

Northern Territory Licensing Commission

Decision on Whether Objections will Proceed to Hearing

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| Premises: | Montes Lounge |
| Applicant: | Montes Bar and Bistro Pty Ltd |
| Nominee: | Matt Mulga |
| Licence Number: | 80515500 |
| Objectors: | Mr Peter Barr NT Police NT Fire and Rescue Service ("NTF&RS") People's Alcohol Action Coalition ("PAAC") The Rock Bar NT Legal Aid Commission ("NTLAC") |
| Legislation: | Sections 47F to 47I of the <i>Liquor Act</i> and Section 28 of the <i>Interpretation Act</i> |
| Decision of: | Philip Timney (Legal Member) |
| Date of Decision: | 31 October 2011 |

Background

- 1) By Application dated 23 August 2011 Mr Matt Mulga, on behalf of the Licensee for Monte's Lounge ("the Premises"), applied under Section 32A of the *Liquor Act* ("the Act") for a variation of licence conditions so as to remove the condition attached to the licence that all patrons are to be seated at a table.
- 2) The Application was advertised in the *Centralian Advocate* on Friday 26 August and Tuesday 30 August 2011 pursuant to Sections 119(3) and 32A(3)(a) of the Act.
- 3) The first advertisement was as follows:

I, Matt Mulga, Licensee of Monte's Bar and Bistro Pty Ltd hereby give notice that I have applied to the Northern Territory Licensing Commission for a variation to Liquor Licence number 80515500 to sell liquor from the premises known as Monte's Lounge located at Cnr Todd Street and Stott Terrace Alice Springs.

The applicant seeks to remove the licence condition requiring patrons to be seated at a table from this licence.

Current condition regarding venue appearance is to remain in licence.

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

This is the first notice of application. The notice will be published again on 30 August 2011.

The objection period is deemed to commence from 30 August 2011.

Pursuant to Section 47F(2) of the Liquor Act an objection may only be made on the ground that the licence 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 Director of Licensing on telephone 8999 1800. Objections to this application should be lodged in writing with the Director Of Licensing, Racing, Gaming and Licensing GPO Box 1154, Darwin, within thirty (30) days of the commencement date of the objection period.

Dated this 24 Day of August 2011.

- 4) Pursuant to Section 47F(4)(d) an objection must be lodged within thirty (30) days of the publication of the last notice, namely on or before Monday 29 September 2011.
- 5) 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. Relevant to this application Section 47F provides -

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:

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

(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).

- 6) Six objections were lodged in response to the application. The applicant has provided responses to five of those objections pursuant to Section 47G of the Act. The applicant declined to respond to the objection lodged by John Oliver, Senior Fire Safety Officer, NTF&RS. Under Section 47I of the Act the Commission must determine whether objections received are to proceed to Hearing.

Objection from Mr Peter Barr

- 7) Mr Barr is a resident of 20 Leichardt Terrace which is in close proximity to the Premises. As such, he is entitled pursuant to Section 47F(3)(a) to lodge an objection. The objection was forwarded via an email dated 9 September 2011 which was lodged within the prescribed time limit. Mr Barr objects to the variation of licence conditions on the basis of previous noise complaints against the Premises. He states that the variation is not necessary and that the License can operate the Premises adequately within the existing licence conditions.
- 8) Mr Barr's objections relates to noise complaints arising from the business conducted at the Premises. The objection does not relate those complaints to the application presently before the Commission seeking to remove the licence condition requiring patrons to be seated. As such the objection is invalid and should not be referred to a Hearing. If Mr Barr wishes to pursue the noise complaints against the Premises the appropriate course would be for him to lodge a formal complaint with the Director of Licensing or Police.

Objection from A/Commander Robert Rennie, Northern Territory Police

- 9) Acting Commander Rennie lodged a written objection dated 8 September 2011. The objection was lodged within the prescribed period. Commander Rennie is a member of the Northern Territory Police force and is entitled to lodge an objection pursuant to Section 47F(3)(c). Commander Rennie objects on the basis the Licensee's previous application to change the licence conditions from "Restaurant" to "On Licence" were rejected and no changes have been made to the Premises. He states that the Premises should be required to trade as a restaurant and not a bar and that there are sufficient alternative venues in the locality that already cater for the service that the applicant aims to offer.
- 10) A/Commander Rennie's objection, lodged on behalf of Northern Territory Police, is valid in terms of Sections 47F(2)(a) and (b) of the Act including the potential for the variation sought to impact of the amenity of the neighbourhood. This objection requires a Hearing.

Objection from Mr John Oliver, Senior Fire Safety Officer, NTF&RS

- 11) Mr Oliver objects on behalf of NTF&RS on the ground that there are ongoing building works being carried out at the Premises without the issue of a building permit. He states that NTF&RS would not support any change to the current licence conditions until a permit to occupy is issued for the complete site. The objection was lodged within the prescribed period and Mr Oliver is a member or employee of the Fire and Rescue Service and entitled to lodge an objection pursuant to Section 47F(3)(d).
- 12) The basis of Mr Oliver's objection is that the Licensee is undertaking unauthorised and illegal building alterations. Apart from the requirement that the Commission authorises material alterations to licensed premises, that issue is outside the jurisdiction of the Commission. This objection does not fall within grounds specified in Section 47F(2)(a) and (b) of the Act and, in that sense, is invalid. However, the Commission is tasked with considering a change of licence conditions that may impact on the manner in which the business of the Premises is conducted. However, in considering any application under the Act, including an application for variation of licence conditions, the Commission is entitled to inform itself as it sees fit. In my view it would be in the Commission's interests to hear from Mr Oliver in respect of any fire safety issues he may have in terms of the subject application and the allegedly unauthorised building alterations.

- 13) Whilst I do not regard Mr Oliver's objection to be valid in terms of the Act I recommend that the Commission invite him to appear at the Hearing so as to inform the Commission of any fire safety related issues he wishes to address on behalf of NTF&RS.

Objection from Mr Jonathan Pilbrow on behalf of PAAC

- 14) 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.
- 15) Mr Pilbrow notes that the existing licence conditions allow the Licensee to apply for a relaxation of the "restaurant" licence conditions when required for a special event and that the current smoking legislation allows for part of the Premises to be designated as a smoking area. He objects on the basis the application for variation of conditions would result in licence creep and allow the Premises to operate predominantly as a bar or tavern with patrons standing around drinking.
- 16) Mr Pilbrow also objects on the ground the Premises are situated near a busy intersection in Alice Springs with a number of other licensed venues in a vicinity where large numbers of people congregate at night. He states that, if approved, the variation will effectively result in the creation of another bar which will increase the risk of harm from alcohol related misbehaviour and negate the licence condition that requires the Premises to have the appearance of a restaurant at all times. Mr Pilbrow states that the addition of another late night drinking venue will have an increasingly deleterious effect on the amenity of the neighbourhood. He also submits that the allowance of another de facto late night bar would undermine Government and community initiatives aimed at dealing with alcohol problems in Alice Springs.
- 17) The objection lodged by Mr Pilbrow on behalf of PAAC relates specifically to the application before the Commission. The objection relates to the grounds specified in Sections 47F(a) and (b) of the Act and requires a Hearing.

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

- 18) 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 in which the subject premises are located. The objection was lodged within time.
- 19) Messrs Cowan and George object to the application to remove the condition requiring patrons to remain seated on the basis it amounts to licence creep resulting in a change of the licence type from restaurant to tavern or nightclub. They state that many intoxicated patrons leaving Monte's Bistro try to enter their venue and the Premises is currently operating outside the conditions of its licence, affecting the amenity of the neighbourhood and patron safety. Messrs Cowan and George also note that the premises engages security guards which is not normal for a restaurant.
- 20) The objection also notes a number of alleged breaches of the existing licence conditions for the Premises by the Licensee such as:
- Breach of the condition prohibiting the advertising the consumption of liquor without a meal;
 - Patrons standing inside and outside the venue;
 - No clearly defined smoking areas in the outside area of the restaurant;
 - Patrons smoking at tables in the outside food service area

- 21) The objectors are the proprietors of neighbouring licensed premises however, in my opinion, their objection is not of an overtly commercial nature. The component of the objection set out in paragraph 19 above is valid and requires a Hearing.
- 22) The component of the objection relating to alleged breaches of existing licence conditions is not based on a valid ground of objection. If the objectors have concerns that the Licensee is breaching its licence conditions the appropriate course would be for them to lodge a complaint with Director of Licensing and not to attempt to have those matters aired via an application for variation of licence conditions.
- 23) Similarly, the ground of objection relating to the alleged breach of the licence condition prohibiting the advertising of the sale of alcohol without the requirement for a meal is not valid in the context of the current application. The Commission has recently received a complaint lodged by the Deputy Director (South) relating to an alleged breach of the licence condition prohibiting the advertising of the sale of alcohol without a meal. That is the appropriate course by which to refer a matter of that nature to the Commission.

Objection from Mr Russell Goldflam, NTLAC

- 24) Mr Goldflam is the Principal Legal Officer engaged by NTLAC whose premises are located within the neighbourhood of the subject premises. NTLAC is an organisation performing functions 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.
- 25) Mr Goldflam states that NTLAC was an objector to a previous application by this Licensee for variation of licence conditions and continues to rely on the same grounds of objection (set out in paragraph [25] to [28] of the Commission's previous objection decision published on 29 October 2010). Those grounds may be summarised as follows:
- that the amenity of the neighbourhood is 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.
 - 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;
 - 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; and
 - 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.
- 26) Mr Goldflam's objection also relies on the Commission's previous decision (delivered 30 December 2010) in which a previous application to remove the condition requiring patrons to remain seated was refused. He also submits that the current application is substantially similar to the 2010 application and should be refused on the same grounds.
- 27) The objection lodged on behalf of NTLAC relates to the amenity of the neighbourhood in which the Premises is situated with the result it is valid in terms of Sections 47F(a) and (b) of the Act and requires a Hearing.

Applicant's Response to Objections:

- 28) By letter dated 13 October 2011, Mr Mulga responded to the objection of Mr Barr. He states that the noise complaints referred to in the objection related to three incidents, one of which did not relate to Monte's Lounge. He states that the other two complaints were satisfactorily resolved. Mr Mulga submitted further that noise issues are covered by existing licence conditions and the objection does not relate the application for variation to the amenity of the neighbourhood or the health, education, public safety or social conditions in the community.
- 29) In respect of the objection from A/Commander Rennie, Mr Mulga responded by letter dated 13 October 2011. He notes that the previous objection by Police related to crime and general anti-social behaviour in the area however no evidence of any incidents since the Premises opened has been included in the objection letter. Mr Mulga suggests that Commander Rennie does not understand the conditions of Monte's current licence (presumably on the basis that patrons of the Premises are currently permitted by the licence conditions to purchase alcohol without a meal).
- 30) No response to the objection of Mr Oliver was received on behalf of the Licensee. Mr Mulga advised Inspector Moodie on 18 October 2011 that he did not intend to respond to that objection.
- 31) Mr Mulga responded to the objection from Mr Pilbrow by letter dated 13 October 2011. He stated that the purpose of the variation of conditions is not to turn the Premises into a bar but to accommodate patrons who wish to move around inside the venue. Mr Mulga notes that PAAC objected to the previous application for variations on the basis of the licence creep argument and yet provides no detail of how Monte's has impacted on the amenity of the neighbourhood since the premises began operation under the current conditions. He also states that Mr Pilbrow is on a "personal anti-alcohol crusade" and that not all members of PAAC support the objection.
- 32) Mr Mulga responded to the complaint of Messrs Cowan and George by letter dated 13 October 2011. He states that the accusations of intoxicated patrons leaving Monte's have no basis and Police would be better placed to report on that issue than a competitor. The remainder of the letter deals with issues raised by the objection of Mr Cowan and Mr George that are not relevant to the application before the Commission, for the reasons set out above, and raises complaints about the operation of the Rock Bar which are also irrelevant in the context of this application.
- 33) A response to Mr Goldflam's objection was received from Mr Mulga by letter dated 13 October 2011. He states that the fears of Mr Goldflam, as expressed during the hearing of the 2010 application, were ill founded and Monte's Lounge is a popular and well patronised weekend venue frequented by many NTLAC employees. He states further that Mr Goldflam's objection does not demonstrate how the current application will adversely affect the amenity of the neighbourhood or the health, education, public safety or social conditions in the community.

Determination

- 34) The application seeks a variation of licence conditions so as to remove the requirement that patrons remain seated whilst at the venue. The Licence is also currently subject to a condition requiring that at all times it maintain the appearance of a restaurant. The subject application has the potential to change the manner in which the business is operated as well as the appearance of the Premises to clients and people passing by.
- 35) For the reasons set out above, the objections lodged by A/Commander Rennie, Mr Pilbrow and Mr Goldflam are valid and require a Hearing.

- 36) The objection lodged on behalf of the Rock Bar is valid to the limited extent set out above. Any evidence presented to the Hearing by the objectors should be limited to the ground of complaint found to be valid, as set out in paragraph 19 above.
- 37) I find that the objection of Mr Barr is invalid for the reasons set out above. Pursuant to Section 47I(4) of the Act I direct the Director to inform Mr Barr that his objection has been dismissed.
- 38) I find that the objection lodged on behalf of the NTF&ES 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, I recommend that the Hearing Commissioners request that Mr Oliver attend the Hearing for the purpose of advising the Commission of his concerns in respect of alleged unauthorised building activity and any other issues of concern from fire safety perspective.

Philip Timney
Legal Member

1 November 2011