

NORTHERN TERRITORY LICENSING COMMISSION

Reasons for Decision

PREMISES:	Monte's Lounge 95 Todd Street ALICE SPRINGS NT 0850
APPLICANT:	Monte's Bar & Bistro Pty Ltd
NOMINEE:	Matt Mulga
LICENCE NUMBER:	80515500
PROCEEDING:	Application for approval of material alterations pursuant to Section 119 and application for variation of licence conditions pursuant to Section 32A of the <i>Liquor Act</i>
HEARD BEFORE:	Mr Richard O'Sullivan (Chairman) Mr Philip Timney (Legal Member) Mr Paul Fitzsimon
DATE OF HEARING:	1 December 2010
DATE OF DECISION:	30 December 2010
APPEARANCES:	Mr Matt Mulga on behalf of the Licensee Mr Chris McIntyre, Deputy Director of Licensing Messrs Robert Cowan and Jolyon George - Directors of The Rock Bar Superintendent Sean Parnell – NT Police Dr John Boffa - People's Alcohol Action Coalition

BACKGROUND

- 1) By letter dated 25 August 2010, 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 to the premises pursuant to Section 119 of the *Liquor Act* ("the Act") and for variations of liquor licence number 80515500 pursuant to Section 32A of the Act at premises situated at 95 Todd Street, Alice Springs ("the Application"). The Application was originally 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. Following an objection to the wording of the advertisement 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.

2) The proposed material alterations include:

- Installation of decking, built in tables and chairs in the outdoor area;
- Expansion of 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;
- Relocation of the service area within the premises and installation of a new service area on the southern side of the building; and
- Extension of the roof of the alfresco dining area at the rear to match the existing roof.

3) The proposed variations to licence conditions 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.

4) The application for variation requests that the following licence condition be added to the licence:

- 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.

5) The application and the advertisement noted that 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 11.30am to 02.00am the following day, seven (7) days a week.

5) A total of ten objections were received to the applications. Nine of those objections were deemed to be valid and referred to Hearing. The substance of the objections is set out in the Objections Decision published on 29 October 2010. Those objections were lodged by the following persons:

- Messrs Robert Cowan and Jolyon George - Directors of The Rock Bar
- Mr and Mrs Eric and Marie Campbell – residents in the neighbourhood of Monte's Lounge
- A/Commander Michael Murphy – NT Police
- Mr Craig Catchlove – Alice Springs Town Council
- Mr Russell Goldflam – NT Legal Aid
- Senior Pastor Allen Steel - Christian Family Centre
- Major Adye Viney - Salvation Army
- Mr Jonathan Pilbrow - People's Alcohol Action Coalition
- Dr Rosalie Schultz - NT Branch of the Public Health Association of Australia.

6) Of those objectors Messrs Robert Cowan and Jolyon George, Superintendent Sean Parnell of NT Police and Dr John Boffa representative of People's Alcohol Action Coalition, appeared at the Hearing to make submissions in

support of their objections. Major Abye Viney attended the Hearing and advised that he relied on his written objection and did not wish to present any further oral evidence to the Commission. The remaining objectors did not attend the Hearing and indicated they were content to rely on their written objections.

- 7) Mr Michael Wells, Director of the NT Heritage Branch, sought to lodge an objection to the application for material alterations to the subject premises which are heritage listed. The Legal Member found that this objection did not fall within the grounds specified in Section 47F(2)(a) and (b) of the Act and was therefore not a valid objection. However, Mr Wells was invited to attend the Hearing and address the Commission in respect of the concerns of the Heritage Branch. Mr Wells declined the opportunity to attend the Hearing however he did submit further written advice to the Commission following the Hearing.

THE HEARING

- 9) At the commencement of the Hearing the Chairman requested that the Commission and the objectors present at the Hearing be given the opportunity to view the premises and the alterations that had been carried out to date. Mr Mulga agreed and the Hearing was adjourned to allow that to occur.
- 10) During the course of the viewing Mr Mulga outlined his proposal to conduct live music, including amplified music, from the elevated decking area to the side of the CWA building. He informed the Commission of the measures taken in respect of noise abatement so as to minimise any disturbances to residential properties in the neighbourhood. Mr Mulga also outlined the proposal to convert the current souvenir shop into a service area for patrons of the garden area for snacks, coffee etc as well as for the sale of alcohol.

SUBMISSIONS ON BEHALF OF THE LICENSEE

- 11) At the resumption of the Hearing Mr Mulga outlined the substance and purpose of the applications for material alterations and variation of license conditions. The proposed alterations include a refurbishment of the interior of the premises, construction of a raised deck outdoor entertainment area and the installation of fixed furniture in the garden and outdoor areas of the premises. It is also proposed to utilise the building currently operating as a souvenir shop as a service area for patrons using the outdoor areas of the premises.
- 12) Mr Mulga advised that Commission that the application for variations to the licence conditions was essentially to remove the requirements for patrons to be seated at all times and for the premises to always have the appearance of a restaurant. He stated that the variations are required so as to accommodate plans to conduct entertainment nights at the premises, as had

recently occurred at Monte's Lounge under a special licence / licence variation during the Desert Festival. He stated that the variations now applied for were required to accommodate the proposal to expand the business in the live entertainment area and in order to avoid a breach of licence conditions when patrons were standing to watch the entertainment or moving between different parts of the premises.

- 13) Mr Mulga stated that he had proven his credentials as Licensee of Annie's Place, which he said had been expected to be unsuccessful due to its location outside the main entertainment area of Alice Springs. He advised the Commission that Annie's Place had proven to be a profitable and well run business venture due to the strategy of building up trust in clients by providing a safe and pleasant environment in which to socialise with the resultant repeat business from regular clients.
- 14) Mr Mulga informed the Commission that his proposals for the development of Monte's Lounge had the support of Mr Peter Griggs, General Manager of Tourism Central Australia. He tendered a letter from Mr Griggs (Exhibit 1) indicating his support for the development of the restaurant and the provision of another quality late night dining establishment in the Alice Springs CBD. Mr Griggs referred to the excessive consumption of alcohol in Alice Springs in an uncontrolled environment and noted that this was unlikely to occur at Monte's due to licence requirements.
- 15) Mr Mulga then called Mr Cy Starkman to give evidence in support of the applications. Mr Starkman has been a resident of Alice Springs for four years and is the organiser of Pop Cinema events at Witchetys. Those events consist of boutique movie nights including local musicians and artists. The events provide support and showcasing opportunities for local artists and musicians. Patrons are charged \$15 admission and food and alcohol are available for purchase. Mr Starkman emphasised that the Pop Cinema events are well patronised and alcohol consumption is a minor component of the event with patrons consuming, on average, two to three drinks per person as patrons attend for the entertainment and not for a drinking session.
- 16) Mr Starkman advised that the arrangement with Witchetys created some problems and his events sometimes needed to be rescheduled due to competing events at the venue. He is considering conducting Pop Cinema events at Monte's Lounge if the licence condition variations are approved, including movie nights as well as nights featuring local and interstate entertainers. Mr Starkman noted that the physical layout of Monte's suited the types of entertainment provided by Pop Cinema more than other licensed premises in Alice Springs. He added that the location, availability of parking and patron safety were features that made Monte's a preferred venue.
- 17) Mr Starkman confirmed that the majority of performers engaged for Pop Cinema events were of the "alternative genre" and rock bands were rarely featured, partly due to the overhead costs in setting up for that type of entertainment and in providing security.

- 18) Mr Mulga added that the type of events he had planned for Monte's were along the lines of those conducted during the recent Desert Festival, namely a restaurant with live entertainment, movie nights and the like. He noted that, apart from two noise complaints concerning noise from live entertainment, the Alice Desert Festival events at Monte's had been a great success and had not attracted any adverse comment from the people attending or from authorities such as Police, Licensing etc.
- 19) Mr Mulga then called Mr Scott Large to give evidence in support of his applications. Mr Large is engaged full time as the Festival and Events Manager for RedHOT Arts Central Australia which organises the annual Alice Desert Festival. RedHOT Arts is a not for profit organisation run by a volunteer board of management whose aim is to develop and promote the cultural and arts sectors of Central Australia.
- 20) Mr Large advised the Commission that many Alice Desert Festival Events have been run at Witchetys however there were limitations as to availability of space at that venue and also the problem of attracting patrons to a venue outside the Alice Springs CBD.
- 21) Mr Large noted that Monte's Lounge had proven to be a good venue for the events conducted there during the Desert Festival this year and he is considering featuring selected events there in the future, such as comedy and local talent nights, theatre and music nights, workshops and presentations. He expected his organisation to use the venue less than once per month however they would be interested in assisting other individuals and organisations to run similarly themed events.
- 22) Mr Large noted that there is a lack of facilities in Alice Springs suitable for the types of events held by RedHOT Arts. Whilst a number of venues have regular entertainment they do not cater for the diversity of events and one off performances promoted by RedHOT Arts. He acknowledged that some venues, such as the sporting and social clubs, were unsuitable for the types of events planned due to the potential for noise to impact on surrounding residents.
- 23) Mr Large noted that Mr Mulga is very supportive of emerging artists in the community and that the Monte's Lounge premises would attract a wider Section of the community to the performances due to its central location in the CBD.
- 24) At this point Mr McIntyre handed up a bundle of documents relating to the noise complaints (Exhibit 2). The complaints concerned noise emanating from live entertainment on 15 and 16 September 2010 between 10.00 pm and midnight. Both complaints were referred to Police. The documents exhibited included correspondence from Mr Peter Bannister, Environmental Officer with the Department of Natural Resources. As a result of the complaints Mr Bannister issued an Authorised Officer Direction to the Manager of Monte's Lounge directing that the premises was to cease from allowing musical entertainment to cause an adverse effect on the amenity of

neighbouring properties. Mr McIntyre informed the Commission that Mr Bannister was available to attend the Hearing if required.

- 25) Mr Mulga then called Ms Milyika Scales, Alice Springs Co-ordinator of Music NT, to present evidence in support of the application. Music NT's mission is to support the growth and development of original contemporary music in the Northern Territory. Ms Scales noted that there was a lack of live performance venues in the NT resulting in little opportunity for local artists to perform before audiences and forcing artists to try and organise their own events.
- 26) Ms Scales noted that it was vital to the local music industry that more live venues are available and that Annie's Place had been supportive in that regard in the past. Ms Scales also noted that there were few venues in Alice Springs where indigenous bands could perform. Ms Scales informed the Commission that she had been in discussions with Mr Mulga in respect of utilising Monte's for live entertainment performances.
- 27) Mr Mulga then called Mr Hal Duell to make submissions in support of the application. Mr Duell confirmed that he is a resident of Alice Springs and that he supports the application for the material alterations and the variations to licence conditions for Monte's Lounge. Mr Duell submitted that there is a need in Alice Springs for more evening entertainment venues as most young people find the town boring and lacking variety of entertainment. He considers and that Monte's is an ideal venue to accommodate the present need, being centrally located.
- 28) Mr Duell stated that he does not agree with the objectors that Monte's could become a "trouble spot" so far as anti-social behaviour is concerned. He stated that the alcohol related harm occurring in Alice Springs could not be sheeted home to premises such as Monte's. Mr Duell expressed his opinion that sporting and social clubs were not the answer and that a large proportion of the residents of Alice Springs wanted something more than a drinking place with poker machines.
- 29) Mr Duell submitted a written submission in support of the application (Exhibit 3) in which he stated that Alice Springs was in need of more diversity in respect of evening entertainment venues. In his view Monte's is an ideal venue, being a centrally located restaurant that is easy to access from other licensed venues. Mr Duell also referred to the expected growth in the population of Alice Springs and the extra demand this would create for entertainment outlets. He stated that, given the nature of the premises and the type of entertainment proposed, he did not expect that Monte's would become a trouble spot so far as anti-social behaviour is concerned and reiterated that the alcohol related problems experienced by Alice Springs could not be sheeted home to the behaviour of patrons of Monte's. He added that the provision of a variety of venues may in fact minimise the negative effects currently experienced by Alice Springs residents.

- 30) Mr Mulga referred the Commission to the membership system he proposed to introduce at Monte's Lounge whereby patrons would sign on as members and receive email advice and the like regarding up-coming events. Mr Mulga noted that, as well as promoting the business, the system allowed the monitoring of patron behaviour and age checks. He stated that this would reduce the requirement for security personnel and allow the management to ban members whose behaviour is not acceptable. Mr Mulga noted that approximately 500 members had been signed up to date and a number of those people were employees of the organisations that have lodged objections against the current applications.
- 31) Mr Mulga stressed to the Commission that Monte's currently has a 2.00am licence that allows for the sale of alcohol without the requirement for the consumption of a meal. He submitted that several of the objectors appeared to be unaware of this existing licence condition.

SUBMISSION ON BEHALF OF THE OBJECTORS

- 32) A number of the objectors did not attend the Hearing to speak to their written objection but confirmed that they wished to rely on their written objections. A summary of all objections, including those from objectors who did not appear at the Hearing, is contained in the Objections Decision dated 29 October 2010 and available on the Licensing Commission website at <http://www.nt.gov.au/justice/commission/decisions.shtml>.
- 33) Superintendent Sean Parnell appeared at the Hearing as the representative of NT Police. The written notice of objection was lodged by A/Commander Murphy. Superintendent Parnell advised that the addition of another bar in Alice Springs would place additional strain on Police resources. He stressed that whilst Police have no problem with the restaurant licence they do object to the proposed change to the nature of the venue through the removal of licence conditions so as to create another bar licence that had the potential to become another drinking only venue.
- 34) Superintendent Parnell also noted that Monte's is located in an area that was troublesome for Police in terms of alcohol related anti-social behaviour. He noted that some people have a tendency to congregate and loiter near licensed premises even if they do not patronise the premises and there were policing issues related to the near by twenty-four hour store. He added that the Policing problems in the vicinity of Monte's had increased since the demolition of the Malanka premises.
- 35) In response to a question from Mr Mulga, Superintendent Parnell advised that there was no significant spike in the number of assaults reported in Alice Springs during the recent Master's Games.
- 36) Mr Robert Cowan, a Director of The Rock Bar, appeared at the Hearing to present evidence in respect of the objection lodged by himself and co-Licensee Mr George. Mr Cowan informed the Commission that he is a

long term resident of Alice Springs and is involved in a number of business ventures including tourism, licensed premises and property development. Mr Cowan noted that the licence condition variations sought would result in a significant change to the nature of the venue and the way in which the business was conducted. He reiterated concerns expressed in the written objection that no CCTV plan is included in the proposal and noted that the venue is located in a recognised trouble spot, including its proximity to the 24 hour store where he himself has been attacked.

- 37) Mr Cowan noted that Monte's is located at a busy road intersection which would give rise to patron safety issues. He also stated that loiterers and trouble makers tended to congregate around licensed premises which also raises patron safety concerns.
- 38) In respect of the material alterations, Mr Cowan noted that these were partially completed, without approval of the Commission and without the procedure required by the Act having been followed. Mr Cowan also raised the potential for noise from entertainment at the premises to impact adversely on residents of the neighbourhood, including potential occupants of the new residential premises planned for the former Melanka property. Mr Cowan noted that the Rock Bar does provide outside entertainment however this has potential noise restricted by a cut off system that shuts down the entertainment automatically if noise levels exceed 55 dB.
- 39) Mr Cowan noted that the proposals for entertainment at Monte's that were presented to the Hearing were good and would most likely cater to a niche market. However, he has concerns regarding the proposal for outdoor entertainment that may include up to 26 Pop Cinema events per year and up to ten events conducted during the Alice Desert Festival. Mr Cowan commented on the requirements placed on the Rock Bar premises in terms of RSA, noise control, security and the like and suggested that, if the variations were to be granted for Monte's Lounge, they should be subject to the same stringent licence conditions.
- 40) Dr John Boffa, Public Health Medical Officer with the Aboriginal Congress, appeared at the Hearing to provide evidence in support of the objection lodged by Mr Jonathan Pilbrow, Convenor on behalf of the People's Alcohol Action Coalition ("PAAC").
- 41) Dr Boffa advised that PAAC has concerns regarding the granting of more bar type licences for late night trading and suggested that the addition of another late trading venue would add to the alcohol related problems facing Alice Springs by bringing the "Mitchell Street" problems to Alice Springs.
- 42) Dr Boffa confirmed that PAAC's main concern was that the licence retained the requirement for the consumption of a meal in conjunction with the service of alcohol. He advised that PAAC does not have a problem with the restaurant licence but has concerns about the venue becoming another bar, with the focus on the consumption of alcohol as consumption without a meal leads to greater intoxication. Dr Boffa said that PAAC consistently opposes

the grant of bar and late night trading licences and referred to the recent case in Newcastle NSW where trading hours were reduced to 1.00am with a resultant drop in assaults of 29%.

- 43) Mr Boffa advised that he was in support of the entertainment proposed to be provided at Monte's but queried whether the additional costs of putting on entertainment would need to be covered by greater alcohol sales.
- 44) In response to a question from Mr Mulga, Dr Boffa advised that PAAC involved input from approximately 120 different organisations which represents the views of a broad Section of the community. PAAC meets regularly with approximately fourteen representatives of various organisations attending.
- 45) Mr Mulga noted that of the ten objectors to the applications five were from organisations associated with PAAC and the grounds for objection were similar in nature. He queried why the other organisations associated with PAAC had not bothered to lodge an objection.
- 46) At this point Mr McIntyre informed the Commission that the existing licence for Monte's Lounge allowed for the sale of alcohol without the purchase or consumption of a meal. Dr Boffa advised that this in itself is of concern to PAAC. He confirmed however that the manner in which Mr Mulga intended to operate the premises raises concerns that were not evident when the premises operated primarily as a restaurant.
- 47) In respect of the objection lodged by the Heritage Branch, Mr McIntyre advised that an invitation had been extended to the Heritage Branch to send a representative to the Hearing but this had been declined. Mr McIntyre advised that the Heritage Branch concerns regarding the building alterations had not been resolved and that some of the works already carried out do not have Heritage approval. He stated that he had been advised that those alterations now required Ministerial approval and that approval was unlikely to be granted as the alterations were carried out without approval in the first place.
- 48) Mr Mulga advised the Commission that, contrary to the advice provided to Mr McIntyre, he had reached agreement with the Heritage Branch for the alterations to date and for those that remained to be completed. The Chairman stated that this issue would need to be resolved prior to the Commission delivering its decision in respect of the material alterations and requested that Mr McIntyre obtain confirmation in writing from the Heritage Branch as to whether the concerns identified in their letter of objection remained on foot.

CONSIDERATION OF THE ISSUES

Material Alterations:

- 49) Section 119 of the Act provides that a Licensee must obtain the approval of the Commission prior to making any material alterations to licensed premises. Mr Mulga commenced the alterations to the premises prior to making any application to the Commission for approval, a clear breach of the Act. On becoming aware of that situation on 12 August 2010 the Commission immediately suspended the licence for Monte's Lounge, pending Mr Mulga lodging the appropriate application.
- 50) Mr Mulga's explanation for the breach of Section 119 was that the licence was in the process of being transferred when he commenced the alterations and he was not the Licensee at the time. The Commission does not accept that submission and notes that Mr Mulga continued to trade under the licence until it was suspended. The Commission noted during the course of the viewing of the premises that the alterations were substantially completed and further works were in fact being carried out whilst the Commission was visiting the premises.
- 51) The Commission does not intend to take any further action in respect of the breach of Section 119 as the Licensee has in effect suffered a penalty through the suspension of licence and loss of trade for a period of approximately 4 ½ months, a significant penalty in itself albeit brought about by Mr Mulga's failure to comply with the Act. Leaving aside the Heritage Branch concerns, the Commission noted that the alterations carried out to date represented a significant improvement in respect of the amenity and appearance of the premises.
- 52) Of concern to the Commission however was the objection lodged by Mr Michael Wells, Director Heritage Branch, advising 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. 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. In his letter of objection Mr Wells also stated that the Heritage Branch was contemplating what action it may take against Mr Mulga in respect of the unauthorised works and whether they will require the reversal of some of the already completed works.
- 53) It was determined that Mr Wells' objection did not fall within grounds specified in Section 47F(2)(a) and (b) of the Act and was therefore an invalid objection. In the Objections Decision it was also noted that, 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 alterations that may infringe some other legislation. On that basis the Heritage Branch was invited to attend the Hearing. Unfortunately that invitation was declined leaving the Commission in a situation at the end of the Hearing where it was unaware of the extent of the Heritage Branch concerns and

whether those concerns were of such significance as to require a refusal of the application for material alterations.

54) During the course of the Hearing Mr Mulga insisted that the alterations had been approved by the Heritage Branch. Following Mr McIntyre's advice this was not the case the Chairman requested that further advice be sought from the Heritage Branch. Following the conclusion of the Hearing, Mr Wells provided the Commission with a file note of a meeting held with Mr Mulga at the premises on 23 September 2010 detailing the issues of concern to the Heritage Branch. Those issues included:

- Construction of the raised deck outside the dimensions of the approved plans and of a different material;
- Fixed furniture installed on the raised deck;
- Additional fixed furniture in the garden area to what is shown on the approved plans;
- Fixing of custom orb cladding to the main building;
- Construction of a framed wall clad with custom orb between the former CWA building and the toilet block on the southern side of the premises; and
- Minor alterations not in accordance with the Heritage Agreement including fixtures to the exterior of the heritage building and the refurbishment of original doors.

55) By letter dated 8 December 2010 Mr Mulga responded to the issues raised in Mr Wells' file note as follows:

- Whilst the dimensions of the raised deck vary from the plans no form of materials was specified for the construction;
- The outdoor furniture was not shown on the plans but was always intended to be installed. Fixed furniture is safer as it cannot be moved by patrons. Outdoor furniture is not covered by the Heritage Agreement.
- The amount of outdoor furniture is not relevant to the Heritage Branch concerns;
- The cladding added to the building is traditional corrugated iron and was added to repair damaged areas;
- The fence with double opening doors was approved by the Heritage Branch and does not visually obstruct the view of the CWA building;

- The old doors were restored for use in the premises to replace damaged doors;
- Mr Mulga has made several unsuccessful attempts to contact the Heritage Branch to resolve the issues raised. He stated in his letter that his calls have not been returned.

56) Via an email dated 8 December 2010 Mr Wells provided the following additional advice to the Commission:

- The issues raised by the Heritage Branch have not, as Mr Mulga suggests, been resolved;
- The Heritage Branch have not yet resolved what action it can/should take and that legal advice obtained indicates that they would not be on strong grounds in respect of prosecuting the Mr Mulga for a breach of the *Heritage Conservation Act*, nor in having the completed works undone and restored to original condition;
- The Heritage Branch is waiting to see what action might be taken under the *Planning and Liquor Acts*.
- Some of the work done is not in compliance with the permit issued under the *Heritage Conservation Act* and/or the Heritage Agreement.
- Deviations outside the approved alterations include construction of the raised timber deck of a different form and far exceeding the dimensions on the approved plans, the inclusion of fixed furniture, the cladding of the main building with custom orb sheeting although not noted on the approved plans, the construction of a new wall over three metres high between the southern wall of the main building and the toilet block which is not shown in the approved plans and many minor alterations which had been carried out and which do not accord with the Heritage Agreement, including new fixtures.

57) As noted in the Objection Decision, the Commission needs to ensure that it not approve any material alterations that are likely to fall foul of the *Heritage Conservation Act*, or any other legislation. The Commission afforded the Heritage Branch the opportunity to attend the Hearing and raise its concerns in a forum that would provide Mr Mulga with the opportunity to respond directly. Unfortunately this did not occur for reasons known only to the Heritage Branch. The most recent advice received from Mr Wells states that, whilst the issues that are of concern to the Heritage Branch remain unresolved, they have received legal advice to the effect a prosecution of Mr Mulga is unlikely to be successful.

58) The Commission is charged with dealing with applications under the Act in an expeditious manner. Presumably, the issues of concern to the Heritage Branch relate to the impact of the alterations on the historic value of the former CWA building. They do not raise concerns in respect of matters within

the jurisdiction of the Licensing Commission, such as public safety or the amenity of the licensed premises and the neighbourhood in which they are located.

- 59) The Commission is satisfied that the material alterations will not result in a contravention of or a failure to comply with the provisions of the Act. To the contrary, and leaving aside the heritage issues, the Commission is of the view the alterations already undertaken and those proposed by Mr Mulga actually enhance the amenity and aesthetics of the premises and have improved the overall appearance from what was previously in place.
- 60) The Commission does not have the expertise or jurisdiction to determine whether the alterations will comply with the *Heritage Conservation Act* of the Heritage Agreement. However, the Commission has explored that line of inquiry as far as possible. Of particular relevance is the advice from Mr Wells that Mr Mulga is unlikely to be prosecuted for a breach of the *Heritage Conservation Act* of the heritage Agreement.
- 61) As pointed out by Mr Mulga in his response to the objections, few, if any, of the formal objections relate to the application for approval of material alterations, with the exception of the location of the fixed furniture near the border of the premises. The Commission is satisfied that the material alterations are appropriate and enhance the amenity of the premises. No compelling reason has been presented for the Commission to refuse to approve the material alterations and the Commission is not inclined to delay the approval process any further. In reaching that decision the Commission is mindful that the suspension of licence, for the failure to obtain approval for the alterations, has resulted in a significant loss of trade for the period since 12 August 2010.

APPLICATION FOR VARIATION OF LICENCE CONDITIONS

- 62) The Commission notes, as was confirmed by Mr McIntyre during the conduct of the Hearing, that the liquor licence for Monte's Lounge as it currently stands allows for the sale of alcohol to patrons without the requirement to consume a meal. This is contrary to the views and concerns expressed by some of the objectors. The components of the objections relating to this aspect of the licence must be dismissed as irrelevant in terms of the potential for an increase in sales or consumption of alcohol in the community. The current application will not effect the future operation of the on-licence conditions.
- 63) The Commission notes the concept that Mr Mulga is attempting to achieve at Monte's so far as the provision of alternative and contemporary entertainment is concerned. The witnesses called by Mr Mulga spoke positively of the nature of entertainment proposed and the niche market that would be catered for in Alice Springs. The Commission notes that the objects of the *Liquor Act* include the facilitation of a diversity of licensed premises for the benefit of the community and agrees that the business plan proposed by Mr Mulga would

provide an entertainment venue that is presently not catered for in the town on a permanent basis or from a fixed location.

- 64) The Commission is supportive of the proposal to provide entertainment of the type proposed however it does have concerns regarding the potential for noise from Monte's Lounge to impact on the amenity of neighbouring premises. This can be controlled to some extent by the imposition of an appropriate noise condition in the licence and a licence condition requiring the installation of a cut off system that would disable the entertainment when a specified decibel level is reached. The Commission intends to incorporate the appropriate conditions in the licence.
- 65) Mr Mulga has sought the removal of the licence conditions requiring the premises to have the appearance of and trade predominantly as a restaurant and for patrons to be seated at a table. This component of the application appears to have been of concern to the majority of the objectors.
- 66) Of major concern to the Commission is the potential for "licence creep" resulting in the change of the licence type or concept from a restaurant to a tavern or nightclub. The Commission agrees with the objectors that this is not a desirable outcome and also agrees that there are sufficient licensed premises in close proximity to Monte's that currently provide this type of venue. The Commission is not minded to consent to the removal of the licence conditions requiring Monte's lounge to appear as and trade predominantly as a restaurant.
- 67) The Commission notes the evidence presented by Mr Mulga in respect of the functions and entertainment provided at Monte's Lounge during the most recent Alice Desert Festival. Apart from several noise complaints, no adverse reports have been referred to the Commission in respect of anti social behaviour or breaches of the Act associated with those events. To the contrary, the activities appear to have been well run and well patronised by the community. Mr Mulga proposes to conduct a number of similar events at Monte's if the licence condition variations are approved.
- 68) The Commission notes the objections relating to the location of Monte's in a "trouble spot" within Alice Springs and the potential for another "nightclub" venue in the area to exacerbate those problems. The Commission also notes that many of the problems identified by the objectors already exist and did so during the time the former Bluegrass Restaurant was in operation. The Commission is not convinced that those problems arise due to the location of the restaurant and, even if they did, that Mr Mulga can in any way control or affect that situation any more than the licensees of other premises in the vicinity. The anti social activity is not occurring on licensed premises but rather in public places outside the control of the licensees.
- 69) Having said that, the Commission is not inclined to relax the licence conditions for the restaurant to such an extent as to completely alter the concept and nature of the licence or the type of business that is conducted at the premises. On balance the Commission is of the view the existing

conditions relating to the appearance of the premises as a restaurant, and the requirement for patrons to be seated should remain in the licence. Many of the functions proposed by Mr Mulga could be catered for with the existing licence conditions in place, for example, cinema and comedy nights.

- 70) For events where those conditions would be unworkable it is open to Mr Mulga to apply for a Special Licence or a temporary variation of conditions relaxing the “restaurant” conditions for a specified event or period. Applications of that nature would be treated on a case by case basis by the Director or the Commission, a process that should provide some comfort to the objectors to the application to vary the licence conditions permanently.
- 71) The Commission notes that one of the current licence conditions requires that “patrons be seated at a table”. Mr Mulga submitted that this was an impractical condition to enforce at Monte’s Lounge due to the layout of the premises and the discrete areas that make up the licensed area. He raised the issue of patrons moving away from a table to smoke in the designated smoking area.
- 72) The Commission is not persuaded by that argument. The premises hold a restaurant licence including an on-licence component and not a tavern or hotel licence. The seating requirement is not unusual for licensed restaurants and, despite the new smoking laws, most licensees appear to be capable of complying with their licence conditions. It is a matter for Mr Mulga how he manages that licence or configures and develops the premises, including the management of a designated smoking area.

DETERMINATION

- 73) The Commission determines to approve the application for material alterations in accordance with Section 119(7)(a) of the Act. The suspension of the Liquor Licence for Monte’s lounge, imposed for the breach of the requirement to seek approval of the alterations, is lifted effective from the date of publication of this decision.
- 74) For the reasons outlined above the Commission refuses, pursuant to Section 32A(7)(b) of the Act, to approve the variation to licence conditions applied for by Mr Mulga in respect of the premises trading as and appearing as a restaurant, including the requirement for patrons to be seated. The following conditions shall remain as conditions of the licence:
- 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.

75) For the sake of clarity, the decision set out in the preceding paragraph does not per se preclude the conduct of entertainment of the nature outlined by Mr Mulga during the course of the Hearing. The Commission confirms however that the licence must comply with the licence conditions in providing entertainment events unless a temporary relaxation of the "restaurant" conditions is applied for and approved prior to the conduct of the event.

76) The Commission also determines that the following noise conditions are to be included in the licence:

Noise & Entertainment:

(a) 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.

(b) The conduct of entertainment at the premises is conditional upon the purchase, installation and programming of a noise control device by the Licensee to the satisfaction of an authorised officer (Noise Control Officer) of the Department of Natural Resources, Environment, the Arts and Sport appointed under the *Waste Management and Pollution Control Act*.

83) The Commission notes that the suspension of licence is revoked from the date of this decision and Monte's Lounge is entitled to trade from that date. The Commission has no issue with the Licensee continuing to provide entertainment at the premises so long as the licence conditions relating to the seating of patrons and trading as and having the appearance of a restaurant are adhered to. However, the Commission will not consider any future requests to relax the relevant licence conditions for special events involving entertainment until such time as a noise control device is installed in accordance with the condition set out above.

Richard O'Sullivan
CHAIRMAN

30 December 2010