

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR MATERIAL ALTERATION OF LIQUOR LICENCE

REFERENCE: LC20212/17

LICENCE NUMBER: FLL1374

LICENSEE/APPLICANT: Air Raid Arcade Pty Ltd

PREMISES: Birth of Venus
35 Cavenagh Street
DARWIN NT 0800

NOMINEE: Mr Matt Mulga

LEGISLATION: Part 3 Division 4 of the *Liquor Act 2019*

HEARD BEFORE: Mr Russell Goldflam (Acting Deputy Chairperson)
Mr Bernard Dwyer (Health Member)
Ms Christine Hart (Community Member)

DATE OF HEARING: 26 May 2022

DATE OF DECISION: 21 September 2022

Decision

1. For the reasons set out below and in accordance with section 97 of the *Liquor Act 2019* (NT) (**the Act**) the Northern Territory Liquor Commission (**the Commission**) has determined to approve a material alteration to liquor licence FLL1374 (**the licence**) held by Air Raid Arcade Pty Ltd (**the applicant**).
2. The material alteration that is approved is to extend the liquor licence area to incorporate shops 1, 3, 5 and a portion of shop 7 as indicated by the area bounded in red on the plan annexed to this Decision Notice.
3. Pursuant to section 97(3) of the Act, the following conditions are attached to the approval of the material alteration:
 - a. "The Arcade Area" is the area bounded in yellow on the plan annexed to this Decision Notice.

b. Trading hours for the Arcade Area shall be between:

Sunday 12:00 and 24:00

Monday 17:00 and 24:00

Tuesday 17:00 and 24:00

Wednesday 17:00 and 24:00

Thursday 17:00 and 24:00

Friday 17:00 and 24:00

Saturday 12:00 and 24:00

c. Liquor may only be consumed in the Arcade Area by patrons whilst seated at the chairs within the Arcade Area indicated on the plan annexed to this Decision Notice.

4. Pursuant to section 97(5) of the Act, no business is to be conducted on or in the licensed premises unless arrangements for that business are approved by the Commission. The Commission hereby delegates the authority to approve these arrangements to the Director of Liquor Licensing (**the Director**).

Reasons

Background

5. Mr Matt Mulga is the principal executive officer of various corporate entities (**the Mulga group**), one of which, Air Raid Nominees Pty Ltd, owns the premises at 35 Cavenagh Street Darwin (**Air Raid Arcade**), which it leases to the licensee, another company in the Mulga group. The licensee holds liquor licences over Babylon Berlin, which trades with a small bar authority and a late night authority at the northern end of Air Raid Arcade; and Birth of Venus, which trades with a small bar authority at the southern end of Air Raid Arcade. The Mulga group also leases a number of ground floor shops in the Air Raid Arcade to small businesses, including a record shop, a fabric shop, a hairdresser's, an ironing service, a vintage clothing shop and a screenprinting studio. The Air Raid Arcade has a second storey, which is apparently not currently occupied.
6. This is the fourth application to the Liquor Commission by the applicant in relation to its businesses at the Air Raid Arcade. The Commission anticipates that it will not be the last. Mr Mulga informed the Commission that in due course he intends to develop the first floor of the Air Raid Arcade into a licensed entertainment venue, and to seek to consolidate the two existing liquor licences into a single licence over the entire property.

The Application

7. As the next step in the applicant's staged development of its property at the Air Raid Arcade, the applicant seeks to expand the footprint of the Birth of Venus from its existing two shops to six shops, plus a portion of the arcade thoroughfare itself. The expanded venue will be a pizzeria called "Last Supper".

Consultation

8. In accordance with section 57 of the Act, the Director required notice of the application to be published in the NT News on 12 March 2022, to be posted on the Director's website, and to be displayed on a sign at the premises.
9. In accordance with section 56 of the Act, notification was given to the Department of Health, NT Police and the City of Darwin Council, as well as the Northern Territory Fire and Rescue Service.
10. No objections to the application were received from either the public, or any of the stakeholders who had been consulted.

The licensee's record of compliance

11. The Mulga group has been the subject of some disciplinary action in the past arising from the operation of other liquor licences, as detailed in the Commission's previous decisions in relation to the applicant's Air Raid Arcade business.¹ However, the Director informs the Commission that no compliance issues have arisen with respect to the liquor licences held by the applicant at the Air Raid Arcade.

The referral

12. On 30 March 2022, pursuant to section 96 of the Act, the Director referred this application to the Commission to be determined by way of a public hearing. Notice was subsequently given to the applicant that the matter would be listed for a public hearing on 26 May 2022.
13. The Director provided the following documents to the Commission with the referral (**the brief**):
 - a. Birth of Venus liquor licence;
 - b. Application for material alteration;
 - c. Public Interest and Community Impact Assessment summary pursuant to sections 49 to 52 of the Act;
 - d. "Last Supper" proposed licensed area.

The hearing

14. Pursuant to section 23 of the Act, the Commission is not bound by the rules of evidence and may inform itself in any manner it considers appropriate. Section 21(2) provides that a hearing must be conducted in public unless the Commission is of the opinion it is not appropriate. No submissions were made to the Commission that the hearing be conducted in private.

¹ See, for example, Northern Territory Liquor Commission, *Application for a liquor licence 2019/013* (3 June 2019), at [22], documenting nine *Liquor Act* disciplinary matters involving liquor licences operated by Mr Mulga between 2001 and 2014.

15. On 26 May 2022, the application proceeded as a public hearing. Mr Mulga appeared on behalf of the applicant. Mr Verinder appeared for the Director. The Commission thanks them for their attendance and assistance.

16. The brief was tendered and admitted into evidence without objection.

17. In addition and also without objection the following documents were tendered:

- Babylon Berlin liquor licence
- Plan of proposed premises
- Plan of proposed premises with handwritten annotation of proposed seating in arcade thoroughfare

ASSESSMENT OF THE APPLICATION

18. In accordance with section 97 of the Act, the Commission has considered the public interest and community impact requirements, which are set out at section 49 of the Act.

Public notice and consultation

19. The Commission is satisfied that public notice of the application was given and consultation was undertaken in accordance with section 57 of the Act.

Whether the material alteration is in the public interest

20. To determine whether the approval of the material alteration is in the public interest, the Commission is required to consider how the issue of the licence would advance the following objectives set out in section 49(2) of the Act:

- (a) minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor;
- (b) ensuring liquor is sold, supplied, served and consumed on or in licensed premises in a responsible manner;
- (c) safeguarding public order and safety, particularly when large numbers of people would be attracted to licensed premises or an area adjacent to those premises;
- (d) protecting the safety, health and welfare of people who use licensed premises;
- (e) increasing cultural, recreational, employment or tourism benefits for the local community area;
- (f) promoting compliance with this Act and other relevant laws of the Territory;
- (g) ensuring each person involved in the business conducted at licensed premises receives training suitable to the person's role in the business;
- (h) preventing the giving of credit in sales of liquor to people;

- (i) preventing practices that encourage irresponsible drinking;
- (j) reducing or limiting increases in anti-social behaviour.

21. The Commission has considered each of these objectives, and has had particular regard to, firstly, the licensee's success in establishing and developing its licensed premises at the Air Raid Arcade in compliance with the Act; and secondly, the contribution of the licensee's premises at the Air Raid Arcade to the revitalisation of the Darwin city centre, a goal supported by both the Northern Territory government and the Darwin City Council. In accordance with section 51(1)(a), the Commission is satisfied that it is in the public interest to approve the material alterations.

Whether the material alteration will have a significant adverse impact on the community

22. To determine whether it is satisfied that approval of the material alteration will not have a significant adverse impact on the community, the Commission must consider the matters set out at section 49(3) of the Act:

- (a) the risk of undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity of the proposed licensed premises or who are using, or travelling to or from, a place of public worship, a hospital or a school;
- (b) the geographic area that would be affected;
- (c) the risk of harm from the excessive or inappropriate consumption of liquor;
- (d) the people or community who would be affected;
- (e) the effect on culture, recreation, employment and tourism;
- (f) the effect on social amenities and public health;
- (g) the ratio of existing liquor licences and authorities in the community to the population of the community;
- (h) the effect of the volume of liquor sales on the community;
- (i) the community impact assessment guidelines issued under section 50;
- (j) any other matter prescribed by regulation.

23. The Commission notes there are no such "other" matters prescribed by regulation.

24. Regulation 123 of the Regulations provides that the community impact assessment guidelines published under section 6A of the *Liquor Act 1978* and in force immediately before the commencement of the Act are taken to be community impact assessment guidelines issued under section 50 of the Act.

25. Having considered all of these matters, and in particular having regard to the modest increase that will be effected by the proposed alterations to the size of these small premises, Commission is satisfied, in accordance with section

51(1)(b) of the Act, that approval of the material alteration will not have a significant adverse impact on the community.

The licence conditions

26. Section 97(3) of the Act confers on the Commission the power to attach conditions to the approval of a material alteration.
27. In purported compliance with section 96(3)(a) of the Act, the licensee included in its application a copy of the plans and specifications for the alteration, comprising a plan depicting service counters, a bar, a kitchen and tables, chairs and booths located in shops 2 and 4 on the Knuckey Street side of the arcade, and in shops 3, 5 and 7 on the Edmonds Street side of the arcade. The plan did not depict any proposed alterations or furnishings in the thoroughfare used by pedestrians walking through the arcade between Cavenagh Street and Austin Lane, which includes the Arcade Area as defined at paragraph 3.a) above.
28. During the hearing, in response to queries from the Commission Mr Mulga disclosed that he also intends to install seating for up to 28 patrons in the Arcade Area.
29. This information was new to the Commission, and should have been included in the plans the licensee submitted with its application. Mr Mulga was well aware that the Commission has concerns about the use of the Arcade Area. In its decision delivered on 17 September 2021 to approve a previous application for a material alteration by the licensee to premises in the Air Raid Arcade, the Commission had stated:

At the outset of the hearing the Commission reiterated the concerns it had expressed previously, both in the original licence application for these premises and more recently in respect of the licensee's other premises in this arcade, Birth of Venus Bar: namely that members of the public wishing to gain access to other shops in the arcade should be able to do so without having to push their way through drinkers congregating at either end of the arcade.

Mr Mulga told the Commission that he would be prepared to abide by a condition that liquor could only be consumed by patrons within the arcade whilst they were seated at a designated table. He also said that he was considering the introduction of an "App" that would enable his patrons to order and pay for drinks "on-line" from the table which means they would not have to leave their table and their drinks would be served by wait staff.²

30. On this occasion, Mr Mulga offered no explanation to the Commission for this salient omission, but instead provided a handwritten sketch he made on the spot depicting the location of the proposed tables and chairs. This sketch was of assistance to the Commission, but inadequate for the purpose of determining

² Northern Territory Liquor Commission, *Application for Approval of Material Alteration to Licensed Premises LC2021/033* (17 September 2021), at [18] – [19]

an application for a material alteration. The Commission informed Mr Mulga that before approving the application, the Commission would require a copy of properly drawn plans and specifications for the alteration including any furnishings in the Arcade Area. The licensee subsequently provided this material to the Commission on 19 September 2022.

31. In its decision of 17 September 2021, which concerned a material alteration to Babylon Berlin, the licensee's premises at the northern end of the Air Raid Arcade, the Commission imposed the following conditions:

The Licensee is to provide the Director for approval, a plan depicting the placement of the tables and chairs in the arcade area of these premises which are positioned so as to provide a sufficient thoroughfare for pedestrians to access other shops in the arcade;

Liquor may only be consumed in the arcade by patrons whilst seated at the chairs designated in the plan approved by the Director.

32. On this occasion, the Commission has determined to fix relevantly similar conditions for the southern end of the arcade thoroughfare.

The objects of the Act

33. Section 3(4) of the Act provides that in performing its function to decide whether to issue the licence, the Commission must have regard to the primary and secondary purposes of the Act. The Commission considers that the approval of the material alterations with the conditions imposed is consistent with the purposes of the Act.

34. For these reasons, the Commission has determined that the application should be granted, and that the material alterations be approved on the conditions set out at the commencement of this Decision Notice.

NOTICE OF RIGHTS

35. Section 31(1) read with section 60(3) of the Act provide that the decision set out in this decision notice is reviewable by the Northern Territory Civil and Administrative Tribunal (**NTCAT**). Section 94(3) of the *NTCAT Act* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.

36. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Director and the licensee.



Russell Goldflam

ACTING DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
21 September 2022

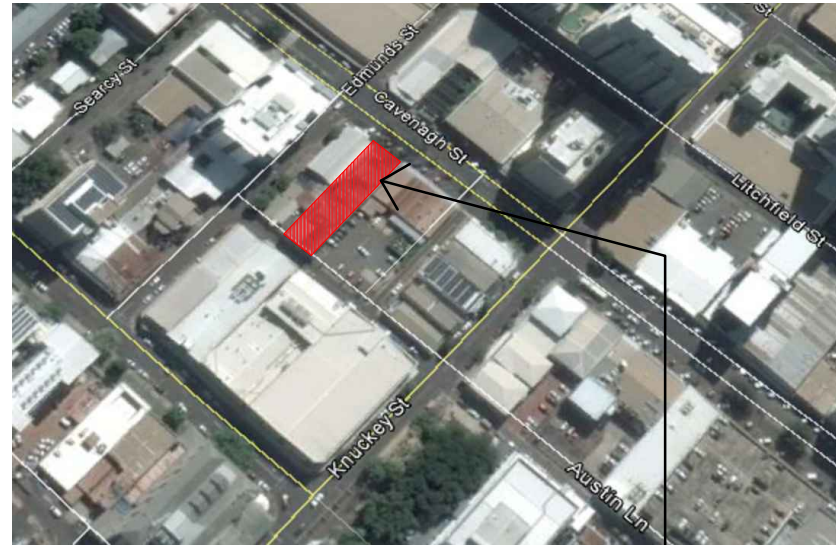
On behalf of Commissioners Goldflam, Dwyer and Hart

Annexure A

BIRTH OF VENUS LICENCED AREA

AIR RAID ARCADE

LOT 2329 35 CAVENAGH ST DARWIN NT

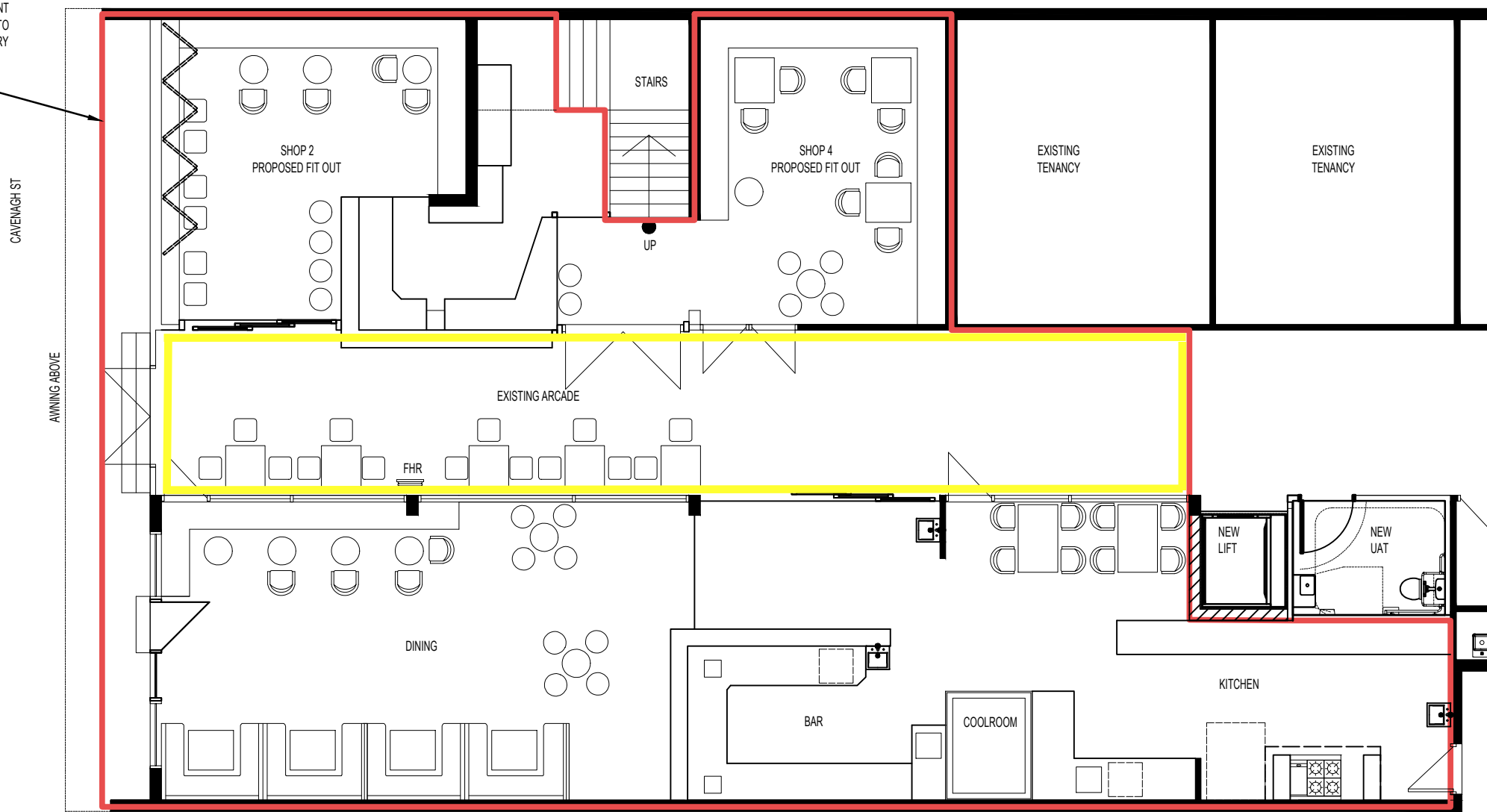


LOCALITY PLAN

SCALE - NTS

LOCATION OF WORKS

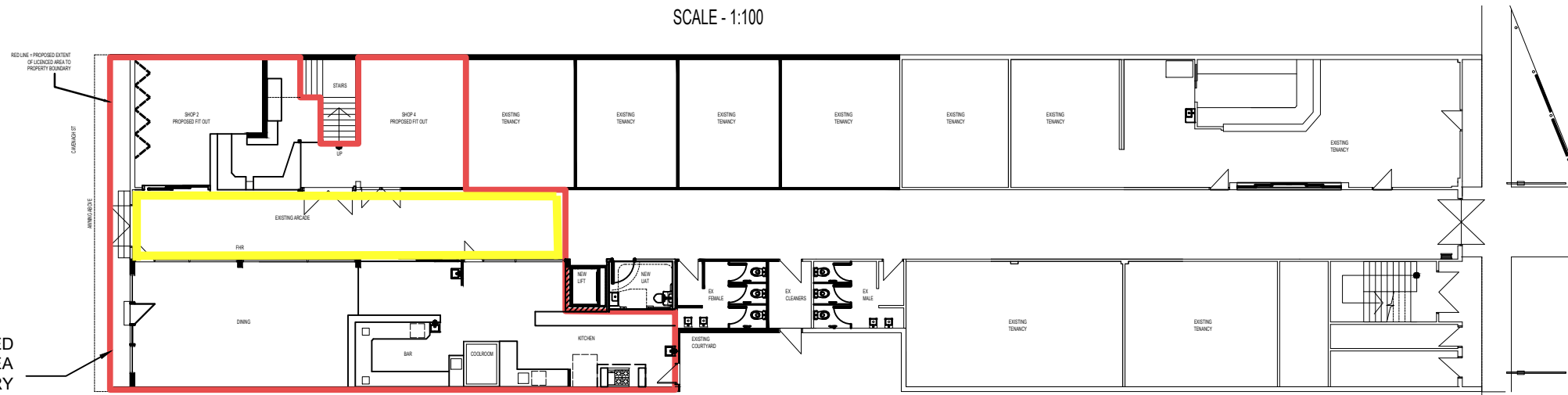
RED LINE = PROPOSED EXTENT OF LICENCED AREA TO PROPERTY BOUNDARY



FLOOR PLAN - BIRTH OF VENUS

SCALE - 1:100

RED LINE = PROPOSED EXTENT OF LICENCED AREA TO PROPERTY BOUNDARY



SITE PLAN - AIR RAID ARCADE

SCALE - 1:250

No.	ISSUED FOR ILICENCING	16-09-22	<p>ANDREA RICE ARCHITECTS ARCHITECTURE INTERIORS HOSPITALITY</p> <p>0409 260 743 andrea@andrearicearchitects.com.au GPO Box 3978 DARWIN NT 0801 www.andrearicearchitects.com.au</p>	<p>PROPOSED FIT OUT - LAST SUPPER GROUND FLOOR AIR RAID ARCADE Lot 2329, 35 CAVENAGH ST DARWIN NT LOCALITY PLAN, SITE PLAN & FLOOR PLAN EXTENT OF LICENCED AREA</p>					B	A3							
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