

IN THE MATTER of the Gambling Act 2003
 AND on an application by
**CHRISTCHURCH CASINOS
 LIMITED** to vary conditions 9A and
 9B of its venue licence

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: 28 October 2011

Date of Decision: 9 December 2011

Date of Notification
 of Decision: 23 December 2011

**DECISION ON AN APPLICATION BY CHRISTCHURCH CASINOS LIMITED
 TO VARY CONDITIONS 9A AND 9B OF ITS VENUE LICENCE**

Introduction

1. Christchurch Casinos Limited ("CCL") applied, pursuant to section 139(1)(d) of the Gambling Act 2003 (the "Act"), to vary conditions 9A and 9B of its venue licence. The variation, if approved, would provide CCL with an amended default gambling area, with the potential for other specific parts of the casino to be included within, or excluded from, its gambling area from time to time.
2. Licence conditions 9A and 9B, with the proposed changes shown in mark-up, are as follows:

CCL's venue licence

- 9A. The Gambling Area within the Casino Venue comprises the areas specified in plans marked "Schedule 1" and "Schedule 2", ~~"Schedule 3" and "Schedule 4"~~ and dated ~~[new date to be inserted]~~ 7 April 2010, attached to Commission decision GC[new reference to be inserted]07/40. The standard Gambling Area for the casino venue is delineated in Schedule 1. The ~~additional~~ alternative ~~G~~gambling ~~A~~areas for the casino ~~are~~is delineated in Schedules 2, 3 and 4. When Schedules 2, and/or 3 and/or 4 ~~are~~ activated, ~~the Grand Café~~ these areas may be used (other than for dining purposes) only to conduct casino promotions. Commission approval needs to be obtained before the Licence Holder conducts any other form of gambling in these areas ~~the Grand Café, or in the Velvet Room.~~

- 9B. The additional ~~alternative~~ Gambling Areas will take effect subject to the following:
- (a) the Licence Holder providing the Gambling Commission and the Inspectorate with a minimum of 310 working days notice in writing of its intention to use any or all of the alternative Gambling Areas; and
 - (b) the Licence Holder specifying ~~in that notice~~ the planned dates and times at which the alternative gambling area(s) will apply and terminate. At termination the Gambling Area will revert to the default Gambling Area delineated in Schedule 1.

Relevant licence conditions

3. Other relevant licence conditions are as follows:

CCL's venue licence

6. Subject to the provisions of condition 7, the Licence Holder must obtain the approval of the Commission prior to:
- (a) construction or design changes to Levels 3 and 4 and the rooftop area of the Casino Venue, including the Gambling Area (Schedule 1) and alternate Gambling Area (Schedule 2) but excluding the foyer and bar areas on Level 3 outside the Gambling Area (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 the exterior of the Casino Venue.

The process by which the Licence Holder may obtain approval for construction or design changes to Levels 3 and 4 and the rooftop area of the Casino Venue, (paragraph (a) above) is set out in condition 7. The Commission will determine any application for approval under 6(b) and (c).

7. The Licence Holder must notify the Executive Director of any proposed changes to the construction or design of Levels 3 and 4 and the rooftop area of the Casino Venue, including the Gambling Area (Schedule 1) and alternate Gambling Area (Schedule 2) but excluding the foyer and bar areas outside the Gambling Area. 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 of the Act.

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.

12. The approval of the Commission is required for the construction of any additional cashiering facilities in other parts of the Gambling Area (Schedule 1) and alternate Gambling Area (Schedule 2) to service dedicated areas or rooms. Any such additional facilities must comply with the surveillance equipment requirements set out in the Surveillance Standard and be fitted with manually triggered alarm systems connected to the surveillance department.

CCL's operator's licence

13. A maximum of 2 automatic teller machines is permitted in the Casino Venue outside the Gambling Area (Schedule 1) and Alternate Gambling Area (Schedule 2).
...
15. The Licence Holder is prohibited from using mobile EFTPOS terminals (cash or non-cash dispensing) or like devices in the Gambling Area (Schedule 1) and Alternate Gambling Area (Schedule 2).
...
18. The Licence Holder is required to notify the Commission if it moves ATMs in the Casino Venue or if it installs or moves EFTPOS terminals or like devices in the Gambling Area (Schedule 1) and Alternate Gambling Area (Schedule 2).
...
20. The Licence Holder shall provide security and surveillance equipment and facilities in the Gambling Area (Schedule 1) and Alternate Gambling Area (Schedule 2) and surveillance areas which shall at all times meet and may exceed the Surveillance Standard in whatever form is currently approved by the Commission. The Commission may at any time institute an audit or require the Licence Holder to report on the standard and/or quality of surveillance equipment to ensure it meets or exceeds the Surveillance Standard.
...
23. The approval of the Commission is required for the construction of any additional cashiering facilities in other parts of the Gambling Area (Schedule 1) and Alternate Gambling Area (Schedule 2) to service dedicated areas or rooms. Any such additional facilities must comply with the surveillance equipment requirements set out in the Surveillance Standard and be fitted with manually triggered alarm systems connected to the surveillance department.

Submissions by CCL

4. CCL submitted, in summary, as follows:
- (a) Christchurch casino is a small property so it is looking for efficiencies there following the Christchurch earthquakes. To meet the changing demands of its clientele, it refurbished the Galley dining area into a sports bar called the Monza Bar. This refurbishment was cosmetic with nothing structural required.
- (b) The use of a mobile EFTPOS terminal in the Monza Bar would enhance its customer service but licence conditions preclude this because the Monza Bar is part of the casino's designated Gambling Area. Further, it is evident from decision GC18/11 that the Commission is not minded to change its position in relation to the use of mobile EFTPOS terminals within gambling areas.

- (c) It has therefore reconsidered its position with regard to its designated Gambling Areas and proposes a change as follows:
- (i) The default Gambling Area will remain substantially the same, with the only change being the exclusion of Monza Bar area on level 4.
 - (ii) To provide the flexibility desired, a further three areas have been identified which it wants to be able to temporarily and independently designate as gambling areas. All three are normally food and beverage areas. The areas are the Grand Café, the Canterbury Lounge and the Monza Bar.
- (d) Rather than producing seven alternate gambling area plans for all possible combinations, it proposes that all three areas simply be approved as being Alternate Gambling Areas which may then be annexed to the default Gambling Area.
- (e) The proposed change does not introduce any new gambling areas, rather it reduces the default area slightly. The proposal does not increase any opportunities for casino gambling, but it greatly increases the flexibility to operate and meet the demands of its new clientele.
- (f) The additional alternate Gambling Areas will take effect subject to the following:
- (i) The Licence Holder providing the Commission and the Inspectorate with a minimum of three days notice in writing of its intention to use any or all of the alternate Gambling Areas; and
 - (ii) The Licence Holder specifying the planned dates and times at which the alternate Gambling Area(s) will apply and terminate. At termination, the Gambling Area will revert to the default Gambling Area.
- (g) No other consequential changes are required as these were identified and amended as part of decision GC07/10.
- (h) Condition 9A already limits the permissible use of the alternate Gambling Areas (other than dining) to casino promotions. It therefore suggests the number of days notice to advise of the activation of the alternate Gambling Areas be reduced to three, to be consistent with the notice requirement for casino promotions in the Gazetted Rules.



The Secretary's submissions

5. The Secretary submitted, in summary, as follows:
 - (a) He is comfortable with the proposal.
 - (b) Three days notification would be adequate, especially since condition 9A limits the permissible use of these alternate gambling areas (other than dining) to Casino Promotions.

Analysis

Construction and design changes

6. As part of its overall submission on this application, CCL stated that:

As a part of [its] desire to meet the changing demands of its clientele, it has refurbished the Galley dining area into a sports bar called the Monza Bar. This was a cosmetic change with nothing structural required.
7. The statement was apparently made to provide some background to CCL's substantive application to redesignate its Gambling Areas. However as the Galley/Monza area is currently within the Gambling Area on level 4, the statement raised a significant issue in relation to compliance with condition 6 of CCL's venue licence; namely, that in converting the Galley dining area to the Monza Bar, CCL undertook construction and design changes to part of the Gambling Area without having first obtained the necessary Commission approval under conditions 6 and 7. Condition 6 provides that CCL must obtain the approval of the Commission prior to:
 - (a) construction or design changes to levels 3 and 4 and the roof top area of the casino venue, including the Gambling Area (Schedule 1) and Alternative Gambling Area (Schedule 2) but excluding the foyer and bar areas on level 3 outside the Gambling Area (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); ...
8. The Commission was very concerned by CCL's actions, especially as the construction and design changes only came to the Commission's attention by way of an unrelated application and the manner of its mention indicated a possible purpose of the indirect "notification" after the event was to receive an implied ratification of what it had done, should the Commission's decision on the substantive application be silent on the issue.
9. The Commission accordingly raised this issue with CCL prior to the Commission considering the substantive application. In response, CCL immediately submitted a retrospective application for approval of the construction and design changes, together with what it described as an unreserved apology. The Commission was pleased that CCL admitted its failure and took steps to try and remedy the situation, but was less than

convinced by CCL's apology as the explanation of the breach suggested that economic imperatives and time constraints drove the refurbishment at the expense of obtaining the appropriate prior approval. CCL stated that:

No approval was sought ... as it was considered the changes were more cosmetic than substantive and that no such approval would be necessary. ... the changes are reflective of a new challenging environment we now find ourselves following the Canterbury earthquakes. In this environment we need to be exceptionally flexible and able to react quickly ... a very late decision was taken (with just thirty odd days to go prior to the Rugby World Cup) to try and meet market demand.

10. The Commission considered this explanation to be unacceptable, especially as CCL is well aware of its condition 6 obligations, having made a number of previous applications for approval under this condition. The issue whether changes are "more cosmetic than substantive" may be material to the outcome of an application but not to whether one is required. The condition requires all construction and design changes to be approved, not merely "structural" or "substantive" ones. As can be seen from the detail set out below, it was not remotely arguable that the changes did not require consent.
11. Conditions 6 and 7 of CCL's venue licence provide a mechanism for a Commissioner and the Executive Director to approve construction and design changes without the need for the application to go to the full Commission. Such applications are generally approved within a few days meaning that the pressure of tight time constraints is not an acceptable excuse.
12. The Commission wants to make it plain to CCL, and to all casino licence holders, that adherence to licence conditions is neither optional nor required only when time permits. Licence conditions must be complied with at all times and approvals must be obtained before the outcomes sought are implemented.
13. The Commission reminds operators that the potential consequences of a breach are significant with section 144 of the Act providing that the Commission may, on an application by the Secretary, suspend or cancel a casino licence if it is satisfied that any of a number of obligations have not been met, including a breach of a licence condition. The Commission has previously implemented sections 144-146 of the Act – see decision GC29/06.
14. Finally, the Commission is disappointed that the DIA Inspectorate was notified of the proposed construction and design changes before they took place but was unaware of the licence requirement for the Commission to approve the changes. The Inspectorate should have been well aware of this universal licence condition, and that it cannot "okay" construction and design changes when it has no authority to do so.



Construction and design changes

15. CCL retrospectively sought approval for the construction and design changes to the Galley Dining/ Monza Bar. The changes included:
- the construction of a dividing wall and vertical louvres;
 - changes to the colour, lighting, seating and floor coverings of the area;
 - the construction of semi-circular booths;
 - the removal of planter boxes;
 - the installation of television screens and new signage.
16. The Commission sought comment on the retrospective application from the Secretary's Christchurch Inspectorate. The Inspectorate stated that it had no concerns with the conversion, and that there had been no issues in the Monza Bar since it opened.
17. The Commission identified nothing of regulatory concern with the construction and design changes made by CCL, and noted that none of the changes have impacted adversely on any of the matters set out in condition 7(a)-(e). The Commission therefore (retrospectively) approved the construction and design changes under conditions 6 and 7 of CCL's venue licence.

Gambling Areas

18. CCL's primary application was to amend its designated gambling areas, by removing the Monza Bar from the default Gambling Area and proposing to have the ability to separately and independently re-include within the Gambling Area the Monza Bar, the Grand Café and the Canterbury Lounge.
19. CCL sought the amendment to allow it to use mobile EFTPOS terminals in its food and beverage areas, something that it is unable to do while those areas are designated as Gambling Area.
20. CCL also stated that it wants to be able to return the three additional areas to the Gambling Area in order to "provide the flexibility desired" and because "it greatly increases the flexibility to operate and meet the demands of new clientele." The Commission considered this submission to lack any substantial basis as retaining the Monza Bar as part of the designated Gambling Area does not increase CCL's flexibility in any way, nor does it assist CCL to meet the demands of its clientele. This is because CCL does not currently offer any form of gambling in the Monza Bar and, if it wanted to do so in the future, it would need to make a full application to the Commission for a series of approvals, including approval of new floor plans, and probably approvals for new game mixes and for construction and design changes.

21. As these additional approvals are required, notionally retaining the Monza Bar as part of the Gambling Area is of no value to CCL in terms of meeting the demands of its clientele.
22. The Commission also noted CCL's submission that condition 9A limits the use of the alternate Gambling Areas to casino promotions, a submission the Secretary accepted. However this is not what condition 9A provides - condition 9A provides that casino promotions can be conducted only in the Grand Café. There is no mention of casino promotions being conducted in the alternative Gambling Areas; they must be conducted in the Grand Café. The Commission was very specific about this when it considered the issue in decision GC07/10. The Commission sees no reason to extend that approval now when the sole purpose of creating the alternative Gambling Area was to allow CCL to conduct dinner draws in the Grand Café.
23. CCL also submitted that "no other consequential changes are required" if its application is approved. Again, this submission is not correct - licence conditions 6, 7 and 12 of CCL's venue licence would require amendment, as would conditions 13, 15, 18, 20 and 23 of CCL's operator's licence. CCL did not identify the need for these amendments, nor propose how they should be amended.
24. Rather than approving the proposal as sought, the Commission was of the view that it was "cleaner" simply to remove the Monza Bar from the Gambling Areas in the current default and alternative areas. This would allow CCL to operate mobile EFTPOS terminals in the Monza Bar without suffering any detriment because, as noted above, retaining the Monza Bar as part of the Gambling Area is of no value to CCL in the absence of other approvals.
25. Should CCL wish to restore the Monza Bar to its designated Gambling Area, it can apply to the Commission to do so as part of a complete application to deploy gambling product in that area.

Decision

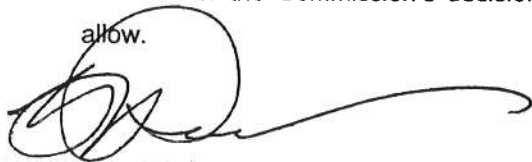
26. The Commission:
 - (a) approved the retrospective application for construction and design changes to convert the Galley Dining Area into the Monza Bar, pursuant to conditions 6 and 7 of CCL's venue licence;
 - (b) declined CCL's application to vary conditions 9A and 9B, under section 139(1)(d) of the Act;



- (c) amended the currently approved default and alternative Gambling Areas, pursuant to conditions 9A and 9B of CCL's venue licence. The new default and alternative Gambling Areas are **attached** as Schedules 1 and 2.

Right of appeal

27. 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.



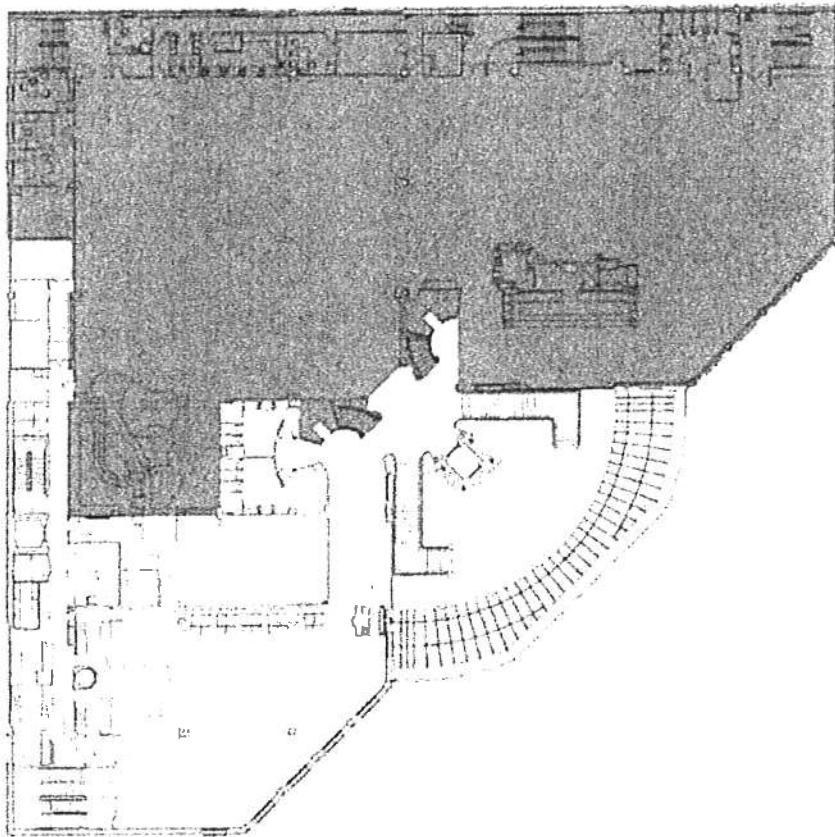
Graeme Reeves
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

23 December 2011

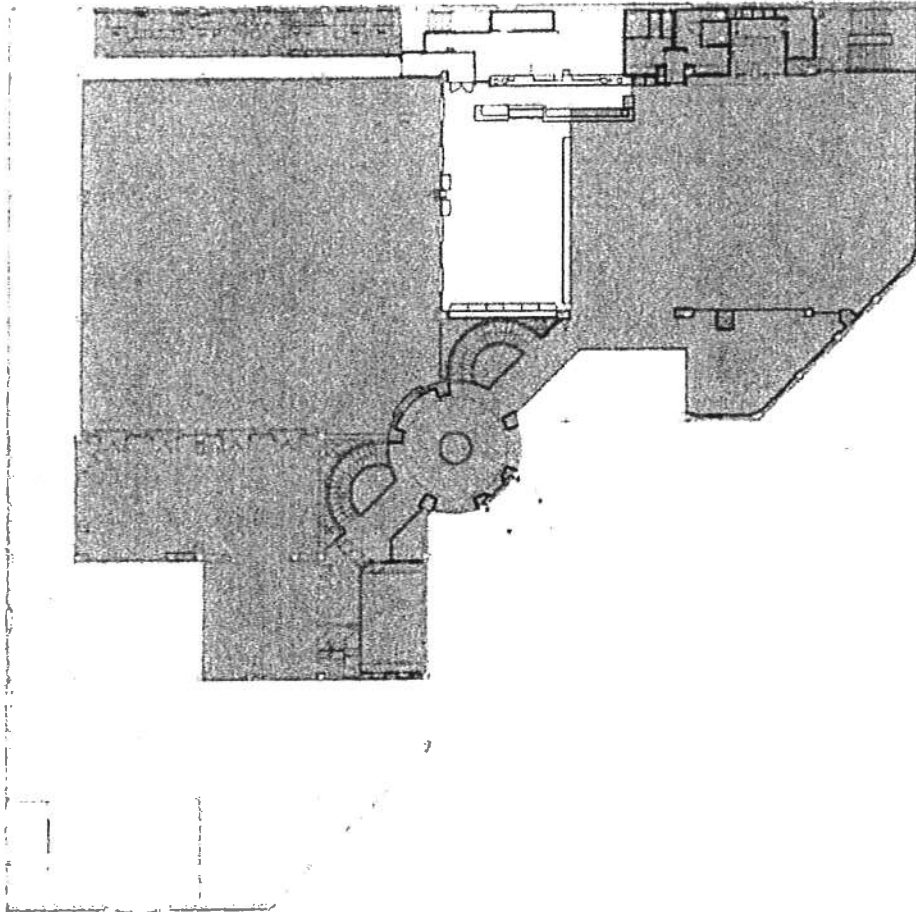


SCHEDULE 1
Default Gambling Area – Level 3
Dated: December 2011



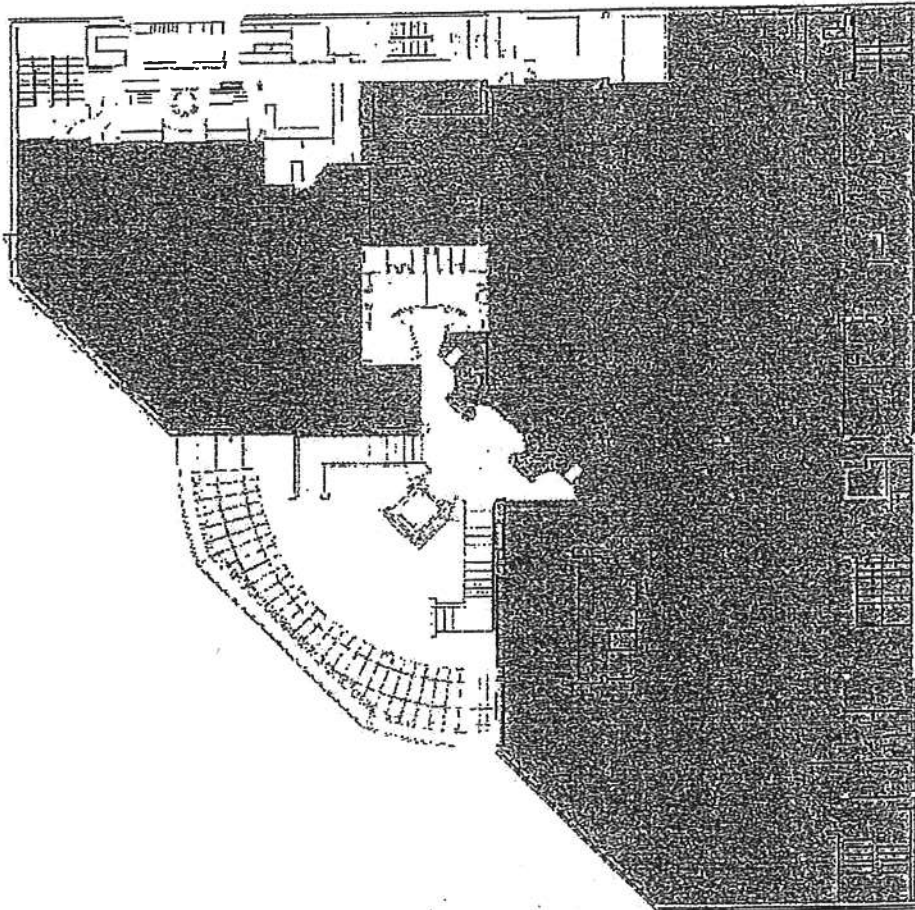
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SCHEDULE 1
Default Gambling Area – Level 4
Dated: December 2011



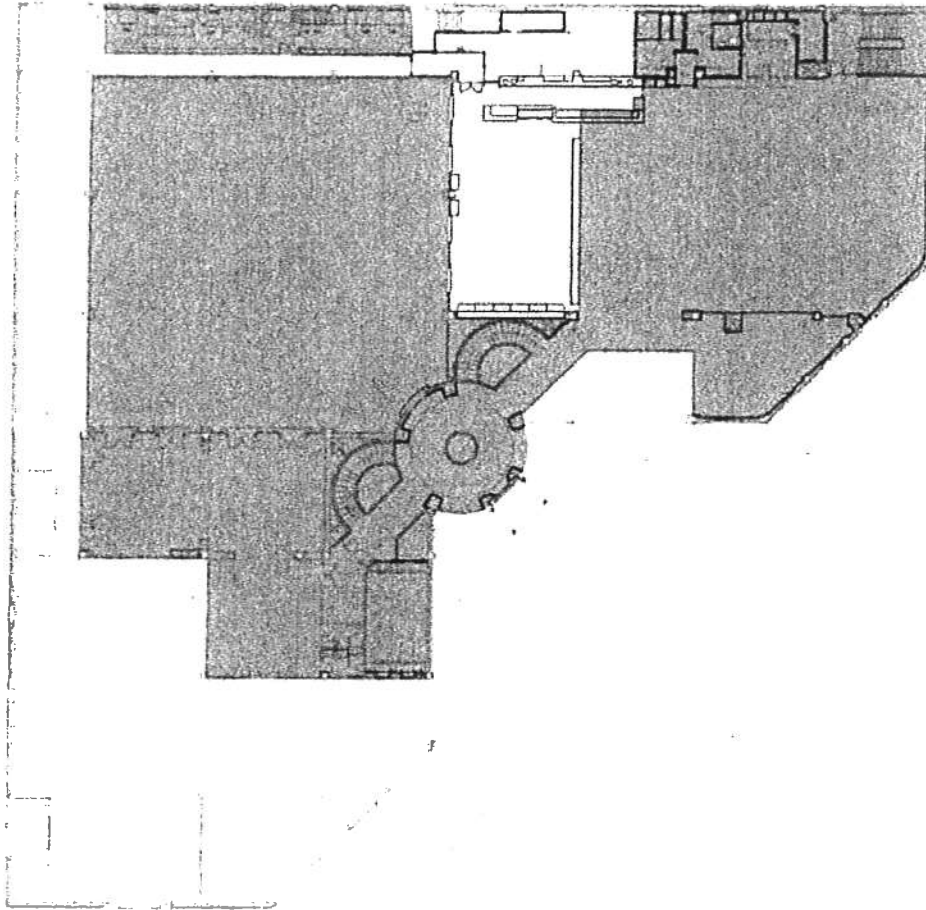
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SCHEDULE 2
Alternate Gambling Area – Level 3
Dated: December 2011



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SCHEDULE 2
Alternate Gambling Area – Level 4
Dated: December 2011



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