Northern Territory Licensing Commission

Reasons for Decision

Premises:	Montes Lounge 95 Todd Street Alice Springs, NT 0850
Applicant:	Monte's Bar & Bistro Pty Ltd
Nominee:	Matt Mulga
Licence Number:	80515500
Objectors:	Messrs Robert Cowan and Jolyon George, Directors, The Rock Bar Mr and Mrs Eric and Marie Campbell A / Commander Michael Murphy, Northern Territory Police Mr Craig Catchlove, Director Corporate and Community Services, Alice Springs Town Council Mr Russell Goldflam, Principle Legal Officer, Northern Territory Legal Aid Commission Senior Pastor Allen Steel, Christian Family Centre Major Adye Viney, The Salvation Army Mr Jonathan Pilbrow, Convenor on behalf of People's Alcohol Action Coalition Dr Rosalie Schults, Acting President, Public Health Association of Australia
Legislation:	Sections 4F to 47I of the *Liquor Act* and Section 28 of the *Interpretation Act*
Decision of:	Philip Timney
Date of Decision:	29 October 2010

Summary of Decision

That the Commission conduct a Hearing in respect of the objections received from:

1) Messrs Robert Cowan and Jolyon George
2) Mr and Mrs Eric and Marie Campbell
3) A/Commander Michael Murphy
4) Mr Craig Catchlove
5) Mr Russell Goldflam
6) Senior Pastor Allen Steel
7) Major Adye Viney
8) Mr Jonathan Pilbrow
9) Dr Rosalie Schultz

That the Hearing Commissioners invite Mr Michael Wells, Director Heritage Branch, to attend the Hearing for the purpose of advising the Commission on the status of any approval required by the Heritage Branch for the proposed material alterations.

Background

1) Mr Matt Mulga, on behalf of Monte's Bar & Bistro Pty Ltd, Licensee of Monte's Lounge has made an application for approval to undertake material alterations and for variations of liquor licence number 80515500 to vary the licence conditions pursuant to Sectiona 119 and 32A of the *Liquor Act* ("the Act") at premises are situated at 95 Todd Street, Alice Springs ("the Application"). The Application was advertised in the Centralian Advocate on Tuesday 31 August 2010 and Friday 3 September 2010 pursuant to Sections 119(3) and 32A(3)(a) of the Act.

2) On 27 September 2010 an objection to the wording of the advertisement was received from People's Alcohol Action Coalition. In light of this objection the application was readvertised on Tuesday 5 October 2010 and Friday 8 October 2010. All relevant parties were notified of the amended notice and advertisement.

3) The first advertisement was as follows:

> *I, Matt Mulga, on behalf of Monte's Bar & Bistro Pty Ltd – Hereby give notice that I have applied to the Northern Territory Licensing Commission for approval to undertake material alterations and for variations to Liquor Licence (Number 80515500), issued to Monte's Lounge (formerly Bluegrass Restaurant), located at 95 Todd Street, Alice Springs, and to change the current Licence Authority from a Restaurant to an On Licence.*
>
> ***Proposed material alterations will include:***
>
> - *Installation of decking, built in tables and chairs in the outdoor area.*
> - *Expand the licensed area of the premises to incorporate the building currently utilised as a Souvenir shop which will be converted to a kitchen and servery with additional toilet facilities.*
> - *Relocate the service area within the premises and install a new service area on the southern side of the building.*
> - *Extend the roof of the alfresco dining area at the rear to match the existing roof.*
>
> ***Proposed variation will include the removal of the following current licence conditions:***
>
> ***Appearance***
>
> *The premises shall at all times have the appearance of and shall trade predominantly as a restaurant.*
>
> ***Patrons***
>
> *Patrons to be seated at a table.*
>
> ***And be replaced by the following condition:***
>
> ***Noise & Entertainment***
>
> *The Licensee shall not permit or suffer the emanation of noise from the licensed premises of such nature or at such levels as to cause unreasonable disturbance to the ordinary comfort of lawful occupiers of any premises. At all times, with the*

exception of privately pre-booked functions, any entertainment is to remain secondary to the primary function of the premises as a restaurant.

Trading Hours will remain the same, which are:

11.30 am - 02.00 am the following day, seven (7) days a week.

This is the first notice of application. The notice will be published in the Centralian Advocate on Tuesday 31 August 2010.

The objection period is deemed to commence from Friday 3 September 2010 (date of publication of second notice).

Pursuant to Section 47F(2) of the Liquor Act an objection may only be made on the ground that the variation of the licence conditions may or will adversely affect:

(a) the amenity of the neighbourhood where the premises the subject of the application are or will be located; or

(b) health, education, public safety or social conditions in the community.

Only those persons, organisations or groups described in Section 47F(3) of the Liquor Act may make an objection. Section 47G of the Liquor Act requires the Director of Licensing to inform the applicant of the substance of any objection. This will include the identity and where relevant the address of the objector.

For further information regarding this application contact the Deputy Director of Licensing on telephone 89515195. Objections to this application should be lodged in writing with the Deputy Director of Licensing, Licensing, Regulation and Alcohol Strategy, PO Box 8470, Alice Springs, within thirty (30) days of the commence date of the objection period.

4) The second advertisement was as follows:

I, Matt Mulga, on behalf of Monte's Bar & Bistro Pty Ltd – Hereby give notice that I have applied to the Northern Territory Licensing Commission for approval to undertake material alterations and for variations to Liquor Licence (Number 80515500), issued to Monte's Lounge (formerly Bluegrass Restaurant), located at 95 Todd Street, Alice Springs, and to change the current Licence Authority from a Restaurant to an On Licence.

The change in Authority will change the trading nature and appearance of the premises.

Proposed material alterations will include:

- *Installation of decking, built in tables and chairs in the outdoor area.*
- *Expand the licensed area of the premises to incorporate the building currently utilised as a Souvenir shop which will be converted to a kitchen and servery with additional toilet facilities.*
- *Relocate the service area within the premises and install a new service area on the southern side of the building.*
- *Extend the roof of the alfresco dining area at the rear to match the existing roof.*

Proposed variation will include the removal of the following current licence conditions:

Appearance

The premises shall at all times have the appearance of and shall trade predominantly as a restaurant.

Patrons

Patrons to be seated at a table.

Notice to be Displayed

Liquor may be served without a meal provided that the premises shall at all times have the appearance of and trade predominantly as a restaurant.

And be replaced by the following condition:

Noise & Entertainment

The Licensee shall not permit or suffer the emanation of noise from the licensed premises of such type or volume as to cause such annoyance or disturbance to the ordinary comfort of lawful occupiers of adjoining properties, other persons in the vicinity or the residential neighbourhood.

The following Licence conditions will remain in place:

Consumption of Liquor

Consumption of liquor without a meal will not be advertised or promoted.

Kitchen Operation

The premises shall close no later than one and one half hours after the kitchen closes.

Snack Foods

Snack foods will be available at all times.

Advertising and Signage

The word "Bar" shall not be used in any advertising and signage.

Trading Hours will remain the same, which are:

11.30 am - 02.00 am the following day, seven (7) days a week.

This is the first notice of application. The notice will be published in the Centralian Advocate on Tuesday 5 October 2010.

This is an amended advertisement (originally advertised Tuesday, 31 August 2010 and Friday, 3 September 2010).

All objections previously received will stand and will be taken into the Licensing Commission's consideration of the application.

The objection period is deemed to commence from Friday 8 October 2010 (date of publication of second notice) for a period of ***14 days only.***

Pursuant to Section 47F(2) of the Liquor Act an objection may only be made on the ground that the variation of the licence conditions may or will adversely affect:

(a) the amenity of the neighbourhood where the premises the subject of the application are or will be located; or

(b) health, education, public safety or social conditions in the community.

Only those persons, organisations or groups described in Section 47F(3) of the Liquor Act may make an objection. Section 47G of the Liquor Act requires the Director of Licensing to inform the applicant of the substance of any objection. This will include the identity and where relevant the address of the objector.

For further information regarding this application contact the Deputy Director of Licensing on telephone 89515195. Objections to this application should be lodged in writing with the Deputy Director of Licensing, Licensing, Regulation and Alcohol Strategy, PO Box 8470, Alice Springs, within fourteen (14) days of the commence date of the objection period.

5) Pursuant to Section 47F(4)(d) an objection must be lodged within thirty (30) days after the publication of the last notice, namely on or before 22 October 2010.

6) Section 47F of the Act prescribes the circumstances in which an objection may be made, specifies the grounds for objection and identifies the persons entitled to object to a particular application -

47F.Person may object to certain applications

(1) Subject to this Section, a person, organisation or group may make an objection to the following applications:

(a) an application for the grant of a licence, as notified under Section 27;

(b) an application for a variation of the conditions of a licence, as notified under Section 32A;

(c) an application for the substitution of other premises for the premises specified in a licence, as notified under Section 46A;

(d) an application for approval to make a material alteration to licensed premises, as notified under Section 119.

(2) The objection may only be made on the ground that the grant of the licence, variation of conditions, substitution of other premises or material alteration may or will adversely affect –

(a) the amenity of the neighbourhood where the premises the subject of the application are or will be located; or

(b) health, education, public safety or social conditions in the community.

(3) Only the following persons, organisations or groups may make an objection under sub-Section (1):

(a) a person residing or working in the neighbourhood where the premises the subject of the application are or will be located;

(b) a person holding an estate in fee simple in land, or a lease over land, in the neighbourhood where the premises the subject of the application are or will be located;

(c) a member or employee of the Police Force acting in that capacity;

(d) a member or employee of the Fire and Rescue Service within the meaning of the Fire and Emergency Act acting in that capacity;

(e) an Agency or public authority that performs functions relating to public amenities, including health, education and public safety;

(f) a community-based organisation or group (for example, a local action group or a charity).

7) Section 47F(1)(b) provides that a person or organisation may object to an application for material alteration of premises under Section 119 and variation of licence conditions under Section 32A, the type of applications lodged for Monte's Lounge.

8) Turning to the specifics of the objections lodged:

Objection from Messrs Robert Cowan and Jolyon George of The Rock Bar:

9) Messrs Robert Cowan and Jolyon George are the Directors of The Rock Bar, licensed premises located at 78 Todd Street, Alice Springs. As such they fall within Section 47F(3)(a) of the Act as persons working in the neighbourhood within which the subject premises are located. The objection was received on 15 September 2010 and was therefore lodged within time.

10) Messrs Cowan and George object to the application to change the License Authority from Restaurant to On Licence on the basis it will adversely affect the amenity of the neighbourhood and the health, education, public safety or social conditions in the community.

11) In support of their objection, Messrs Cowan and George note that the Application does not include a security plan or camera surveillance plan and that the premises are located in a late night "hot spot" recognised for alcohol related anti-social behaviour. The objectors also note that no maximum patron number is identified and raise concerns about patron safety due to the lack of a taxi rank in the vicinity

12) The objection also notes that the application does not specify the hours that meals will be available and that the location of decking and furniture close to footpaths presents a patron safety issue. The objectors also raise the issue of the premises previously trading outside the parameters of the existing licence and the potential for noise emanating from the premises, including from live music, to affect the amenity of the immediate neighbourhood.

13) Despite the fact the objectors are the proprietors of neighbouring licensed premises I do not consider this objection to be of a commercial nature. The objection is valid and requires a Hearing.

Objection from Mr and Mrs Eric and Marie Campbell

14) Mr and Mrs Campbell are residents of unit 14/20 Leichardt Terrace, and as such fall within Section 47F(3)(a) of the Act as persons residing within the neighbourhood of the subject premises. The objection was lodged within the specified time limit.

15) The objectors raise the issue of noise disturbance arising from activities at the licensed premises during the Alice Springs Desert Festival. Mr and Mrs Campbell object to the application for variation of licence conditions on the basis it will result in more regular noise disturbance at their residence.

16) This objection is valid in terms of relating to the amenity of the neighbourhood within which the subject premises are located and requires a Hearing.

A/Commander Michael Murphy, Northern Territory Police

17) Section 47(3)(c) allows members of the Northern Territory Police to object to an Application. A/Commander Michael Murphy is a member of the Police Force acting in that capacity within the meaning of Section 47(3)(c) and as such is a valid objector. The objection was lodged within time.

18) A/Commander Murphy notes that Police have no concerns in respect of the existing restaurant licence but object to the application for an on licence on the basis that an additional bar in Alice Springs is unwarranted. The objector notes that Alice Springs suffers from an over representation of alcohol related anti-social behaviour and that the venue is in close proximity to other drinking venues and Police "hot spots", namely the Mall and Gap Road.

19) A/Commander Murphy states that the subject premises are located at a busy intersection frequented at night by youths and the extension of the licence is likely to present public safety issues during early morning hours. The objector also raises the issue of noise disturbance to the neighbourhood, including amplified music emanating from the premises.

20) A/Commander Murphy's objection is valid in terms of Sections 47F(2)(a) and (b) of the Act and requires a Hearing.

Objection from Mr Craig Catchlove, Alice Springs Town Council

21) Mr Catchlove is employed by the Alice Springs Town Council in the capacity of Director Corporate and Community Services. The Council is a public authority within the ambit of Section 47F(3)(e) of the Act and therefore entitled to lodge an objection. The objection was lodged within the time limit.

22) Mr Catchlove advised that the Council had considered the application at its meeting on 27 September 2010. The objection originally raised issues of lack of clarity of the application documentation, public safety and security concerns, that the change of conditions would mean that the premises was essentially a tavern, increased anti-social behaviour and the heritage status of the building.

23) By letter dated 27 October 2010, Mr Catchlove advised that Council wished to withdraw its reasons for objection other than that relating to the premises trading as a tavern.

24) The objection as it now stands relates to the change of licence authority from a restaurant to on licence. Council submits that, presumably due to the change of licence conditions, the premises will operate more in the style of a tavern should the application be approved. As such the objection falls within either Section 47F(2)(a) or (b), or both. On that basis the objection is valid and requires a Hearing.

Objection from Mr Russell Goldflam, Northern Territory Legal Aid Commission

25) Mr Goldflam is the Principal Legal Officer engaged by the NT Legal Aid Commission ("NTLAC"). Mr Goldflam claims standing for NTLAC on the basis its office premises are located within the neighbourhood of the subject premises and that NTLAC is an organisation performing function relating to public amenity, including education, public safety and justice. NTLAC is a valid objector on both grounds pursuant to Sections 47F(3)(a) and (e) of the Act. The objection was lodged within the time limit.

26) Mr Goldflam states that the amenity of the neighbourhood is presently affected by anti-social behaviour, including criminal damage to the NTLAC building and property, and that the addition of another late night licensed venue will exacerbate the incidence of antisocial behaviour, property damage, violence and accidents. The objector also raises the proposed development of the former Melanka site and the resultant change of the neighbourhood to a high density residential precinct as an issue of concern.

27) Mr Goldflam states that several licensed premises already exist in close proximity to the subject premises and that the location of Montes presents issues in that the safety of pedestrians using the premises would be put at risk due to the location at a busy intersection and from intoxicated persons travelling from one venue to another. Mr Goldflam states that the area near the subject premises is known as one at which antagonistic groups assemble and engage in anti-social behaviour and violence and that the addition of another licensed venue will increase the risk of further incidents.

28) The NTLAC objection also refers to the "appalling levels of violence in the Alice Springs Community" arising from persons who frequent late night licensed venues and the resultant demands on NTLAC's services.

29) The objection is valid in terms of Sections 47F(a) and (b) of the Act and requires a Hearing.

Objection from Senior Pastor Allen Steel, Christian Family Centre

30) Pastor Steel is the Senior Pastor with the Christian Family Centre ("CFC"). The CFC is a local community based organisation within the meaning of Section 47F(3)(f) of the Act and, as such, is entitled to lodge an objection. The objection was received with the specified time limit.

31) Pastor Steel objects to the grant of an additional licence for the sale of alcohol without a meal and suggests this will facilitate "drinking for drinking's sake". He states that ample licensed premises exist in the locality already. Pastor Steel also notes the location of the subject premises near a busy intersection and the potential for patron harm late at night.

32) Pastor Steel also refers to anti-social behaviour and violence arising from intoxicated person moving from one venue to another and states that the problem will increase with the addition of another late night venue. He also states that the granting of this application would be contrary to the Government's current Alcohol Strategy.

33) The CFC objection relates to the grounds specified in Sections 47F(a) and (b) of the Act and requires a Hearing.

Objection from Major Adye Viney, The Salvation Army

34) Mr Viney holds the position of Major (Corps Officer) with the Salvation Army. The Salvation Army is a community based organisation as described in Section 47F(3)(f) of the Act and entitled to lodge an objection. In addition the Salvation Army's offices are located within 500 metres of the subject premises so as to give the objector standing pursuant to Section 47F(3)(a). The objection was received within time.

35) Mr Viney states that the Salvation Army has been targeted on numerous occasions with break ins and property damage arising from the excessive consumption of alcohol. He objects to the grant of another licence where alcohol may be consumed without a meal in close proximity to the Salvation Army's premises and the resultant risk of harm and injury to patrons of the subject premises resulting from anti-social and violent behaviour.

36) Mr Viney also objects to the application on the basis of the high level of alcohol consumption in Alice Springs generally and the detrimental impact a further licence will have in terms of the Government reforms and initiatives designed to tackle alcohol abuse.

37) Mr Viney's objection refers to adverse effects of granting the application in respect of the grounds specified in Sections 47F(a) and (b) of the Act and requires a Hearing.

Objection from Mr Jonathan Pilbrow, People's Alcohol Action Coalition

38) Mr Pilbrow is the Convenor on behalf of the People's Alcohol Action Coalition ("PAAC"). The PAAC is a local action group based in Alice Springs whose aims include the development of alcohol reforms and advocating for the responsible service of alcohol. As such the PAAC falls within the ambit of Section 37F(3)(f) so as to be a legitimate objector. The objection was received within the specified time frame.

39) Mr Pilbrow, on behalf of PAAC, objects to the change to the licence so as to allow the sale of alcohol without the service of a meal on the basis this will encourage harmful or risky alcohol consumption. Mr Pilbrow also raises concerns in respect of the location of the premises near a busy intersection and in an area where several licensed premises are already operating and the potential for risk of harm to patrons to increase.

40) The PAAC objection also refers to the risk that a late night trading venue will create disturbances to the detriment of residential neighbours, including those occupying the yet to be developed Malanka site, particularly by noise from entertainment at the venue. The objection also notes that an additional bar type venue within the Alice Springs central business district has the potential to further stretch the resources of Police, Licensing Inspectors and the night patrol. Mr Pilbrow also notes that the grant of the application and the potential increase in alcohol sales is contrary to Government reforms aimed at the reduction of alcohol consumption and the resultant harm to the community.

41) The PAAC objection relates to the grounds specified in Sections 47F(a) and (b) of the Act and requires a Hearing.

Objection from Dr Roaslie Schultz, Public Health Association of Australia

42) Dr Schultz is the Acting President of the NT Branch of the Public Health Association of Australia ("PHAA"). The PHAA is an organisation dedicated to the promotion of public health and falls within Section 47F(3)(f) of the Act.

43) Dr Schultz objects to the variation of licence on the grounds it will increase harmful alcohol consumption with a resultant detrimental impact on health and wellbeing within the community. Dr Shultz also refers to potential for an increase in alcohol related injuries, criminal activity and anti-social behaviour.

44) The PHAA objection also refers to the location of the subject premises near a busy and major intersection in the town and the potential for an increase in traffic and pedestrian injuries to alcohol effected patrons on the premises.

45) Whilst PHAA's objection is dated 21 October 2010 and it was received by Licensing Regulation & Alcohol Strategy on 25 October 2010, three days after the end of the objection period. Section 127 of the Act provides that the Commission may extend a time limit within which a person is required to do a thing specified in the Act. That power has been delegated to the Chairman. On 29 October 2010, the Chairman, taking account of the public interest criteria set out in the Act and the fact the PHAA objection relates to matters canvassed by several other objectors, determined to extend the time for PAAH to lodge its objection until 25 October 2010.

46) Noting the extension of time approved by the Chairman, the PHAA objection relates to the grounds specified in Sections 47F(a) and (b) of the Act and requires a Hearing.

Further objection from the Director, Heritage Branch, Department of Natural Resources, the Arts and Sport

47) By Letter dated 25 October 2010, Mr Michael Wells, Director Heritage Branch, sought to lodge an objection to the application for material alterations to the subject premises. Mr Wells advised that the property on which the licence operates is a declared heritage place under the *Heritage Conservation Act* and is subject to a Heritage Agreement.

48) Mr Wells advised further that the works comprising the material alterations at the premises have been carried out without approval under the *Heritage Conservation Act* and potentially in breach of the Heritage Agreement. Mr Wells also stated that the Heritage Branch is contemplating what action it will take against Mr Mulga in respect of the unauthorised works and whether they will require the reversal of some of the already completed works. Mr Wells advised that he did not consider it appropriate for the liquor licence to be varied until those issues have been resolved.

49) Mr Wells' objection does not fall within grounds specified in Section 47F(2)(a) and (b) of the Act and, in that sense, is not a valid objection. However, one of the issues before the Commission is the application for approval of material alterations. The issue as to whether the alterations applied for are lawful is clearly a matter that the Commission will be required to take into account in determining whether or not to approve the material alterations

specified in the application. In considering any application under the Act, including an application for material alterations, the Commission is entitled to inform itself as it sees fit. Whilst compliance with the *Heritage Conservation Act* is not a matter within the Commission's jurisdiction, it would not be appropriate for the Commission to approve material alternations that may infringe some other legislation.

50) Allowing that any information provided by Mr Wells is likely to be germane to the consideration of the application for material alterations, it is recommended that the Hearing Commissioners invite Mr Wells to attend the Hearing for the purpose of giving evidence.

Applicant's Response to Objections

51) Mr Mulga responded to the letters of objection, summarised as follows:

Objection from Messrs Robert Cowan and Jolyon George of The Rock Bar:

52) Security plan, camera surveillance systems and patron numbers are special conditions and not required to be specified in an application. A proximate taxi rank is not essential. The current licence requirement is that the premises must close 1 and ½ hours after the kitchen closes and there will be no alteration to this condition. Mr Mulga suggests that this objection is of a commercial nature and based in part on Mr Jolyon's personal animosity towards him. The objection is of a frivolous, irrelevant and malicious nature and should be dismissed.

Objection of Marie and Eric Campbell:

53) The objection does not relate to the application for material alterations, variation of licence conditions or change of licence authority. The noise levels during the time of Mr and Mrs Campbell's complaint were monitored with no adverse report to the licensee. None of the other residents in the same units complex complained about noise levels. Mr Mulga is prepared to work with the complainants to resolve any noise issues.

Objection of A/Commander Michael Murphy, NT Police:

54) The complaint does not comment on the application for material alterations. The objection relates to alcohol issues in the general Alice Springs area and not the specifics of the application before the Commission for Montes. The objection is of a frivolous, irrelevant and malicious nature and should be dismissed.

Objection from Mr Craig Catchlove, Alice Springs Town Council:

55) Mr Mulga did not respond to the objection lodged on behalf of the Alice Springs Town Council.

Objection from Mr Russell Goldflam, NTLAC:

56) The intrusions on and damage to NTLAC's property cannot be attributed to Montes. Other businesses in the locality have not objected to the application. Montes current licence allows the service of alcohol until 2 am and this will not change. The developers of the former Melanka premises have not objected to the application. NTLAC is not in a position to determine the type of licensed facilities the public of Alice Springs can relax in. It is an offence to sell liquor to an intoxicated person. The objection based on violence and anti-social behaviour in Alice Springs generally is not linked to the application regarding Montes. No incidents occurred at Montes during the Desert Festival. The charter of NTLAC does not extend to opposing licence applications. Mr Goldflam is an active member of the PAAC and performed at Montes during the Desert Festival. The objection does not meet the criteria specified in the Act and is therefore of a frivolous, irrelevant and malicious nature.

Objection of Senior Pastor Allen Steel, Christian Family Centre:

57) Monte's already has a licence that allows the service of alcohol without a meal. The objection does not relate to the material alterations or the removal of the conditions requiring patrons to be seated and for the premises to have the appearance of a restaurant. Mr Mulga disputes that patrons will stand around drinking for drinking's sake and suggests that they could do so for longer if they were seated. The objection does not meet the criteria specified in the Act and is therefore of a frivolous, irrelevant and malicious nature.

Objection from Major Adye Viney, Salvation Army:

58) The damage to Salvation Army premises and property cannot be attributed to Montes. The current licence allows for the service of alcohol without a meal so the current application will not create a new licence of that category. The high alcohol consumption rate in Alice Springs is not attributable to Montes. The provision of entertainment will attract patrons other than just for the purpose of drinking. The objection does not meet the criteria specified in the Act and is therefore of a frivolous, irrelevant and malicious nature.

Objection of Mr Jonathan Pilbrow (PAAC):

59) Patrons can currently consume alcohol at the premises without the consumption of a meal and the condition restricting advertising of that fact will remain. The seating and table furniture at the premises has been secured and will not be moved. Intoxicated persons arriving at the premises from other venues will not be served. The premises already have a licence so here will be no additional licence in the neighbourhood. There has been no objection to the application by the developers of the Melanka site. Noise levels emanating from the premises have been monitored with no adverse reports. The broader alcohol related issues affecting Alice Springs are not related to the application for Montes. The objection is of a frivolous, irrelevant and malicious nature.

Objection of Dr Rosalie Schultz, Acting President NT Branch of PHAA:

60) The objection does not detail how the application will result in higher consumption of alcohol. Monte's aims to provide alcohol at the higher end of the price scale. The objection is of a frivolous, irrelevant and malicious nature and should be dismissed.

Objection of Mr Wells, Director, Heritage Branch:

61) Mr Mulga states that the alterations to date have been inspected by the Heritage Branch and that he has Heritage approval for those works. Mr Mulga annexes documents evidencing Heritage Branch approval for works proposed in 2007 and 2008. The objection does not meet the criteria specified in the Act and is therefore of a frivolous, irrelevant and malicious nature.

Determination

62) The application relates material alterations and to changes to licence conditions so as to alter the licence authority from Restaurant to On Licence. As such the application clearly has the potential to change the manner in which the business is operated and the reasons that members of the public are likely to visit the premises. Contrary to Mr Mulga's view, I find that all objections, with the exception of that lodged on behalf of the Heritage Branch, satisfy the requirement of Section 47F(a) – amenity of the neighbourhood and / or Section 47F(b) – health, education, public safety or social conditions in the neighbourhood. Similarly, I find that each of the objections has been lodged in good faith and that none are frivolous, vexatious or malicious.

63) I find that the objection lodged on behalf of the Heritage Branch is not based on the grounds specified in Section 47F(2)(a) or (b) of the Act and is therefore an invalid objection. For the reasons set out above, including Mr Mulga's assertion that the material alterations

have Heritage Branch approval, I recommend that the Hearing Commissioners request that Mr Wells attend the Hearing for the purpose of advising the Commission of the status of the any approval required by the Heritage Branch.

64) For the reasons set out above, the objections numbered 1 to 9 inclusive are valid in terms of the requirements of the Act and require a Hearing. Hearing briefs should be provided to all of the objectors prior to the Hearing.

Philip Timney
Legal Member

29 October 2010