

Northern Territory Licensing Commission

Decision on Whether Objection Will Proceed To Hearing

Premises:	Monte's Lounge
Licensee:	Monte's Bar & Bistro Pty Ltd
Applicant:	Matt Mulga
Licence Number:	80515500
Objectors:	3 Objectors <ul style="list-style-type: none">• Mr Cliff Glover (Annie's Place & Mulgas Adventures)• Dr John Boffa (People's Alcohol Action Coalition)• A/Superintendent Peter Dash (Northern Territory Police)
Legislation:	Sections 47F to 47I of the <i>Liquor Act</i> and Section 28 of the <i>Interpretation Act</i>
Decision of:	Cindy Bravos (Commission Member)
Date of Decision:	29 July 2014

Background

- 1) On 3 March 2014, Mr Matt Mulga ("the Applicant") on behalf of Monte's Bar & Bistro Pty, Ltd applied pursuant to Section 32A of the *Liquor Act* ("the Act") for a variation of licence conditions to the premises known as Monte's Lounge (Licence No. 80515500).
- 2) The Applicant is seeking to change the licence category from a "Restaurant" to an "On Licence". In this respect, the Applicant has indicated that Monte's Lounge will continue to trade predominantly as a restaurant during meal times and that it is not the intention to alter the role of the kitchen in the venue's current business model, however, the applicant does seek amongst others the removal of the current condition that requires "patrons to be seated at a table". The remaining variations to other conditions of the current licence which are being sought are fully detailed in the advertisement outlined at paragraph 3.
- 3) The Application was advertised in the *Centralian Advocate* on Friday 28 March 2014 and Tuesday 1 April 2014 pursuant to Section 32A(3)(a) of the Act.
- 4) The first advertisement on 28 March 2014 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 (the Commission) to change the Authority of the Licence from a 'Restaurant' to an 'On' Liquor Licence for the premises known as Monte's Lounge located at Cnr Todd Street and Stott Terrace Alice Springs.*

Current conditions to be removed from licence are:

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.

This is the first notice of application. The notice will be published again on 21 March 2014..

The objection period is deemed to commence from 21 March 2014.

Pursuant to Section 47F(2) of the Liquor Act an objection may only be made on the ground that the variation of the licence conditions 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, Gambling and Licensing Services, Green Well Building, 50 Bath Street, Alice Springs within thirty (30) days of the commence date of the objection period.

Dated this 28th Day of March 2014

- 5) It is noted that in the second advertisement on 1 April 2014, a correction to the commencement of the objection period as advertised in the first advertisement was made, this being corrected to 1 April 2014.
- 6) Pursuant to Section 47F(4)(d) an objection must be lodged within thirty days after the publication of the last notice, namely on or before 1 May 2014.
- 7) 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 -

“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 licenced, 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)."*
- 8) Three objections have been lodged in response to the application and the applicant has provided a response to those objections pursuant to Section 47G of the Act.
- 9) Under Section 47I of the Act the Commission must determine whether the objections received are to proceed to Hearing.

Consideration of the Objections Received

Objection from Mr Cliff Glover (Annie's Place & Mulgas Adventures)

- 10) Mr Glover is a Director of Mulgannies Pty Ltd (Annie's Place & Mulgas Adventures) which is located in the neighbourhood within in which the premise is located and therefore has standing to object.
- 11) The objection is dated 14 April 2014, however, it is date stamped as having been received by Racing Gaming and Licensing South on 6 May 2014. If in fact received on 6 May 2014, then the objection has not been lodged within the time prescribed within which to lodge an objection.
- 12) Inquiries made with the relevant Licensing Inspector for this matter from Gambling and Licensing Services (GLS) indicate however, that it appears that the correspondence may have addressed incorrectly and it took some time for it to reach GLS. Due to this and pursuant to Section 127 of the Act which allows for the Commission in its discretion to extend the time required for a thing to be done under the Act notwithstanding that the time prescribed by the Act has expired, I have determined in this instance to extend the time required within in which to lodge an objection and as a result, this objection qualifies under the Act as an objection requiring a Hearing.
- 13) The objection raises the concern that Monte's Lounge is currently operating outside of its current licence conditions in that it is operating as a bar and not as a restaurant. Additionally, Mr Glover raises concerns that Monte's Lounge is regularly frequented by minors who consume alcohol on the premises. Mr Glover states that his objection "*is not a case of one business trying to disadvantage another business*" but rather due to his concern that Monte's Lounge is currently not operating within the conditions of its current licence.

- 14) Whilst on first blush, Mr Glover's objection could be considered to be a complaint about the current operation of Monte's Lounge rather than an objection to the application to the variation of its licence conditions, Mr Glover does raise concerns about minors frequenting Monte's Lounge to consume alcohol. As such, I am of the view that the objection has been made on the ground that the variation of conditions may or will adversely affect the amenity of the neighbourhood and or the social conditions in the community and as a result meets the necessary grounds to qualify under the Act as an objection requiring a Hearing.

Objection from Dr John Boffa (People's Alcohol Action Coalition)

- 15) Dr Boffa has lodged the objection on behalf of the People's Alcohol Action Coalition (PAAC), a local action group aimed towards reducing alcohol-related harm. Pursuant to Section 47F(3)(f) of the Act, PAAC is a community based organisation and therefore has standing to object.
- 16) Although not date stamped upon receipt, the objection is dated 30 April 2014 and I have determined to accept that it was received by GLS within the time allowed within which to lodge an objection.
- 17) PAAC, whilst commenting on many aspects of the current and future operation of Monte's Lounge should the variation to licence conditions be granted advises that their objection relates specifically to the noise and entertainment conditions contained within the current licence and that they do not object to the remaining licence conditions upon which a variation has been sought. In this regard, PAAC raises concerns regarding increased noise affecting the residents in the area.
- 18) Given that the objection raises concerns that the granting of a licence will have a negative impact to the amenity of the area, the objection meets the necessary grounds to qualify under the Act as an objection requiring a Hearing.

Objection from A/Superintendent Peter Dash (Northern Territory Police)

- 19) Section 47(3)(c) allows members of the Northern Territory Police to object to an Application. A/Superintendent Dash is a member of the Police Force acting in that capacity within the meaning of Section 47F(3)(c) and stationed at the Alice Springs Division. As such A/Superintendent Dash is a valid objector.
- 20) Although not date stamped upon receipt, the objection is dated 1 May 2014 and I have determined to accept that it was received by GLS within the time allowed within which to lodge an objection.
- 21) The objection is based on concerns that the variation of the licence from a 'Restaurant' Licence to an 'On' Licence will impact adversely on the surrounding neighbourhood through persons consuming alcohol in the area and the potential for an increase in drink driving. Additionally, the variation may lead to more violence occurring through greater consumption of alcohol thereby adversely impacting on the public safety and social conditions in the community.
- 22) Given that the objection raises concerns that the granting of a licence will have a negative impact to the amenity of the area and that it will have an adverse affect on

the public safety and social conditions in the community, the objection meets the necessary grounds to qualify under the Act as an objection requiring a Hearing.

Applicant's Response to Objections Received

- 23) The applicant, Mr Mulga has responded to each of the objections. With respect to the objection raised by Mr Glover, Mr Mulga is of the view that the objection does not demonstrate as to how the variation would adversely impact on the amenity of the neighbourhood, health, education, public safety or social conditions in the community.
- 24) Regarding the objection lodged by PAAC, Mr Mulga is of the view that nearby residents would be better positioned to raise any concerns caused by noise as opposed to this issue being raised by PAAC.
- 25) With respect to the objection lodged by the Northern Territory Police, Mr Mulga raises concerns that whilst the Police have commented about anti-social behaviour in the area, they are unable to directly relate that behaviour to the patrons of Monte's Lounge.

Decision

- 26) It is noted that other parties who were provided with copies of the application including the Alice Springs Town Council and the Northern Territory Fire and Rescue Service had no adverse comment to make on the application.
- 27) The objection has been assessed according to the requirements of the Act to determine whether the objectors have standing to lodge an objection, to determine whether the objections were lodged within the required time and to determine if the grounds specified in the objection meet the requirements of Section 47F(2) of the Act.
- 28) The Commission has determined that all three objections lodged are valid and require a Hearing pursuant to Section 47I(7) of the Act.

Cindy Bravos
Commission Member

29 July 2014