

Decision Notice

Matter:	Grant of a Liquor Licence
Proposed Premises:	Henry's at Cullen
Applicant:	Monte's Lounge Pty Ltd
Proposed Nominee:	Matt Mulga
Objectors:	John Berryman Mrs Claire Taylor Mrs Judy Wright Mr Ray Bail Mrs Cheryl Halliday
Legislation:	Section 29 and 47F – 47I of the <i>Liquor Act</i>
Decision of:	Delegate of Director-General of Licensing
Date of Decision:	26 February 2016

Background

Matt Mulga, Director of Monte's Lounge Darwin Pty Ltd (Applicant), has applied to the Director-General of Licensing for an 'on-licence' liquor licence pursuant to Section 26 of the *Liquor Act* (the Act) for a premise to be known as Henry's at Cullen located at 14/48 Marina Boulevard, Larrakeyah, Darwin N.T.

Current Situation

1. The Applicant provided a submission that meets the relevant criteria referred to in section 6(2) of the Act identifying the operations of the proposed business. The applicant submitted that the information provided demonstrates the grant of the licence will be in the public interest.
2. The proposed Licensee has provided an affidavit pursuant to section 26A of the Act, identifying that the applicant is the only person to have influence over the liquor licence.
3. The application is for an 'on-licence' liquor licence. The business proposed to be conducted on the premises will be in the nature of a Function Centre for private parties and corporate events. Liquor may be sold from 10:00 hours until 02:00 hours (the following day), seven days a week.
4. The Applicant is the proposed Licensee for the premises.
5. The trading name "Henry's at Cullen" is a registered business name.
6. The Applicant is to be the nominee. The Applicant has previously supplied the Director-General a Responsible Service of Alcohol certificate, supplied photo identification, provided referees reports attesting to his character and work ethic and has undertaken a National Police Criminal History and Fingerprint Check. The Applicant has demonstrated a sound understanding of the Act by successfully completing the *Liquor Act* test.

Advertising and Objections

7. The Application was advertised in the Northern Territory News on Wednesday 2 September 2015 and Friday 4 September 2015 with the objection period expiring on 4 October 2015.
8. A total of eight (8) objections were received of which five (5) were assessed as meeting the criteria pursuant to s.47F of the *Act*.

Assessment of invalid objections:

9. Mr Gordon Whitnall objection was assessed as invalid as it was submitted outside the 30 day advertising period without a request for an extension to submit.
10. Mr Geoff Ritter's objection was assessed as invalid as it was deemed not to meet the criteria pursuant to 47F (2) of the *Act*.
11. Mr Ron Lindau and Mrs Maureen Lindau's objection was assessed as invalid as it was submitted outside the 30 day advertising period without a request for an extension to submit.

Assessment of valid objections:

12. Mr John Berryman's objection to the application states;

- Some of the area subject to the application occupies common property. There are 2 areas, the upper and lower boardwalks facing the Marina. There exists an historic permission to use the upper deck for both units 1 and 2, however the lower deck is not included in this permission to use, and included in the application. The Body Corporate of UP 95/039 will not be granting permission to use the lower boardwalk, and request the area defined under the liquor licence be amended to exclude same, as indicated on the attached drawing.

13. In response to the objection the Applicant states;

- I was not intending to utilise the lower boardwalk, and if the proposed licensed area was redrawn to exclude the lower boardwalk it would be satisfactory to both parties.

14. Assessment

- Mr Berryman's objection relates specifically to the use of the lower boardwalk area as part of the licensed footprint. The Applicant has since submitted a revised version of the licensed site plan which no longer includes the lower boardwalk area.

15. Ms Judy Wright's objection to the application states;

- I would like to express my concern over the liquor licence for the new function restaurant at Cullen Bay as a resident who has experienced Lola's Bar I am very concerned about the noise level. I have no objections to these places having a fun time but when it gets louder as the night goes on I object strongly it is a residential area and the noise level should be shut down at the same time as residents having their own parties. We have a high problem with noise in this area as it reverberates back and forth over the water.

16. In response to the objection the Applicant states;

- Ms Wright's objection is based on the level of noise. She argues that she lives in a residential area. I have applied for a Liquor Licence for a venue in a commercial area that is sandwiched between 2 other licensed venues and which has previously held a liquor licence. If Henrys is successful in its licence application conditions would be applied regarding noise emitting from the venue and that it would be against its licence to disturb the neighbours.
- On a Monday afternoon when our other venue Lola's is not trading I have turned the music up to levels greater than we would trade at. Noise can travel across water. I have travelled in my kayak to outside Mrs Wright's residence at 14 Hickey Crescent. I cannot hear the music from Lola's. Mrs Wright has never complained about the level of

noise from Lola's to myself, the commission or to the police. Oddly Mrs Wright stated that the "noise level should be shut down at the same time as residents having their own parties". What she is suggesting and what she is objecting too is unclear.

17. Assessment

- Ms Wright's objection relates specifically to the emanation of noise from Henry's at Cullen. Ms Wright's opinion is founded on the current operations of Lolas Pergola directly adjacent to Henry's at Cullen. The Applicant has stated that Henry's at Cullen is in a commercial area positioned amongst other late night traders. The Applicant further states that all noise emanating from Henry's at Cullen will be subject to noise conditions contained within their liquor licence.
- Considering that Henry's at Cullen is to be used as a function and event venue the type of trade will differ significantly from that of Lolas Pergola. In respect to the noise issue, conditions placed on the liquor licence will regulate the volume of music played during any scheduled event or function. The venue will only be permitted to play 'easy listening' background music up until midnight. However, music can continue to be played inside the premise, after midnight, once all windows and doors are closed. No live music is permitted.

18. **Ms Claire Taylor's objection to the application states;**

- I would like to voice my opposition to a liquor licence being granted for a seven day a week operation at Henry's at Cullen due to the possible social disturbance and noise, in what is a quiet and orderly neighbourhood. I would have no objection to the granting of such a license if the business operated 6 days a week, Monday to Saturday, closing no later than 11pm. The non- residential part of Cullen Bay is basically a restaurant precinct and I would not like this expanded to cater for late night drinking and the creation of a second nightclub precinct in Darwin. Mitchell Street is a more appropriate area for the type of venue the proposers have in mind.

19. In response to the objection the Applicant states;

- Ms Taylor's objection is based on the concern that the venue rather than a restaurant style would become more like a nightclub style, which she suggests is more appropriate to an area such as Mitchell Street. We have no plans to have Henrys operate as a night club, it is our intention to cater for functions, events and as a pop up shop. Not a night club. Claire Taylor's concerns are understandable but in this case are not valid.

20. Assessment

- Ms Taylor's objection relates to the potential for Henry's at Cullen evolving into nightclub style venue which operates 7 nights a week and closes after 11pm. The Applicant has responded by reiterating that the premise is to operate as a venue for functions and events and not a nightclub. The 7 day trading condition is a standard condition afforded to all licensed premises in Cullen Bay and the wider area (not including store licences).
- The venue's trade will be regulated by special conditions incorporated into the liquor licence. As an example all events and functions will be recorded into a register and brought to the attention of Licensing NT 5 days prior to each event or function. Furthermore, the venue is required to have food available at all scheduled functions or events thus eliminating any potential for the venue to trade solely as a bar.
- In respect to the noise concerns, the venue will only be permitted to play 'easy listening' background music up until midnight. Music can continue to be played inside the premise, after midnight, once all windows and doors are closed. No live music is permitted.

21. Ms Cheryl Halliday's objection to the application states;

- The applicants already hold a liquor licence in Cullen Bay, this being Lola's Pergola. Since the applicants commenced business at the Lola's premises the venue has been extremely noisy, often with live bands and loud drunken patrons, especially weekends until late. Following complaints at the recent Cullen Bay Management Corporation AGM the noise has actually increased even though the business owner was present at the AGM. I am presenting this information because the applicants for the new liquor licence already are the subject of many noise complaints from residents of Cullen Bay. Lola's advertisements also offer a function room for hire. This function room is able to be fully enclosed, therefore cutting down the noise level. Why does Cullen Bay need another party venue next door?
- My objection to the granting of the above liquor licence is on the grounds of Section 3 (2)(a), & Section 6 (2)(e)(f) of the Act. Cullen Bay is a prestigious estate, mainly occupied by retired and family people. Being a marina development, all properties surrounding the marina are subject to some noise that carries across the water. Apart from "Lola's" all other restaurants for many years have made an effort to fit in with the ambiance of Cullen Bay and its surrounds. During the Dry season some restaurants often have a musician/singer entertaining their guests but have rarely impacted on other restaurants or residents. Until recently, Cullen Bay venues have rarely been late night party places and have contributed to the overall lifestyle and enjoyment of residents and patrons.
- The planned premises for this licence are extremely small inside but they are planning a function centre, private parties, and corporate events. Obviously the applicants intend using the open boardwalk at the front of the premises. I assume many of these private events will have live bands, singers, karaoke, DJ's and the like. Too bad for the peaceful ambiance of the nearby restaurants and residents. All restaurants along the boardwalk at Cullen Bay are close together and have a 1.5 metre easement walkway running through their restaurants. It will be impossible for this easement be kept clear at Henry's at Cullen when a private party is in full flow? How would somebody in a wheel chair manoeuvre their way through people standing huddled in groups or dancing? The current restaurants have their tables set up to allow easy access for passer-by's. This type of venue needs to be contained in an enclosed air-conditioned area. The applicants already have that facility in their existing pub Lola's Pergola.
- Where ever people live it is commonly accepted that on occasions our neighbours will hold a private party. No one is prepared to endure loud parties night after night, weekend after weekend and neither should the residents of Cullen Bay. We have made a substantial investment into our properties in order to enjoy the benefits of the peaceful lifestyle offered by this prestigious marina estate. We pay expensive body corporate fees and council rates for the privilege. Residents should be able to entertain their guests in their home and if they wish play music of their choice, not to have it drowned out by loud head banging unacceptable noise night after night. Why should we have to shut our windows to hear our TV? Add to this the devaluing effect on our properties when loud music and drunken noise starts happening on a regular basis. Nobody wants to purchase a property worth millions knowing they will be hounded by constant loud parties and drunken idiots.
- This business is not suitable for Cullen Bay Estate. It will not enhance community amenity, social harmony and wellbeing of the residents or surrounding restaurants. I sincerely hope that the liquor licence will be rejected on the above grounds.

22. In response to the objection the Applicant states;

- Ms Halliday's objection is based on the level of noise that may be emitted from the venue. On a Monday afternoon when our other venue Lola's is not trading I have turned the music up to levels greater than we would trade at. I have travelled in my kayak to outside Mrs Halliday's residence at 98 Cullen Bay. I cannot hear the music

from Lola's and Mrs Halliday has never complained about the level of noise from Lola's to the commission, police or to myself.

- She did make mention of it at the recent Cullen Bay body corporate AGM and attempted to encourage other members at the meeting of over 100 residents to complain also. In her objection Ms Halliday complains of the little time for residents to object to my application. Mrs Halliday got her objection in a week before the end of the objection period and so she had plenty of time to encourage any other concerned residents to object. There are approximately 2,500 residents of Cullen Bay. Mrs Halliday's objection is frivolous.
- In August we began the application for this licence. With the venue located between 2 other licensed venues, and has previously held a liquor licence with no issues, I assumed that a licence of some kind would apply by November. We have taken bookings for functions for November and December. I trust that the Department of Business realises the situation that I am in and will apply any assistance it can.

23. Assessment

- Ms Halliday's objection relates to the obstruction of pedestrians attempting to pass through the boardwalk locality and the potential for excessive noise generated by Henry's at Cullen negatively impacting on the area's amenity.
- In respect to the noise issue, conditions placed on the venue's liquor licence will regulate the volume of music played during trading periods. The venue will only be permitted to play 'easy listening' background music up until midnight. Music can continue to be played inside the premise, after midnight, once all windows and doors are closed.
- In regards to the to the boardwalk area, the Applicant has advised that pedestrian access at the front of his premise is 30% wider than that found at businesses trading along the same boardwalk. An inspection by compliance officers has found that the pedestrian access at the front of Henry's at Cullen is measured at 2.5 metres, approximately 700mm wider than any other venue along the boardwalk. In line with this, a licence condition will require that the main thoroughfare be kept clear of any obstructions at all times.

24. **Mr Bail's objection to the application states;**

- I hold concerns regarding the noise that this establishment could potentially generate till late at night being a function centre that will amplify around Cullen Bay of an evening. Cullen Bay is a residential Marina that is fringed by private dwellings. My dwellings overlook this area. The Applicant currently operates an adjacent venue known as Lolos Pergola and I have found the noise being generated from this establishment to be excessive. I am concerned that another venue operated by the same person will further add to this issue. I realise that other restaurants in the area have licences till 2am, however they are never used till that time and only play soft background music. I have strong concerns that this new venue will therefore ruin the current ambience of Cullen Bay.
- The area along the boardwalk has a one and a half metre easement so that patrons can walk from one end of the boardwalk to the other unobstructed. This is easy to control when people are seated at tables, however, I am of the opinion that this new licence will be a standing and sitting venue, and I fail to see how patrons of other restaurants can clearly walk along the boardwalk through a standing crowd without feeling intimidated. As there is no hard barrier at the boundaries of the property, I also fail to see how the patrons of this new venue will be contained within their respective licensed area.

25. In response to the objection the Applicant states;

- Mr Bail lives at 7 Cullen Bay Crescent. This is nearly 1 kilometre from 52 Marina Blvd. There are many tall apartments housing hundreds of people between Henrys and

Ray's residence. I could shoot a rifle in Henry's venue and I doubt if Ray could hear it from his home. Ray claims that the noise generated from our adjacent venue Lola's is excessive. No one else who lives between Lola's and Ray's residence have complained about the noise from Lola's nor has Ray either complained to the police, liquor commission, or myself.

- Ray frequents Lola's as a patron. Ray mentions in his objection the area along the boardwalk having a one and a half meter (1,500mm) easement allowing patrons to walk from one end to the other unobstructed. I have built 8 fixed tables along the boardwalk. I have allowed 2,500mm clearance for the public to walk. The Indian property next door has movable tables with 1,900 mm clearance with "Yots" the Greek place next to it also having movable tables with 1,800mm clearance. Further along the boat shed cafe has had many tables scattered over the boardwalk for the past year with no possible way of patrons to walk unobstructed. I suggest if Ray truly has concerns over patrons being able to walk unobstructed he could as Chairman of the Cullen Bay Marina Management Corporation begin by enforcing this regulation to the Boat Shed, instead of creating a hypothetical situation with Henry's in which to object too. Mr Bail's objection is frivolous.

26. Assessment

- The objections raised by Mr Bail relate to the emanation of noise, obstruction to the boardwalk area and the lack of visible boundaries to inform patrons of the licensed area.
- In respect to the noise concerns, the venue will only be permitted to play 'easy listening' background music up until midnight. Music can continue to be played inside the dwelling after this time once all windows and doors are closed. No live music is permitted.
- Pedestrian access is significantly wider than that of other restaurants (approximately 700mm wider) found along the boardwalk area. Additionally, it will be a licence condition that the thoroughfare is kept clear at all times.
- In terms of containing patrons to the licensed area, no other licensed venue along the boardwalk has any visible boundaries in place to inform patrons of the licensed footprint. The monitoring of patrons remains strictly the responsibility of the licensee/nominee of each particular licensed premise.

Comments from other stakeholders:

27. Northern Territory Health:

The Director of Alcohol and other Drugs advises Health have no adverse comment with the application. Health asks Licensing NT to consider patron and community safety and amenity when determining this application and request the venue clearly displays signage to delineate the Non Smoking areas from Smoking Areas. This restaurant is a non-smoking restaurant.

28. Northern Territory Police:

Northern Territory Police state they have nil objections.

29. City of Darwin:

City of Darwin has not identified any reason that would be grounds for objection.

30. NT Fire and Rescue Service

NT Fire and Rescue Service commented that they have no objections in respect to the application. Fire Safety conducted their compliance check on the premise and has issued max patron numbers which are now on display within the premise.

Summary

31. The applicant has made a full and thorough application that demonstrates the grant of a liquor licence for the premise known as Henry's at Cullen, located at 14/48 Marina Boulevard, Larrakeyah, Darwin N.T, will be in the public interest.
32. The Applicant is known to the Director-General and has previously supplied all relevant documentation as part of an approved liquor licence transfer for Lolas Pergola and as such is considered to be a fit and proper person to hold a liquor licence.
33. The Applicant published a notice in the Northern Territory News of the fact that he had applied to the Director-General for the grant of a new liquor licence. The notice of the application included a description identifying the location of the premises and a description of the nature of the business proposed to be conducted on the premises.
34. The objections received during the advertising period predominantly relate to the potential for excessive noise being generated by the venue, obstruction to the boardwalk area and the potential for the venue to evolve into a nightclub. The Applicant has responded to each of the objectors elucidating the intended purpose of the venue. Further to the objectors concerns, Henry's at Cullen's liquor licence will have special licence conditions that will regulate the venue's trading practices. This will include conditions governing how events and functions are registered, restrictions on the type of entertainment provided during scheduled events or functions, noise conditions and a requirement for the boardwalk thoroughfare to be kept clear of any obstructions at all times.
35. As the Applicant is the current nominee for Lolas Pergola, he is familiar with the provisions of the *Liquor Act* and his role and responsibilities therein.
36. The application is for an 'on-licence' liquor licence.
37. Liquor may be sold from 10:00 hours until 02:00 hours (the following day), seven days a week.
38. The venue is suitable for a liquor licence and has passed relevant fire and safety compliance.
39. The Applicant has successfully operated a licensed premise in Darwin (Lolas Pergola) and Alice Springs (Monty's).
40. The Applicant plans on using the venue for pre-booked functions and events.
41. Based on the Applicants application and experience in the industry together with the proposed business plan for the venue there are no foreseeable reasons as to why the grant of a new liquor licence should not be approved.

Decision

42. In accordance with s.29 of the Act and on the basis of the information provided in respect to the application, and the reasons set out above, I approve the grant of a 'On Licence' liquor licence for the sale and consumption of liquor for the premises known as 'Henry's at Cullen', located at 14/48 Marina Boulevard, Larrakeyah, Darwin NT.
43. The following special conditions are to be incorporated into Henry's at Cullen's liquor licence;

Functions or Events

- The use of the venue is solely for the purpose of commercial hiring for events and functions of all or part of the premises by any person or body.
- The Licensee shall give written notice of the proposed function or event to the Director-General five (5) business days before the holding of the function or event.
- Details of all functions or events shall be recorded in a register book kept by the Licensee which shall be readily available on the licensed premise for inspection at any time by a Licensing Inspector.
- Food is to be made available at all functions and events.
- The boardwalk thoroughfare is to be kept clear at all times.

Noise

- The Licensee shall not permit or suffer the emanation of noise from the area of such nature or at such levels as to cause unreasonable disturbance to the ordinary comfort of lawful occupiers of any residential premise.

Entertainment

- Entertainment may be provided in the internal and outdoor dining area of the licensed premise and shall be limited to 'easy listening' background music.
- All music in the outdoor dining area shall cease at 23:59 hours. Music can continue to be played inside the premise once all doors and windows are closed.
- No live music is permitted.



Bernard Kulda
Delegate of the Director-General

26 February 2016

Review of Decision

1. Section 120ZC of the Act provides that a person affected by this decision may seek a review before the Northern Territory Civil and Administrative Tribunal. Any application for review of this decision must be lodged within 28 days of the date of this decision.