

# Northern Territory Licensing Commission

## Reasons for Decision

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<b>Premises:</b>	Monte's Lounge
<b>Applicant:</b>	Monte's Bar & Bistro Pty Ltd
<b>Nominee:</b>	Mr Matt Mulga
<b>Licence Number:</b>	80515500
<b>Proceeding:</b>	Application for a Variation of Licence Conditions Pursuant to Section 32A of the <i>Liquor Act</i>
<b>Heard Before:</b>	Mr Richard O'Sullivan (Chairman) Mr Philip Timney (Legal Member) Mr Paul Fitzsimons
<b>Date of Hearing:</b>	31 January 2013
<b>Appearances:</b>	Dr John Boffa, People's Action Alcohol Coalition Superintendent Catherine Bennett, Northern Territory Police Mr Matt Mulga, Nominee and Director of Monte's Bar & Bistro Pty Ltd

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## Background

- 1) On 27 July 2012 Mr Matt Mulga, on behalf of Monte's Bar & Bistro Pty Ltd, Licensee of Monte's Lounge, applied pursuant to Section 32A of the *Liquor Act* ("the Act") to vary the licence conditions for Monte's Lounge. The licence variation sought was for the removal of the licence condition "*Patrons to be seated at a table*". The Licensee did not seek to remove the following condition: "*The premises shall at all times have the appearance of and shall trade predominantly as a restaurant*".
- 2) The Legal Member, in a Decision of 21 December 2012, determined that objections lodged against the application by Superintendent Bennett, on behalf of Northern Territory Police and an objection lodged by Dr Boffa on behalf of the People's Action Alcohol Coalition ("PAAC") were valid in terms of the requirements of the Act and required a Hearing.
- 3) The applicant has twice in the past sought a variation to Monte's Lounge licence to remove the "*patrons to be seated at a table*" requirement with the applications being refused in a Decision handed down on 30 December 2010 and in a more recent Decision handed down on 14 February 2012.
- 4) Additionally, in the Decision of 14 February 2012, the Commission amplified its view on the interpretation of the requirement for patrons to be seated at a table. The following are excerpts from that Decision:
  - 23) Under "**Special Conditions**" many licences include "*patrons to be seated at a table*". This condition is designed to reflect that the predominant activity and the reason why patrons are at the licensed premises is for the consumption of a

*meal accompanied by alcoholic and non-alcoholic drinks and that in partaking of such food and beverages the patrons are to be seated.*

24) *Consequently patrons are required to have a seat at a table where the reasonable expectation is they will consume their food and beverages. This is not to deny reasonable mobility to leave the table to talk to other patrons, go to the toilet, temporarily retire to an area suitable for smoking and where necessary to leave the table to order drinks or pay a bill. Reasonable mobility to conduct social activity when having drinks and food presented at a table is not inconsistent with the requirement that "patrons to be seated at a table".*

25) *What this condition prevents is patrons to be at a licensed premises with the predominant activity of consuming drinks while standing. In this regard it should be noted that venues such as Monte's Lounge provide for patrons to have a drink without food but this is not a predominant activity, with the availability of alcohol without a meal not to be advertised and for the venue to present at all times the appearance of a restaurant.*

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.*

## Hearing

- 5) At the commencement of the Hearing Mr Matt Mulga outlined that this was his third application to have the requirement for patrons to be seated removed from his licence conditions. He outlined that the application was to facilitate reasonable patron mobility at his premises to allow patrons to move around to go to the toilet, meet friends and pay their bill.
- 6) He contested the submission that approval of his application would constitute "*bracket creep*" and enable drinking while standing as a major activity. He submitted that he operated an alternative style dining experience which had not caused problems with Police or resulted in disorderly behaviour of patrons and that this was reflected in a number of objections from his first application reducing from around ten to only two objectors currently.
- 7) He stated that his premises would not become "*a wild west tavern*" if the requirement to be seated was removed. He submitted that the current condition made it difficult to trade and could result in his inadvertent breach of his licence conditions if he did not constantly remind patrons to be seated. He also submitted that since Monte's had commenced trading at the corner (Stott Terrace and Todd Street) the area had become safer as it was previously a hot spot for anti-social activity.
- 8) In answer to a question from Commissioner Timney over what was different from his previous two applications which had not been approved, Mr Mulga responded that he wanted a manageable licence. He then referred to three letters from the Gambling and Licensing Services Division of the Department of Business in relation to breaches of his licence. The Commission advised the Hearing that it required this correspondence to be tabled following the Hearing for its consideration in the context of the application.

- 9) Mr Mulga outlined that conditions in Alice Springs had changed since his last application with the recent closure of Town and Country and other closures of the Alice Springs Memorial Club, RSL and QC's to indicate that the range and dynamics of restaurant and bar amenities had changed significantly in Alice Springs.
- 10) Mr Mulga also advised that the closure of his premises is possible if suspensions or the imposition of conditions of his licence made the premises unviable. In reference to his venue offering a fine dining and fine wine selections he referred to his premises having sixty-four bottles of wine on their wine list for patrons to select from.
- 11) Dr Boffa outlined the objection from PAAC which was along similar lines to that which had been previously submitted to the Commission in response to the prior Licensee applications for a variation of licence condition. Dr Boffa referred to there being fewer objections this time as objectors were frustrated and nothing had changed and objectors had historically made their case and would be under the assumption that such objections still stand. He submitted that allowing patrons to stand and consume beverages would convert the premises from a restaurant to a bar.
- 12) Dr Boffa advised the Commission that he had accessed a Monte's Lounge Facebook site which described the venue as "*bar and restaurant*". If the Commission granted the application and allowed standing rather than patrons being required to be seated, the licence would creep to that of a bar without the normal bar or late night trading conditions such as security and CCTV camera requirements.
- 13) Dr Boffa referred to restricting hours of sale as having a benefit in lessening harm and referred to the Newcastle and Geelong alcohol restriction trials specifically and other international trials and outcomes.
- 14) Dr Boffa stated that he had no objection to Monte's as such so long as it continued to operate under the existing licence conditions. He acknowledged that the recent closure of a number of licensed premises in Alice Springs had resulted in a degree of competition between the remaining venues. He referred the Commission to the situation that had occurred in Tennant Creek when the population declined and a number of licensed premises closed. He submitted that Licensees competing for the declining market had cut corners and introduced practices that resulted in major issues in terms of alcohol related harm and excessive consumption.
- 15) Dr Boffa agreed that licensed premises in Alice Springs were generally struggling financially at present and this resulted in Licensees trying to gain a competitive edge over other premises. He stated further that Monte's Lounge was regularly open until its 02.00am (the following day) closing time and that patrons regularly attended the premises for a drink without the intention of purchasing a meal. He submitted that Monte's Lounge had been given significant latitude in regard to the removal of the requirement to consume alcohol in conjunction with a meal.
- 16) Dr Boffa concluded by saying that by and large the venue does conform with its restaurant appearance and trading requirements but PAAC's concern was over the potential for licence creep if the application was granted. He stated that the application currently before the Commission included no change to the previous variation and therefore the objections to this application should stand and be taken into account by the Commission. Dr Boffa requested that the Commission consider

how many bars the town could accommodate before competitive pressures resulted in an increase in alcohol related harm.

- 17) Mr Mulga, in cross examination, queried the accuracy of the Facebook reference to “bar”. In relation to his trading activity and the potential of his venue becoming a night club he submitted that his venue did trade until 02:00am (the following day) on busy Friday and Saturday nights but at other times closed earlier.
- 18) He also advised the Commission that if his application was granted the venue would largely remain unaltered with similar client base and operations.
- 19) Superintendent Bennett, on behalf of Northern Territory Police, spoke to the Police objection which she outlined was the same as previously submitted to an earlier variation application. She advised that Police would prefer the venue to retain its focus on being a restaurant, not a bar. She submitted that Alice Springs already had alcohol abuse problems and that anti-social behaviour was more likely to occur at or result from patron alcohol consumption at bars.
- 20) Superintendent Bennett raised the physical location of Monte’s Lounge and that her objection submission had referred to it being a busy intersection close to areas frequented by young people at night. She expressed concern that if the venue became a bar it would not enhance the area and likely result in the lessening of public safety in the area in the early hours of the morning.
- 21) Mr Mulga queried the evidence and submission provided by Superintendent Bennett in relation to the location of his venue and submitted that its presence in a prominent central corner added to safety whereas if the venue was situated in a back street it could give rise to safety issues.
- 22) In response to safety in the area and queries by the Commission on available data, Superintendent Bennett advised that Police would submit details of callouts relating to the area and Monte’s Lounge following the Hearing.
- 23) In making summary submission to his application Mr Mulga submitted to the Commission that the two objectors who had written submissions and presented evidence before the Hearing, had merely presented “*a cut and paste of previous objections*”.
- 24) He concluded by stating that what he was seeking was a relaxation of his licence conditions to enable him to trade viably without there being any substantive change to his operations.

## **Consideration of the Issues**

- 25) Following Hearing the Commission has received copies of three letters from the Gambling and Licensing Services Division of the Department of Business relating to infringements or breaches of trading conditions at Monte’s Lounge, two of which relate to noise issues and another which relates to the application before the Commission, that is an alleged breach of licence conditions due to patrons standing and consuming alcohol.
- 26) The Commission also received advice from Northern Territory Police over callouts and incidents in the area, including at the corner at which Monte’s Lounge is located. Police information provided is of summary copies of incident reports “*in and around the location of Monte’s Lounge*” between 1 February 2011 and 24 January 2013, ie approximately twenty-four months. Of the nineteen incidents

recorded in this period five relate specifically to the Monte's Lounge location, four of which are stealing reports and one relating to child welfare. To the Commission's mind these do not evidence any significant policing on anti-social behaviour issues arising from the Licensee trading from that location. Indeed the Commission considers that it may support the veracity of the submission of Mr Mulga that the existence of the venue in providing activity and light in the area, may have made the area safer.

- 27) The Commission has previously considered similar evidence on behalf of the Licensee and similar objections from the parties who were present at this Hearing. In essence, nothing has changed. What the Commission has been apprised of is that since earlier applications the trading environment of Restaurants, On Licences, Clubs and Taverns in Alice Springs has deteriorated with a number of venues being unable to maintain viability. The Commission is also aware that there is further trading doubt in relation to a number of existing licences in the township.
- 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.

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.

36) The applicant may also wish to consider whether he wishes to apply for and is able to delineate separate areas with the licence area where varying licence conditions would apply as is the position with a number of other On Licences. That is, have a specified area for dining and other areas which allow for dining and entertainment, frequently enabling some patrons to not remain seated.

## **Decision**

37) Noting comments in paragraphs 34 – 36 above the Commission maintains its earlier Decisions of 30 December 2012 and 14 February 2012 in refusing the application for variation of the Restaurant licence condition as applied for.

Richard O'Sullivan  
Chairman

11 April 2013