

IN THE MATTER of the Gambling Act 2003
AND of an application by
SKYCITY AUCKLAND LIMITED for approval of
floor layout plans

BEFORE THE GAMBLING COMMISSION

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

Date of Application: 11 August 2005

Date of Decision: 9 September 2005

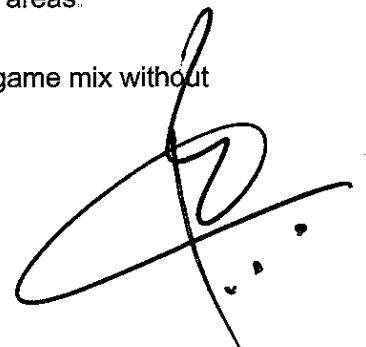
Date of Notification of Decision: **19** September 2005

DECISION

ON AN APPLICATION BY SKYCITY AUCKLAND LIMITED FOR APPROVAL OF FLOOR LAYOUT PLANS

Application

1. SKYCITY Auckland Limited (the "**Applicant**") applied under condition B1(a) of its venue licence for approval of two alternative sets of floor plans, with two alternative game mixes. The changes to the floor plans involve:
 - (a) restoring the number of table games from 109 to 110;
 - (b) restoring gaming machine numbers from 1,632 to 1,647;
 - (c) introducing four Poker tables to the approved game mix;
 - (d) providing an alternative approved game mix which does not include Poker;
 - (e) installing two additional tables in the International Room;
 - (f) reconfiguring machines and tables on both levels of the gambling areas.
2. The Applicant submitted Plans B and C for approval - Plan B provides a game mix without poker, Plan C provides for the introduction of four Poker tables.



Statutory criteria

3. The application was for an approval under an existing licence condition. As there was no variation of a licence condition, the Commission was not required to consult on the proposal as provided in section 140 of the Gambling Act 2003 (the "Act").
4. The Commission is, however, free to determine its own procedure in terms of processing approval applications. In the circumstances, the Commission considered it appropriate to seek the views of the Secretary, given his operational interest.
5. Provisions of the Act relevant to the application include sections 11, 12 and 139(2)(d). Sections 11 and 12 provide as follows:

- 11 No increase in casino gambling**
A person must not increase the opportunities for casino gambling.
- 12 What is increase in casino gambling**
- (1) Decisions on what constitutes an increase in the opportunities for casino gambling are a function and responsibility of the Casino Control Authority, until section 297 of this Act comes into force, and of the Gambling Commission after that.
 - (2) An increase in the opportunities for casino gambling includes but is not limited to-
 - (a) an increase in the number of gaming machines unless the increase is accompanied by a reduction in the number of table games that the Casino Control Authority, or the Gambling Commission, believes is proportionate;
 - (b) an increase in the number of table games unless the increase is accompanied by a reduction in the number of gaming machines that the Casino Control Authority, or the Gambling Commission, believes is proportionate;
 - (c) an increase in total player space at table games unless the increase is accompanied by a reduction in other opportunities for casino gambling that the Casino Control Authority, or the Gambling Commission, believes is proportionate.
 - (3) Opportunities for casino gambling are not increased-
 - (a) by increases, in the Auckland casino, that comply with the Order for the Variation of Conditions of Casino Premises Licence dated 6 December 2002;
 - (b) by gambling conducted by the New Zealand Racing Board referred to in section 120.

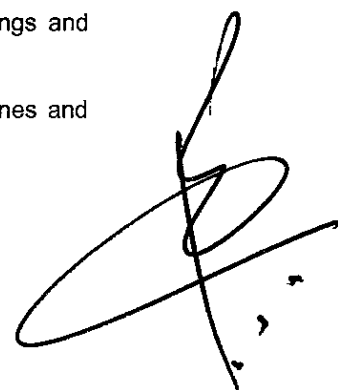
Licence condition

6. Condition B1 (as amended by the Commission in decision GC02/04) provides as follows:

Approval of specifications for security and surveillance installation

The licence holder shall submit to the Commission for approval all drawings and specifications (except as provided in B2) relating to:

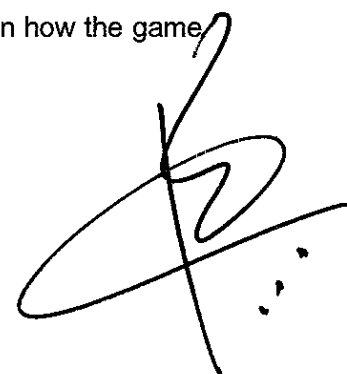
- (a) Gaming Area floor layouts showing gaming tables, gaming machines and close circuit television cameras;
- (b) lighting and any catwalks or viewing panels;



- (c) cashier cages, count rooms, security areas and access thereto;
- (d) areas for inspectors and casino security staff;
- (e) electrical installations, telephone installation, auxiliary power; and
- (f) the master key system or access control system.

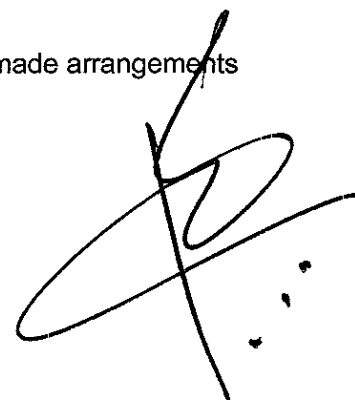
Submissions by the Applicant

7. The Applicant sought approval for Plans B and C in order to provide it with the flexibility to adopt either configuration subject only to prior notification of the Commission and the Inspectorate.
8. The Applicant submitted that the proposal did not increase opportunities for casino gambling and complied with sections 11 and 12 of the Act.
9. The Applicant submitted that the game mixes provided for in Plans B and C represent a reduction in the 3,911 player spaces theoretically available on 18 September 2003, when the prohibition on increases in opportunities for casino gambling took effect. The game mix provided in Plan B equates to 3,909 player spaces, and in Plan C, equates to 3,903 player spaces.
10. The Applicant submitted that rates of play is only relevant in assessing increases in opportunity to the extent that the changes in game mix proposed in Plans B and C would increase the rates of play to the point where they would override the reductions in player spaces. The Applicant submitted that this would not occur. It noted that the game mixes proposed involved a reduction of Black Jack games (as at 18 September 2003) in favour of other games, reducing the overall rate of play.
11. The Applicant noted that the proposed changes to the floor layouts would require some CCTV adjustments, but confirmed that it will continue to comply with the minimum requirements established by the Casino Control Authority's surveillance policy. The Applicant also undertook to install further cameras to ensure adequate coverage of the Poker tables, if necessary.
12. The Applicant submitted that, should the Commission approve the floor layouts, it would commence implementing the proposed changes immediately, with completion to be effected before Christmas 2005. Plan B (non-Poker) would be implemented first, with Plan C being adopted once all necessary processes, including staff training, had been undertaken. The Applicant advised that, in the longer term, depending on how the game performs, Poker tables may be used only for tournaments.

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Submissions by the Secretary

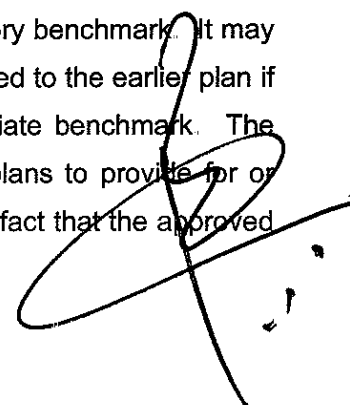
13. The Secretary made no submissions on the application for alternative floor plans with alternative game mixes, but reserved the right not to support a similar application in the future.
14. In relation to the Applicant adopting either set of plans, the Secretary submitted that:
 - (a) the Applicant must continue to notify the Department's Inspectorate "prior to moving, removing, or adding a table, or converting a game", in accordance with Minimum Operating Standards ("**MOS**"); and
 - (b) the Applicant must apply to the Secretary under section 141 of the Act to amend "MOS table games – Supervision Levels" to accommodate table game Poker.
15. In its submissions in reply, the Applicant acknowledged its obligations in relation to both matters.
16. The Secretary noted that the proposed floor plans create a new pit area on Level 2, and that this represents a major departure from the traditional tables games layout on that Level.
17. The Secretary also noted that the Inspectorate proposes to conduct an analysis of table game supervision levels and that the MOS in relation to this may change.
18. In its submissions in reply, the Applicant submitted that it will seek whatever further amendments are necessary to provide suitable supervision of table games.
19. In terms of transitioning from one approved plan to another, the Secretary submitted that the Applicant should submit weekly status reports including the following information:
 - (a) the current gaming machine to table game ratio, and confirmation that this has not been exceeded;
 - (b) the detail of the alterations to the floor plan that occurred in the preceding week; and
 - (c) the plans for the following week's alterations.
20. In its submissions in reply, the Applicant submitted that it has already made arrangements to implement this weekly report.

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Analysis

21. The Applicant has sought approval for two alternative floor Plans B and C, with flexibility to adopt either set from time to time, subject to prior notification of the Commission and the Inspectorate. Plan B does not include Poker. Plan C provides for the introduction of four Poker tables.
22. The Applicant's analysis of whether the proposals would result in an increase in opportunities for casino gambling was framed in terms of a comparison with the circumstances and level of opportunity existing on 18 September 2003 when, according to the Applicant, the section 11 prohibition on increases became effective. In fact, section 11 took effect on 19 September 2003, but this is not material in the circumstances.
23. Compared to its estimate of the theoretical number of player spaces – 3,911 – existing on 18 September 2003, the Applicant submitted that the game mixes specified in plans B and C would result in a decrease of 2 and 8 player spaces respectively. The Applicant also noted that the removal of a number of Black Jack games (existing on 18 September 2003) slowed overall rates of play.
24. The submissions of the Applicant did not assess the proposal in terms of present circumstances and the current level of gambling opportunity. The Applicant is currently operating 109 tables and 1,632 gaming machines – generating a total of 3,885 player spaces. Under Plan B (non-Poker), player spaces will increase existing player spaces by 24. Under Plan C (Poker), player spaces will increase by 18.
25. Section 11 of the Act is silent on the benchmark against which the prohibition on increases in opportunities applies. It does not expressly supply the answer to the question “increase in opportunities relative to what?”.
26. The Commission's view is that the prohibition in section 11 is intended to address the position immediately before the contemplated act in question. Accordingly the correct benchmark is generally to measure increases in opportunities for casino gambling against present circumstances, rather than the circumstances as they existed on 19 September 2003, when sections 11 and 12 took effect.
27. This follows from the natural meaning of the language of the section, and the absence of an express reference to a specific alternative benchmark. The position is also supported by the following factors:
 - (a) There is, both legally and factually, an absence of a readily ascertainable and definable position as at 19 September 2003. The previous legislation did not

contain the same prohibition and the state of opportunity on 19 September 2003 was neither specified by law nor already ascertained as a matter of fact.

- (b) The problem of ascertaining the benchmark (a problem at the outset at least, irrespective of which construction is adopted) would worsen with time. The greater the passage of time, the harder would it be to know and prove the state of affairs on 19 September 2003. The difficulty could not be cured by changes (whether additions or amendments) to licence conditions to provide the requisite degree of certainty, as only the increasingly distant past circumstances would be relevant.
 - (c) Working to a 19 September 2003 baseline makes regulation, and compliance and enforcement difficult. All issues potentially relevant to increase, including rates of play, would potentially need to be referenced back to this historical baseline.
 - (d) If a 19 September 2003 benchmark were adopted, it would render irrelevant all changes in circumstance since then, including subsequent condition variations and approvals given by the Commission.
 - (e) A construction whereby the Commission assesses a proposal in terms of the circumstances prevailing at the time of an application is easier and does not raise the same compliance and enforcement issues. It will enable the Commission to provide increased clarity regarding the opportunity benchmark over time by variations to licence conditions and approvals.
28. The Commission has inherited floor plans which provide a somewhat uncertain starting benchmark and licence conditions which were formulated under previous legislation which was not concerned with controlling growth in opportunity. Pending the review of licence conditions and new express conditions limiting opportunity factors, the Commission considers that it should, in considering applications for new floor plans, have regard, not only to the present state of regulation, but also to the state of affairs as it understands it to have been on 19 September 2003 and to section 12(3)(a) of the Act.
29. This means that, while it will consider whether the new floor plans would result in an increase compared to the previously approved plans, it will also consider the reasons for that, including whether the previous plan constituted a real regulatory benchmark. It may approve a new floor plan which would result in an increase compared to the earlier plan if it considers that the previous plan did not constitute the appropriate benchmark. The reasons for such a conclusion would include a failure in earlier plans to provide for or achieve the express licence condition or statutory maximum or the fact that the approved
- 

plan was a temporary measure to reduce tables or machines during renovations or similar. In other cases, if the approved floor plan reflected a trade-off of parameters and is truly the regulatory benchmark, a proposed change involving an increase in any one parameter is unlikely to be approved.

30. The Commission considers that the existing game mix providing for 109 table games and 1,632 gaming machines does not reflect the true regulatory benchmark and that it is only the unusual circumstances surrounding the installation and operation of electronic forms of Roulette that has resulted in the Applicant operating at a reduced level of player spaces.
31. The Commission considers that the true regulatory benchmark remains, for the time being, at 110 table games and 1,647 gaming machines (as specified in condition A2), there having been no offsetting reduction in either number as the result of an earlier condition change or approval. The present applications do not increase opportunities for casino gambling; rather they enable the Applicant to resume operation at the true regulatory benchmark.
32. The Applicant advised that Plan B, if approved, would be implemented before Christmas 2005. In its decision, the Commission has provided for implementation by 30 January 2006. Once Plans B and C are implemented, earlier plans may no longer be relied upon.

Decision of the Commission

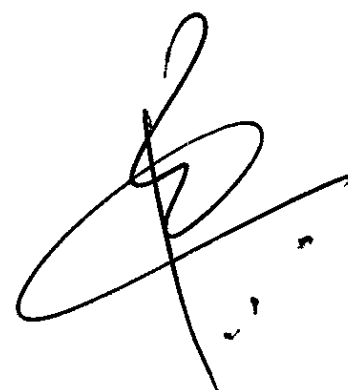
33. The Commission decided unanimously that the application was consistent with the Act, and pursuant to condition B1(a) approved the alternative floor layouts and game mixes shown in Plans B and C (**attached** to this decision), subject to the following conditions and requirements:

- (a) the following games may be operated under Plan B:

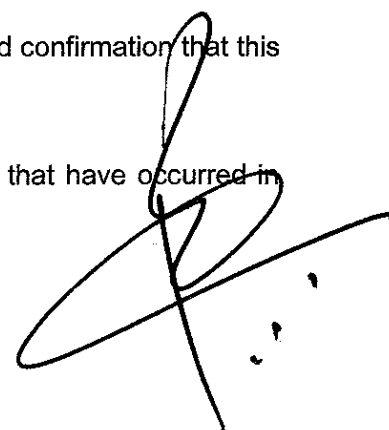
- Black Jack/Pontoon – up to 44 games
- Roulette – up to 24 games
- Electronic Roulette (Touchbet) – up to 1 game
- Caribbean Stud Poker – up to 10 games
- Midi Baccarat – up to 17 games
- Mini Baccarat – up to 7 games
- Pai Gow – up to 4 games
- Tai Sai (DS) – up to 1 game
- Tai Sai (SS) – up to 1 game
- Money Wheel (DS) – up to 1 game

- (b) The following games may be operated under Plan C:

- Black Jack/Pontoon – up to 43 games
- Roulette – up to 22 games
- Electronic Roulette (Touchbet) – up to 1 game

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- Caribbean Stud Poker – up to 8 games
 - Midi Baccarat – up to 18 games
 - Mini Baccarat – up to 7 games
 - Pai Gow – up to 4 games
 - Poker – up to 4 games
 - Tai Sai (DS) – up to 1 game
 - Tai Sai (SS) – up to 1 game
 - Money Wheel (DS) – up to 1 game
- (c) With the exception of Touchbet, the foregoing lists (in (a) and (b) above) refer to manual versions of the games specified, and does not extend to or permit the introduction of electronic versions or any new electronic aid and enhancements to existing games. If any electronic version, aid or enhancement or sought to be introduced, an application by the Licence Holder is required for approval of a revised floor layout;
- (d) CCTV arrangements for Plans B and C must meet or exceed the minimum requirements set out in the CCA surveillance policy and subsequent decisions by the Commission relating to CCTV coverage and as a minimum provide for:
- (i) pan-tilt-zoom camera coverage of all tables;
 - (ii) pan-tilt-zoom camera coverage to enable activity at gaming machines to be monitored;
 - (iii) pan-tilt-zoom camera coverage to enable drop routes to be monitored;
 - (iv) monitoring of all tables by a minimum of one fixed camera;
 - (v) monitoring of Roulette, Midi Baccarat, double-sided Money Wheel and double-sided Tai Sai games by a minimum of two fixed cameras;
- (e) SCAL shall complete the transition from the current approved floor plans to either Plan B or Plan C by 30 January 2006. On completion of the transition, SCAL shall advise the Commission and the Inspectorate and from this point, all previously approved plans will cease to be effective;
- (f) SCAL shall provide the Inspectorate with weekly status reports during the transition phase which must provide as a minimum the following:
- (i) the current gaming machine to table game ratio, and confirmation that this has not been exceeded;
 - (ii) full details of the alteration to the floor plan layout that have occurred in the week; and



(iii) plans for the following week's alterations;

- (g) The Licence Holder is permitted to change between Plans B and C (but not a combination of the two), subject to providing the Commission and the Inspectorate with a minimum of 10 working days notice in writing of its intention to do so. The Licence Holder will specify in that notice which Plan (B or C) is to become operational, proposed transitional arrangements, when it will be fully reliant on the new plans, and for what period (if temporary).

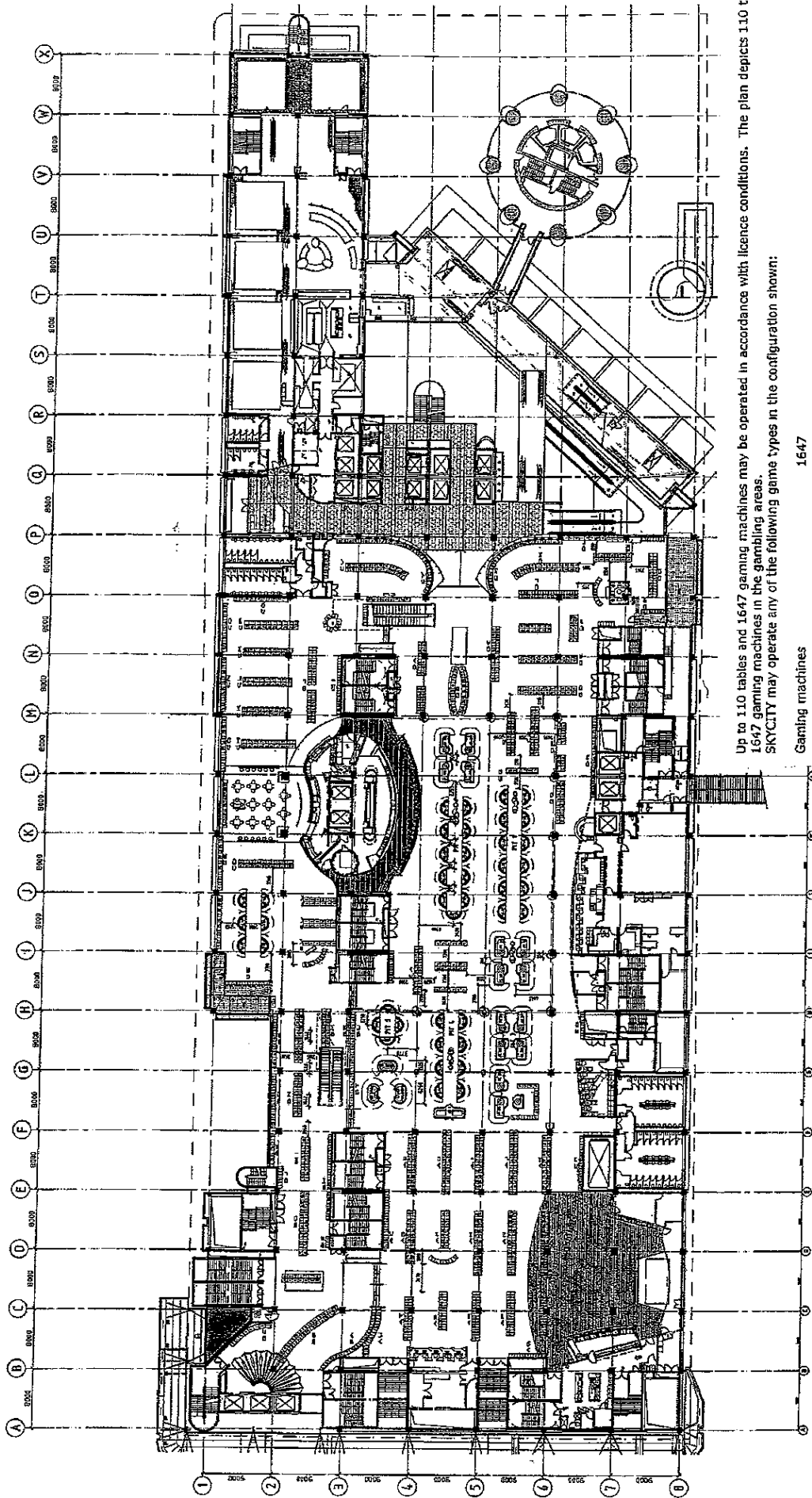


Peter Chin
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

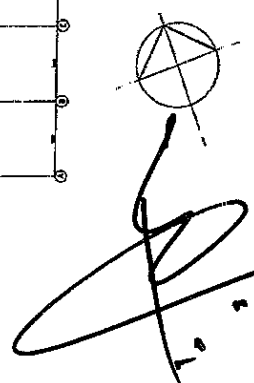
19 September 2005

PLAN B



Up to 110 tables and 1647 gaming machines may be operated in accordance with licence conditions. The plan depicts 110 tables and 1647 gaming machines in the gambling areas.
 1647 gaming machines may operate any of the following game types in the configuration shown:

- Gaming machines**
 1647
- up to 44 games
 - up to 24 games
 - up to 1 game
 - up to 10 games
 - up to 17 games
 - up to 7 games
 - up to 4 games
 - up to 1 game
 - up to 1 game
- Gaming machines**
- Blackjack/Pontoon
 - Roulette
 - Electronic Roulette (Touchbet)
 - Caribbean Stud Poker
 - Mini Baccarat
 - Mini Baccarat
 - Pai Gow
 - Tai Sai (DS)
 - Tai Sai (SS)
 - Money Wheel (DS)



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SKY CITY ENTERTAINMENT GROUP
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 Gaming Layouts

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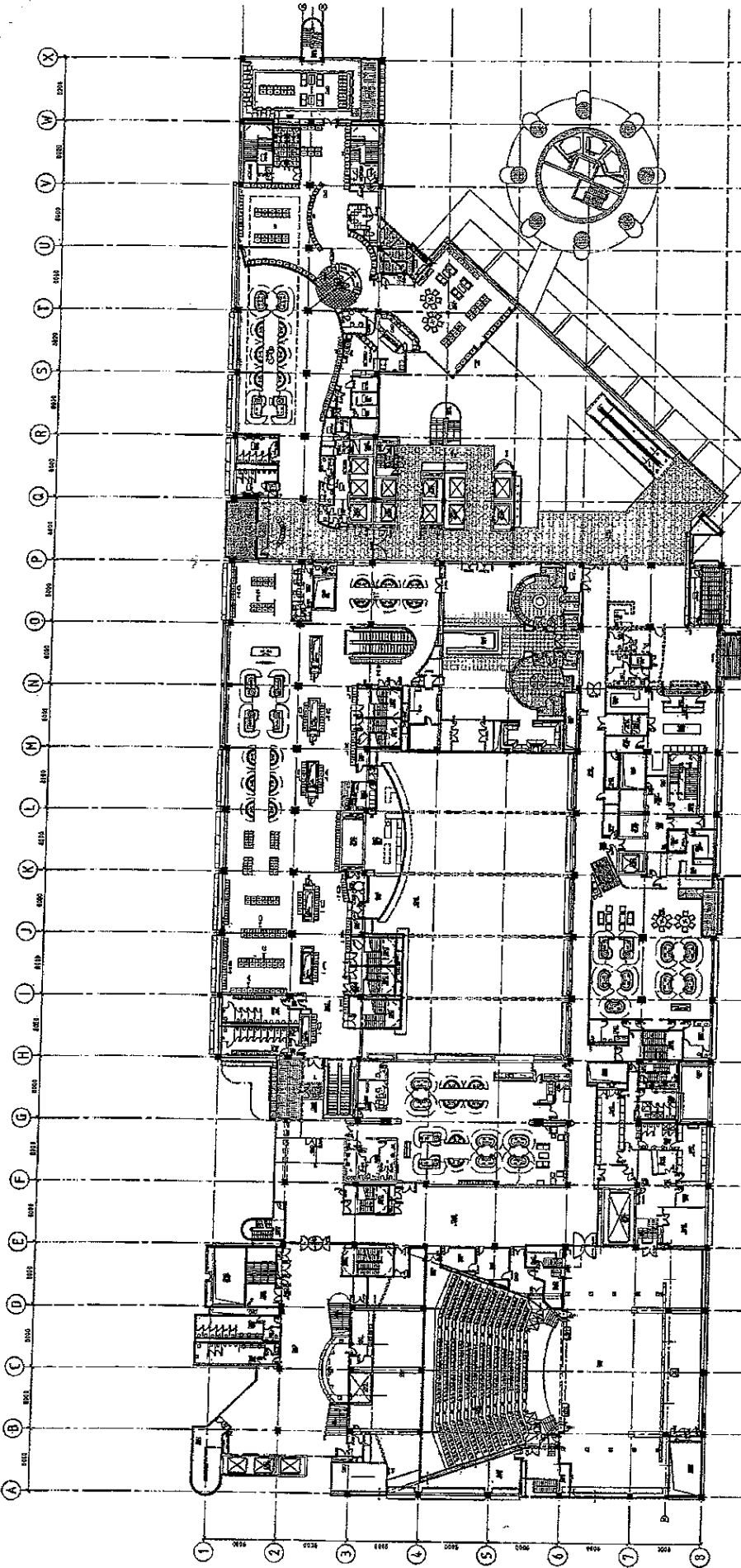
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SKY CITY
 SKY CITY ENTERTAINMENT GROUP

DRAWING TITLE: Level 2 Gaming Layout
 SKY CITY

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PLAN C



Up to 110 tables and 1647 gaming machines may be operated in accordance with licence conditions. The plan depicts 110 tables and 1647 gaming machines in the gaming areas.
 SKYCITY may operate any of the following game types in the configuration shown:

- Gaming machines**
- 1647
 - up to 43 games
 - up to 22 games
 - up to 1 game
 - up to 8 games
 - up to 18 games
 - up to 7 games
 - up to 4 games
 - up to 4 games
 - up to 1 game
 - up to 1 game
 - up to 1 game
- Gaming machines**
- Blackjack/Pontoon
 - Roulette
 - Electronic Roulette (Touchbet)
 - Caribbean Stud Poker
 - Mini Baccarat
 - Mini Baccarat
 - Pai Gow
 - Poker
 - Tai Sai (DS)
 - Tai Sai (SS)
 - Money Wheel (DS)

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PROJECT TITLE
Level 3 Gaming Layout
 SKYCITY

DATE: 10/10/11
 DRAWING NO: 101103(A) | 04d

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