

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Monte's Lounge
Licensee:	Monte's Bar & Bistro Pty Ltd
Nominee:	Mr Matt Mulga
Proceedings:	Application for Variation of Licence Conditions Pursuant to Section 32A of the <i>Liquor Act</i>
Heard Before:	Mr Richard O'Sullivan (Chairman) Mr John Brears Mr Paul Fitzsimons
Appearances:	Superintendent Travis Wurst, Northern Territory Police Mr Matt Mulga, Nominee and Director of Monte's Bar & Bistro Pty Ltd
Date of Hearing:	8 October 2014
Date of Decision:	5 November 2014

Background

- 1) On 3 March 2014 Mr Matt Mulga, a Director of Monte's Bar & Bistro Pty Ltd ("Monte's") made application to the Northern Territory Licensing Commission ("the Commission") to vary the licence conditions of Monte's Lounge situated at the corner of Todd Street and Stott Terrace, Alice Springs. The variation is applied for under section 32A of the *Liquor Act* ("the Act").
- 2) The application seeks to vary the licence category of the premises from that of a "Restaurant" to that of an "On Licence". While the applicant has advised Monte's will continue to trade predominately as a restaurant during meal times and that the kitchen will continue to be the focus of the business, the application as advertised also seeks the removal of the following existing 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.

Consumption of Liquor

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

Kitchen Operation

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. Furthermore, all advertising and promotion must include the word "Restaurant".

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 authorized officer (Noise Control Officer) of the Department of Natural Resources, Environment, the Arts and Sport appointed under the Waste Management and Pollution Control Act.

A request will be made to have the following to be taken into account by the Commission when determining the insertion of conditions in the licence:-

Monte's Lounge will continue to trade predominantly as a restaurant during meal times with a significant proportion of seating in the alfresco areas.

In keeping with the focus on providing quality meals, meals will continue to be available throughout the day with a full menu available between 17:30 and 21:30.

Liquor will still be available without a meal however snack food and complimentary tap water will continue to be available at all times.

A security plan will be put in place to the satisfaction of the Director of Gambling and Licensing Services to ensure the continued safety of patrons and staff. This will include CCTV and onsite security.

There will be no change in trading Hours which are:

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

- 3) Following the advertising of the application three objections were received, being from Dr John Boffa of the People's Alcohol Action Coalition ("PAAC"), Mr Cliff Glover of Annie's Place and Mulgas Adventures, and Acting Superintendent Peter Nash from Northern Territory Police. In a decision of 29 April 2014 Commission Member Cindy Bravos determined all objections were valid and required a hearing pursuant to Section 471(7) of the Act.

The Hearing

- 4) At the commencement of the Hearing the Chairman outlined that although Dr John Boffa, or an alternative representative of PAAC and Mr Glover were not in attendance the Commission would give consideration to the PAAC and Mr Glover's objections submissions in its decision making. The Hearing was advised that the weight accorded to these objection submissions would likely to be less than if evidence on the submission was able to be taken and be subject to cross examination.

- 5) Mr Mulga outlined the purpose for seeking a licence category change for Monte's from that of a Restaurant to a more "liberal" or less constrained On Licence. He stated that the business model would not alter but that a change of licence category would enable the existing operation of Monte's to continue without bringing into doubt where shows, performances, music and dancing were potentially in breach of Restaurant licence conditions. Mr Mulga advised that food sales and the operation of the kitchen would continue to be key drivers of the business model.
- 6) Mr Mulga drew the Hearing's attention to the previous applications he had made to the Commission to have the licence requirement of "*patrons to be seated*" removed from his Restaurant licence conditions. He referred to a previous Commission Decision where the Commission suggested that application be made for an On Licence to enable a broader use of the venue to include entertainment.
- 7) Superintendent Travis Wurst of Northern Territory Police addressed the Police objection to the licence variation sought. He advised that the prime objective of Alice Springs policing was community safety. In his evidence there was likely to be less harm from a premises operating as a restaurant than a premises operating under similar conditions to that of a tavern.
- 8) The Superintendent provided evidence of incidents of anti-social behaviour and other alcohol related matters in Alice Springs. He relayed information from Police records which related to incidents at Monte's on 27 July 2014 and 3 August 2014 where intoxicated persons were removed from the premises and Police were required to intervene. He stated the persons were arrested or taken into custody. Following questions on this evidence Superintendent Wurst clarified that patrons on both occasions had been removed from the premises by security and Police intervention took place outside of the premises.
- 9) Commission Member Brears enquired of the Superintendent as to whether underage presence or underage drinking at Monte's was a problem, as this was a claim by Mr Glover in his objection submission. Superintendent Wurst responded that Police were unaware of any such issue.
- 10) In cross examination of Superintendent Wurst by Mr Mulga further clarification over incidents at or in the vicinity of Monte's was sought. The Superintendent confirmed that the only 24 hour service station and convenience store in Alice Springs was within close proximity to Monte's and that it a place where people gather, including at night and early morning. Mr Mulga also advised that Monte's was closed on Mondays and Tuesdays and all of January and queried whether there were relatively fewer incidents in the area during these times.
- 11) Superintendent Wurst contended that Monte's does not currently trade within the conditions of its Restaurant licence.
- 12) In response to queries over what conditions should apply if the Commission were to grant the application for an On Licence, the Superintendent advised the following conditions should apply:
 - On premises security, although "hostesses" enforcing Responsible Service of Alcohol ("RSA") measures could also be acceptable

- CCTV coverage
- Patron numbers to be approved, noting current approved capacity is 270 patrons
- No extension of licence hours.

13) Mr Mulga in summary submitted that Monte's:

- is a unique venue;
- its location at a busy street intersection adds to its visibility, the grate fencing also provide visibility to most of the premises;
- patron numbers are skewed towards female;
- there had been no neighbour objections or complaint in recent times; and
- would have no objection to a review being conducted if his application was approved.

He also advised that he would be "*happy to have a seat for every patron*" as a licence requirement.

Consideration of the Issues

14) The Hearing Commissioners are aware of the history of Monte's in regard to applications to lessen or remove licence conditions applying to the Restaurant, most notable the requirement that patrons be seated. Commission Decision on these applications are useful to giving background and some context to the current application before it.

15) A Decision of 11 April 2013 inter alia stated:

"28) Historically Monte's Lounge has held a Restaurant licence which was transferred from a former operator of the venue which traded under the name of Bluegrass Restaurant. Since taking over the venue, Mr Mulga has continued to provide a restaurant while adding to the selection of beers and wines and adding entertainment as an attraction to clients. Entertainment is frequently provided at venues which have a more liberal licence than that of a restaurant. Many On Licences combine a licence condition requiring them to have the appearance of and trade as a restaurant whilst also enabling music, theatre and other entertainment to be provided.

29) A number of On Licences also have a separation of licence areas where restaurant areas are provided and additional areas within the premises are also included but do not require "patrons to be seated". On Licences such as the Overlander Steakhouse, Bojangles, Bogarts, The NT Rock Bar and many others have On Licences which are generally less restrictive than a pure Restaurant licence and allow for patrons in some or all areas to stand, with the great majority of such premises having the requirement to have the appearance of a restaurant.

- 30) *Frequently with the more liberal trading conditions of an On Licence there is a concomitant upgrading of licence requirements including for security and CCTV camera coverage.*
- 31) *It is evident to the Commission that Monte's Lounge is seeking to enhance the patron experience in an atmosphere that provides a social situation which embraces entertainment and social interaction. Furthermore the Commission is advised the restaurant has successfully provided such a setting in recent years, creating an atmosphere that is calm, relaxed and most appealing to the younger set and those seeking alternatives to a bar or tavern experience in Alice Springs. It is noteworthy that the need to attend to security issues is minimal, with the need for any Police appearance seldom being a requirement.*
- 32) *The success of Monte's Lounge innovative approach is being achieved at a time when the tourism and domestic market is at a low point and a large proportion of Alice Springs licensed premises are facing patronage and related fiscal challenges. It should also be noted that the Monte's brand contrasts to the "swill until there is a blue" atmosphere that some other premises in the past may have tolerated or allowed. However, it is also evident that the licence is presently trading in a manner that has given concern to the Director of Licensing with complaints served over noise and patron standing issues.*
- 33) *The Commission, in its Decision of 14 February 2012 in relation to a similar Monte's Lounge application, stated:*
- 26) *The Commission is aware that the Licensee of the premises proposes to increase the venue capacity and widen the range of activities presented for the benefit of patrons such as music, plays, theatre performances and the like. Whether this gives rise to further applications relating to the ability of some patrons at the venue to be standing, or seated but not at a table, is a matter for the Licensee to consider.*
- 34) *Given that the Commission has on two occasions previously rejected the application and that nothing new has been provided in evidence in relation to why the application is sought, the Commission's approach on this occasion is consistent with the outcome expanded in its earlier Decisions. However, the Commission is cognisant that the venue does have widespread popularity and a patronage that seeks social ambience, fine food and entertainment."*
- 16) *In a more recent Decision of 22 July 2014 the following has some applicability to the current application:*
- "44) *Much has been put to the Commission on the issue of whether or not the premise maintains the appearance of a restaurant as per licence requirements. Mr Mulga maintains what could be referred to as a contemporary interpretation of how a restaurant presents. In his submission patrons who are seen to be standing around drinking or dancing on the dance floor have generally been patrons who have, or are about to, consume a meal.*

- 45) *The Commission is mindful that the former sharp define line of what is a pub/tavern, and what is a restaurant or licensed café, as defined in licence type, is no longer clear cut in contemporary Australian dining. Fine dining or quality dining venues no longer meet formerly recognised parameters including furnishings such as tables with table cloth, quality silverware, formal dining chairs where diners are served and attended to exclusively by wait staff. The appearance of restaurants, bistros, bars, cafes and other licensed dining venues are no longer sharply delineated.*
- 17) Mr Mulga, in his evidence to the Commission at Hearing and in consideration of written Reasons for Decision in past Commission Decisions, projects his business model for Monte's with some élan. He also projects his vision and operating style as contemporary, different and "funky", to use his term. The use of the venue in going beyond merely serving meals and drinks has tested the parameters and definition of what constitutes a restaurant and what are appropriate restaurant conditions.
- 18) The provision of music, revues, a dance floor and other forms of entertainment has resulted in a series of complaints being referred to the Commission in the past. There have also been 3 previous applications to the Commission from Mr Mulga to vary his Restaurant licence condition to allow people to stand at his venue. All those applications have been rejected by the Commission. In response the Commission has taken the unusual step of suggesting that a more appropriate avenue would be for Mr Mulga to seek a licence variation to that of an On Licence. A Commission Decision of 11 April 2013 put this suggestion forward in unambiguous language:
- "35) The Commission considers it may be more appropriate for the Licensee to seek to change the licence category from a Restaurant to an On Licence. Without fettering the Commission in any way in deliberations if such an application was lodged, this Commission panel considers it may be a more appropriate course for the Licensee to pursue. This could particularly apply if the applicant could demonstrate that such an application was not lodged as a bracket creep from that as trading as a restaurant to a bar, tavern or nightclub, but that such an application is merely seeking to enable a diversification of the restaurant to include entertainment and, more liberal social interaction abilities. An On Licence may be an appropriate licence where such trading is undertaken.*
- 19) Police fears, as testified by Superintendent Wurst, is that approval of a less restrictive licence category for Monte's could result in a loosening of trading controls resulting in the venue operating akin to that of a tavern. The concerns are legitimate but are countered by the advice provided during the application process and in evidence at the Hearing. Mr Mulga maintains that the venue will, if the application is granted, continue to focus on restaurant activities.
- 20) In the application for an On Licence Mr Mulga has stated, "... we will not be altering the role of the kitchen in our business model". He further states; "We do currently engage in some light entertainment in the form of DJ's playing music, live bands, trivia nights and other events such as functions, weddings and book launches". In relation to the venue becoming or assuming the mantle of a nightclub, he states: "This is not the sort of business I want to conduct".

- 21) In considering the objection lodged by PAAC the Commission notes that their submission supports *“the Licensee’s attempts to provide what the Commission described in December 2010 as ‘alternate and contemporary’ entertainment in Alice Springs”*. The PAAC objection opposes the removal of the music and entertainment licence conditions contained in the application advertisement as outlined in paragraph 2) of this Decision. It states that the current conditions which relate to appearance, consumption of liquor without a meal, hours of kitchen operation, no use of the word “Bar” in any advertising and noise and entertainment conditions should remain.
- 22) PAAC has submitted that the licence conditions referred to in the above paragraph should be retained and a licence requirement to install CCTV and to engage security personnel to the satisfaction of the Director of Licensing should be included. If those conditions are imposed PAAC does not object to the variation sought, *“... provided that after twelve months, an independent evaluation is conducted in order to examine the effects of changes including any related harm that has eventuated as a consequence”*.
- 23) During the Hearing the Commission advised that Police could submit within 7 days recommendations of licence conditions to be imposed should the application be granted. A submission in this regard has not been received.
- 24) Under the Act the primary objects and therefore the primary consideration of the Commission is the minimisation of alcohol related harm and protection of the interests of the public. Also included under the Objects is facilitation of diversity of licensed premises for the benefit of the community.

“3 Objects

- (1) *The primary object of this Act is to regulate the sale, provision, promotion and consumption of liquor:*
- (a) *so as to minimise the harm associated with the consumption of liquor;*
and
 - (b) *in a way that takes into account the public interest in the sale, provision, promotion and consumption of liquor.*
- (2) *The further objects of this Act are:*
- ...
- (c) *to facilitate a diversity of licensed premises and associated services for the benefit of the community.”*

- 25) On the evidence before the Commission there is a very low level of harm identified in relation to the current operation of Monte’s. A change of licence category from Restaurant to On Licence in itself is unlikely to generate significant changes to the operation of the venue. What could generate a significant change is the removal of conditions of licence as sought in the public advertisement as contained in paragraph 2) of this Decision.
- 26) Following consideration of the material contained in the Hearing Brief and the evidence given at Hearing, the Commission is disposed to approve the variation of licence to that of an On Licence. It shares concerns of parties who fear an undoing

of requirements to have the appearance of a restaurant, maintenance of kitchen operations, prohibition of advertising alcohol or using the term “Bar” in advertisements and the removal of noise and entertainment conditions, could combine and culminate in alcohol sales being a more predominant aspect of the venue’s functioning. This would contribute to an increase in any alcohol related harm.

27) The Commission considers that three of the current conditions could be removed or amended without contributing to alcohol harm or altering the current venue operations deleteriously. These are:

(i) **Patrons**

“Patrons to be seated at a table”

This could be replaced with:

“The majority of patrons are to be seated at a table”

(ii) **Advertising and Signage**

“The word “Bar” shall not be used in any advertising and signage. Furthermore all advertising and promotion must include the word “Restaurant”.

The second sentence could be deleted, with the licence conditions being:

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

(iii) **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 authorized officer (Noise Control Officer) of the Department of Natural Resources, Environment, the Arts and Sport appointed under the Waste Management and Pollution Control Act.

Part (b) of the Noise and Entertainment conditions could be removed, leaving what is a reasonable standard condition to apply:

“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.”

28) There has been considerable attention in past Commission Hearings given the need for, an effectiveness of, the requirement to have a noise control device. Rather than specify sound decibel levels controlled by a noise governing device, the more general requirement to avoid neighbourhood disturbance or annoyance appears a more reasonable approach. Noise can be generated from various sources and locations within the premises, including noise from live bands, DJ’s and jukeboxes,

amplified speakers for quiz nights and other events. A noise governing device has limited capability and can lack consistent effectiveness in minimising noise disturbance in such an environment. There is also the potential for building and future alterations to impact on noise levels within and external to the licensed area which can make obsolete or lessen the relevancy of a set decibel control.

- 29) Consideration has been given to the suggestion of a 12 month review if the On Licence is granted. In the Commission's view the need for such a review is questionable given that there are powers under the Act given to the Director of Licensing and the Commission that enable the regulation of the licence so its activities and practices conform to licence requirements. Should there be breaches of the Act or licence conditions, there are avenues for enforcement of compliance through infringement notices, penalties and the ability, following Hearing, for the Commission to vary existing licence conditions.

Decision

- 30) The Commission grants the application for a variation of licence category for the liquor licence trading as Monte's Lounge from that of a Restaurant to that of an On Licence. The Commission does not grant the removal of the licence conditions as sought by the applicant and publically advertised in the Centralian Advocate newspaper. The Commission varies the licence conditions relating to Patrons, Advertising and Signage, and Noise and Entertainment as follows:

Patrons

The majority of patrons are to be seated at a table

Advertising and Signage

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

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

- 31) Additionally, and consistent with Police submissions and general Commission policy towards On Licences, further licence conditions are to be imposed requiring the provision of Security (which could include the engagement of hostess or RSA Marshalls) and the provision of CCTV coverage of the venue, to the satisfaction of the Director of Licensing.

Richard O'Sullivan
Chairman

5 November 2014