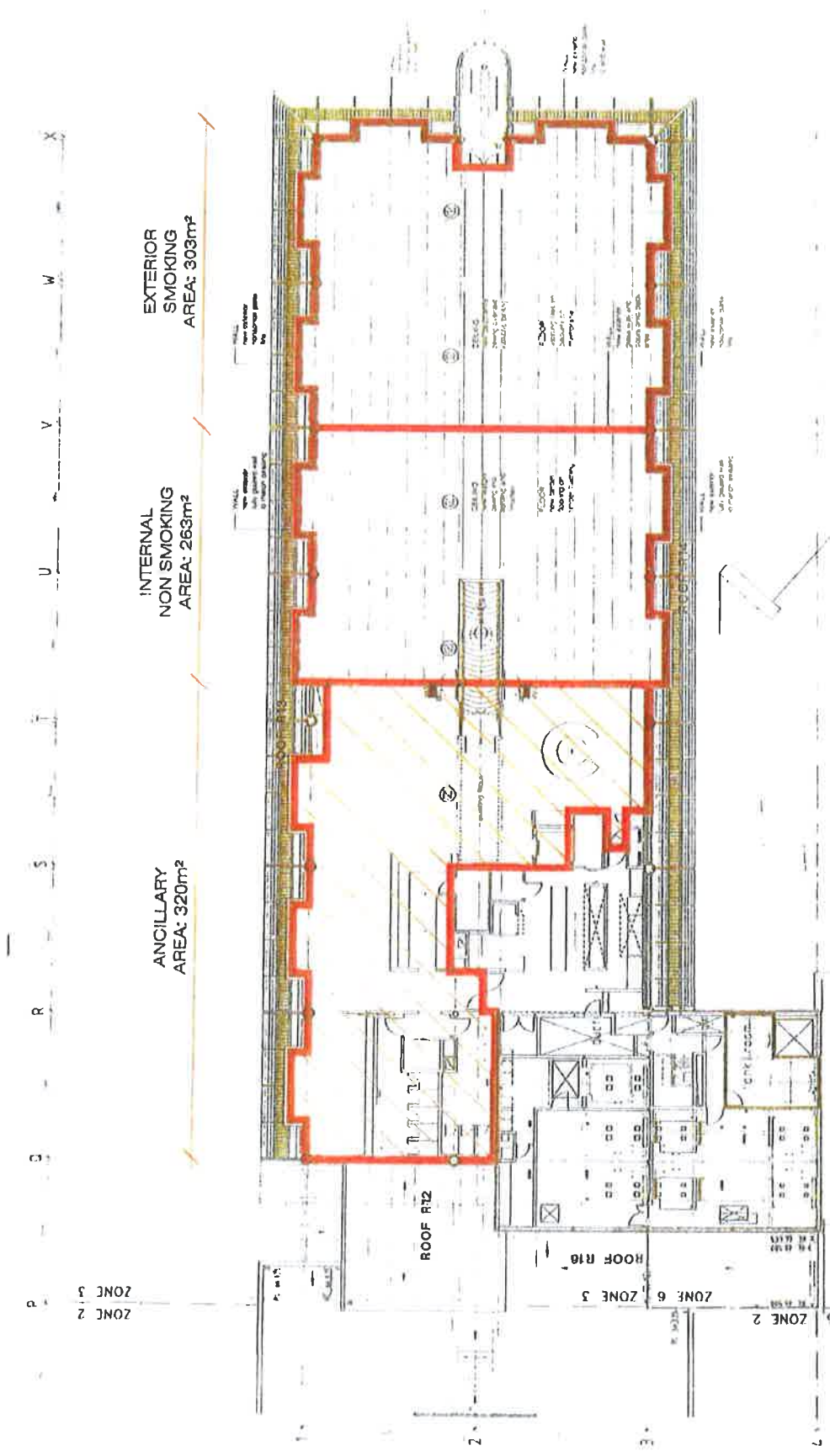
SKY CITY - VIP GAMING  
 LEVEL H5  
 GAMING AREAS  
 15/10/2012

Refer to Revision 1 for Design Developments  
 Main Contractor and work at University House commencing work  
 commencing 15/10/2012. All work to be completed by 30/11/2012.  
 Approved by Sky City Entertainment Group, 15/10/2012

FORMAL INFORMATION

Issue	Date	By	For

SKY CITY  
 ENTERTAINMENT GROUP



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SKY CITY - VIP GAMING  
LEVEL 16E  
GAMING AREAS  
4/12/2012