

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Monte's Lounge 95 Todd Street Alice Springs NT 0850
Applicant:	Monte's Bar & Bistro Pty Ltd
Nominee:	Matt Mulga
Licence Number:	80515500
Proceeding:	Application for Variation of Licence Conditions Pursuant to Section 32A of the <i>Liquor Act</i>
Heard before:	Mr Richard O'Sullivan (Chairman) Ms Helen Kilgariff Mr Paul Fitzsimons
Date of Hearing:	13 December 2011
Appearances:	Mr Alan Woodcock for the Licensee Senior Inspector Wayne Sanderson for the Director of Licensing Dr John Boffa - People's Alcohol Action Coalition Mr John Oliver, Senior Fire Safety Officer with NTFRS A/Commander Michael White – NT Police Mr Robert Cowan - Director of The Rock Bar

Background

- 1) The Licensee of Monte's Lounge has made application pursuant to Section 32A of the *Liquor Act* ("the Act") for the removal of the Restaurant Licence Condition which states:

"Patrons to be seated at a table."

- 2) Following advertising of this application a number of objections were lodged and were deemed under Section 47F of the Act to require a Hearing. This Hearing was conducted on 13 December 2011 and an Interim Decision handed down as follows:

"Full reasons for this Decision will be released early in the 2012 New Year, but in the interim the Commission advises as follows.

The Commission has had no compelling evidence submitted to it warranting the overturn of its Decision of 30 December 2010 wherein it refused to approve the variation of the Licence Condition by removing the requirement for patrons to be seated.

The Commission advises that in its full Reasons for Decision it will provide guidelines in interpreting and applying the "Patrons to be seated at a table" condition applicable in the Monte's Lounge and other Restaurant Licences and On Licence premises."

- 3) Previously Monte's Lounge had made an application for approval to undertake material alterations to the premises and for variations of the liquor licence, which included an application to remove the licence condition that *"Patrons to be seated at a table"*.
- 4) In relation to the requirement to be seated, following the earlier application the Commission handed down a decision on 30 December 2010 which inter alia stated:

- 63) *“The Commission notes the concept that Mr Mulga is attempting to achieve at Monte’s so far as the provision of alternative and contemporary entertainment is concerned. The witnesses called by Mr Mulga spoke positively of the nature of entertainment proposed and the niche market that would be catered for in Alice Springs. The Commission notes that the objects of the Liquor Act include the facilitation of a diversity of licensed premises for the benefit of the community and agrees that the business plan proposed by Mr Mulga would provide an entertainment venue that is presently not catered for in the town on a permanent basis or from a fixed location.*
- 65) *Mr Mulga has sought the removal of the licence conditions requiring the premises to have the appearance of and trade predominantly as a restaurant and for patrons to be seated at a table. This component of the application appears to have been of concern to the majority of the objectors.*
- 69) *Having said that, the Commission is not inclined to relax the licence conditions for the restaurant to such an extent as to completely alter the concept and nature of the licence or the type of business that is conducted at the premises. On balance the Commission is of the view the existing conditions relating to the appearance of the premises as a restaurant, and the requirement for patrons to be seated should remain in the licence. Many of the functions proposed by Mr Mulga could be catered for with the existing licence conditions in place, for example, cinema and comedy nights.*
- 71) *The Commission notes that one of the current licence conditions requires that “patrons be seated at a table”. Mr Mulga submitted that this was an impractical condition to enforce at Monte’s Lounge due to the layout of the premises and the discrete areas that make up the licensed area. He raised the issue of patrons moving away from a table to smoke in the designated smoking area.*
- 72) *The Commission is not persuaded by that argument. The premises hold a restaurant licence including an on-licence component and not a tavern or hotel licence. The seating requirement is not unusual for licensed restaurants and, despite the new smoking laws, most licensees appear to be capable of complying with their licence conditions. It is a matter for Mr Mulga how he manages that licence or configures and develops the premises, including the management of a designated smoking area.”*
- 5) The new application before the Commission is isolated to that of the removal of patrons to be seated at a table condition of the current liquor licence. The Licensee has not sought to alter other conditions such as the venue being required to have the appearance at all times of a restaurant and has not sought variation to the requirement not to advertise the availability of liquor without a meal.

Hearing

- 6) Counsel for the Licensee, Mr Alan Woodcock, outlined the nature of the application and reasons the applicant was seeking the removal of the requirement that patrons be seated. He advised that some of his submission would traverse material covered during the previous Hearing where the application included the removal of the requirement for patrons to be seated and the Commission’s decision of 30 December 2010 in respect of that application.
- 7) He advised the condition of patrons to remain seated was almost impossible to adhere to. He further advised that the sale of food with niche market alcohol and the retention of the restaurant status of the venue was not licence creep as claimed in the Police objection to the previous application made in 2010.
- 8) Mr John Boffa appeared as an objector on behalf of the People’s Alcohol Action Coalition and outlined that Monte’s Lounge provided responsible and well managed but seated drinking in association with good food. He opined that the venue had a unique character where the consumption of alcohol practices are well managed. He further advised support

of the venue "in its current state". He was concerned that if the application was approved it would or could turn the venue into a public bar or nightclub.

- 9) He presented to the Commission that the application was disingenuous in what it is seeking. He submitted that it was a specious argument that the required to be seated is nearly impossible to comply with.
- 10) Acting Commander of Northern Territory Police, Michael White, expressed concern that a change from a restaurant to a place where people can stand up in numbers is not supported. Police objections on the grounds outlined in the 2010 application were repeated.
- 11) Mr Robert Cowan of The Rock Bar stated that licence creep would be enabled if the condition to be seated was removed. He expressed concern that the current dining tables would be removed if the condition of the licence did not require all patrons to be seated.
- 12) As an operator of a venue, which to some degree competes with Monte's Lounge, Mr Cowan conceded that Monte's Lounge, as currently operated, fills a niche within the Alice Springs market.
- 13) In response to the objectors who made submission before the Hearing and objectors whose correspondence was before the Commission in written form, Mr Woodcock made a number of observations in support of his client's application as follows:
 - The bar is small and it is not possible for numbers to congregate around the bar as occurs in a tavern or hotel;
 - There will be no encouragement to have people drinking while standing;
 - His client had stated that the venue would be unlikely to see more alcohol sold or consumed if the application was successful as the venue attracted a different clientele to that of the customary tavern or hotel;
 - Mr Matt Mulga, Nominee advised that the premises had no televisions, no gaming machines and no stools at the bar as would be customary with tavern and hotel licences;
 - The premises sold boutique beer only, especially on tap;
 - The demographic of the client base was that of young professionals and was particularly attractive to females given the refined, safer and up market nature of the premises.
- 14) Mr Woodcock and his client put to the Commission that the current requirement to be seated forced them to rely on individual interpretations on whether to allow a person to stand individually or people to stand in groups.
- 15) In presenting summary submissions, Mr Woodcock advised he could allay fears of licence creep in relation to consequences of removal of the seating condition. He submitted that the Commission can be comforted if the condition is removed that it will not lead to a change in the business plan, the theme or operation of Monte's Lounge.
- 16) Further, he submitted that the Licensee does not seek in any way to change the culture of the venue. Currently its operation relies on the favourable reading of the seating condition and the applicant seeks certainty as the premises is undergoing considerable investment and vagueness of interpretation of the seating condition does not provide the climate for such investment.
- 17) Senior Inspector Wayne Sanderson addressed the Commission on behalf of the Deputy Director (South) of Licensing. He advised that clarity was sought in relation to the seating condition which exists in many restaurant licences. There would also be a consequent

need, if the application is approved, for clarification of “permitted standing”, whilst predominantly trading and giving the appearance of a restaurant, a current licence condition of Monte’s Lounge.

- 18) Senior Inspector Sanderson advised the Commission that if it were inclined to approve the application the premises should be given a maximum number of patrons able to be standing at any time at the venue.

Consideration of the issues

- 19) The Commission is mindful of the previous application in 2010 wherein the Licensee sought to remove a number of licence conditions and made application for approval to undertake material alterations. This earlier application resulted in the lodgement of nine objections which the Commission carefully considered during its deliberation and at Hearing.
- 20) The Commission, as advised in the Interim Decision handed down on 16 December 2011, is not persuaded of the need to lift the patrons to be seated requirement of the licence. It does have concern that the alternative or unique environment of the venue, which on all evidence does attract a niche and socially responsible clientele, could change its nature if the seating condition was removed.
- 21) In this instance the use of the word “could” (in the above sentence) does not imply such a change in cultural and social environment of the premises is certain or likely to change, but to the Commission’s view it does present an element of risk where vertical drinking could become more common and in itself this takes away the emphasis on consumption of food, which the Commission is advised is currently a major drawcard for the venue.
- 22) In its Interim Decision the Commission advised it would clarify, for this Licensee and for affected Licensees in general, the application of the requirement for patrons to be seated at a table condition applicable to many licences.
- 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.

Decision

- 27) As previously advised in the Interim Decision of 16 December 2011, the Commission has had no compelling evidence submitted to it warranting the overturn of its Decision of 30

December 2010 wherein it refused to approve the variation of the Licence Condition by removing the requirement for patrons to be seated at a table.

Richard O'Sullivan
Chairman

14 February 2012