

Northern Territory Licensing Commission

Decision on Whether Objections Will Proceed to Hearing

Premises:	Savannah Way Motel 812 Robinson Road Borroloola NT 0854
Applicant:	Radovic Investments Pty Ltd
Nominee:	Patricia Elmy
Licence Number:	80518107
Proceedings:	Hearing to Consider an Application to Vary Liquor Licence Conditions and Objections to the Application
Members:	Mr Richard O'Sullivan, Chairman Mr Philip Timney, Legal Member Mr Walter Grimshaw, Member
Appearances:	Mr Graeme Buckley, Counsel for the Licensee (via telephone) Mr Antony Downs, Counsel for the Objector, Davis Whiteman Pty Ltd Licensing Inspector Mark Wood, representing the Director of Licensing
Date of Hearing:	7 April 2011

Background

- 1) On 15 December 2010 Ms Patricia Elmy, Nominee of Radovic Investments Pty Ltd, the Licensee of the Savannah Way Motel Borroloola ("the Premises") applied pursuant to Section 32A of the *Liquor Act* ("the Act") for an extension of the licensed area of the Premises and variations to conditions attached to the Liquor Licence. The extension of the licensed area, as indicated in the original application, was to include all the area within the fenced boundary of the property within the licensed area. Currently the licensed area is limited to only the restaurant area of the Premises.
- 2) The application for variation of licence conditions seeks amendments to remove the restriction requiring the sale of alcohol only for consumption ancillary to a meal, to allow the sale of alcohol to bona fide lodgers and guests of the bona fide lodger (in the presence of the lodger), without the requirement to purchase a meal. The variations also seek to permit bona fide lodgers to purchase either a bottle of wine or a six pack of beer only for consumption within the extended licensed area including in the rooms of lodgers and other communal areas.
- 3) One objection to the applications was received from Mr Andrew Davis and Ms Toya Whiteman, Directors of Davis Whiteman Pty Ltd and Dual Nominees of the Borroloola Hotel Motel. By decision dated 24 March 2011, the Chairman determined that the objection was valid and referred the matter to a Hearing before the Commission. The Hearing was convened in Borroloola on 7 April 2011.

The Hearing

- 4) At the commencement of the Hearing Mr Downs sought access to the "Commission file" relating the original application for a liquor licence lodged by Radovic Investments Pty Ltd. Mr Downs stated he required access to the Department of Justice file to consider the type

of licence originally applied for and the proposed concept for the premises so as to be able to properly advise his clients in respect of their objection. Mr Buckley objected to the production of the file. He stated that the Commission must be aware of what was contained on the file and queried the relevance in terms of the objector's position. He noted that Section 47F(2)(a) and (b) of the Act set out the grounds for an objection and consideration of an earlier liquor licence application was not one of the specified grounds for objection. Mr Buckley added that his client had not had access to the file and submitted that the request on the part of the objectors was little more than a fishing expedition. He confirmed that his client had no objection to the Commission inspecting the file.

- 5) The Hearing was briefly adjourned to allow Commission members to inspect the file. Following the adjournment the Commission informed the parties that it had inspected the file, including the original application for a liquor licence for the Savannah Way Motel. The Commission determined not to release the file for inspection by the objectors on the basis there was nothing on the file of relevance to the current proceeding. The licence granted by the Commission reflected what had been applied for by the Licensee, namely a restaurant licence with the sale of alcohol being ancillary to the consumption of a meal. The Commission noted in passing that the file belonged to the Director of Licensing and the Commission, as an independent Statutory Tribunal, does not maintain files pertaining to individual licensees.
- 6) The Commission then adjourned for the purposes of conducting a viewing of the premises.

Submissions on behalf of the Licensee

- 7) Following the resumption, Mr Buckley tendered three plans of the Premises, depicting the site as it currently exists and showing the proposed extension to the licensed area of the Premises and the location of a proposed additional accommodation block.
- 8) While the initial advertised application sought the licensed area be extended to all areas within the boundary fence, the applicants wished to reduce the licensed area variation to the smaller core area of the complex as outlined in Exhibit 1. The application also advertised a variation that bona fide lodgers *"may purchase a bottle of wine or a six pack of beer only to consume in the room of the lodger"*. The Commission was advised that the applicant wished to allow the consumption of the alcohol so purchased in the room of the lodger, verandah or other area within the licence boundary.
- 9) Mr Buckley informed the Commission that the current licence allowed for the consumption of liquor only within the defined area of the restaurant and only in conjunction with the purchase of a meal. He noted that there was some confusion as to the hours that were being applied for under the variation application and confirmed that the Licensee was seeking no change to the current trading hours or to the trading conditions applicable to the restaurant. Mr Buckley also tendered the RSA certificates for all staff of the Premises who are involved in the sale or service of alcohol.
- 10) Mr Buckley stated that the application for variation of the licence conditions was driven by comments from motel clients who wished to purchase alcohol from the restaurant for consumption in their rooms or on the verandahs, without the requirement to purchase a meal. This was not possible at present as the licence conditions provide that only the restaurant area is licensed and all consumption of alcohol must take place in the restaurant and be ancillary to the purchase of a meal. He noted that the Licensee did not wish to have two separate licensed areas and, if the extension of the licensed area was approved, the proposal was to subsume the existing restaurant area into the extended licensed area of the Premises.
- 11) Mr Buckley made the following observations in support of the applications before the Commission. Alcohol sales for consumption other than in the restaurant would be only to lodgers, whose bona fides could be checked from the existing guest booking system. Service of alcohol would be via the restaurant only and trading hours would remain the

same as at present. Alcohol sales would be limited to beer and wine, as is currently permitted by the licence, and each guest would be limited to three invitees. He noted also that the Director had approved material alterations to the premises to allow for the construction of an additional accommodation block. Mr Buckley confirmed that a new toilet block had been constructed in readiness for the expansion of the accommodation facilities and that the new rooms would be self-contained with their own bathroom and toilet facilities. He stated that this new investment in the premises by the Licensee was indicative of the need for quality accommodation and services in the Borroloola township.

- 12) Mr Buckley tendered letters in support of the applications from Mr Mark Leadley, a helicopter pilot and regular guest of the Premises, Ms Stephanie Chan, an employee of and the accountant for the Licensee, and Mr Neil and Ms Yvonne Bradley, regular guests of the Premises who reside at Manangoola Station. He also tendered the draft Alcohol Management Plan ("AMP") for Borroloola and submitted there was nothing in the applications before the Commission that offended the key provisions of the AMP.
- 13) Mr Buckley submitted that the application sought a modest variation of licence conditions that was client driven and not simply a case of licence "creep" on the part of the Licensee. He noted that there was a demand for good standard accommodation in Borroloola and that clientele and visitors to the Premises were predominantly business people who did not pose any significant risk to the community in terms of irresponsible alcohol consumption. He noted that there had been no objection to the applications from Police or the Health agencies which, he submitted, was reflective of the minimal changes to licence conditions that were under consideration.
- 14) In respect of the Borroloola AMP, Mr Buckley noted that one of the Vision Statements was to "encourage and foster tourism and create a community that is desirable and safe to visit" and that one of the Aims and Objectives of the AMP is "encouraging safe drinking practices". He submitted that the type of premises operated by the Licensee, and the variations to licence sought, were in line with and supportive of those visions and objectives.
- 15) Mr Buckley submitted that the objection lodged on behalf of Davis Whiteman Pty Ltd was substantially without foundation. He referred to folio 18 of the Hearing Brief and the statement that the premises were subject to "many and frequent robberies". He stated that this was incorrect and the premises have only been targeted twice in October 2010 and this had resulted in tighter security. Sergeant Johnssen, OIC of the Borroloola Police Station, confirmed this to be the case. Mr Buckley submitted that the break-ins were not the fault of the Licensee who had reacted positively after the October incidents.
- 16) Mr Buckley noted that the guests of the Savannah Way Motel were generally public service or business travellers, and not residents of Borroloola, with the result they did not visit the premises for drinking sessions but rather to conduct their business and enjoy an alcoholic beverage at the end of their day. He conceded that invitees of guests may well be residents of Borroloola but stated they were unlikely to be the type of person who would contribute to the alcohol related issues being addressed by the AMP.
- 17) Mr Buckley emphasised that his clients were operating a motel business and did not intend to put up with alcohol related nuisance behaviour by guests or invitees. The application for variation and extension of the licensed area merely seek to allow guests to consume a limited supply of alcohol away from the restaurant area but still on the licensed premises, either in their rooms or on the verandahs and the common areas. He noted that the Licensee has no record of alcohol related offences or irresponsible service practices. He concluded by submitting that what is being sought is the normal type of licence conditions attached to a motel whereby guests can consume alcohol purchased on the premises for consumption in their rooms, without the Licensee having to install mini-bars in each room. Mr Buckley stressed that the application was not seeking a take away licence and, if the application is approved, all alcohol purchased from the restaurant would be consumed within the proposed extended licensed area.

Submissions on behalf of the Objector

- 18) Mr Downs sought to tender a copy of the letter dated 24 February 2010 lodged by the operators of the Savannah Way Motel objecting to the application by his clients to re-open the public bar within the Borroloola Hotel Motel. In response to a query from Mr Buckley regarding the relevance of the letter and a potential expansion of the scope of this Hearing, Mr Downs submitted that the letter reflected the views of the Licensee of the Savannah Way Motel some fourteen months previously in terms of an additional or extended liquor outlet in Borroloola. Mr Downs then tendered an agreement, dated 23 March 2010, between the Licensees of the Borroloola Hotel and the Savannah Way Motel in respect of agreed trading hours for the Hotel. Mr Buckley also objected to the tender of that document on the grounds of relevance. The Chairman noted that both letters refer to the Borroloola AMP and therefore may be of some relevance. He informed the parties the Commission would accept both letters into evidence and determine what weight they should be given, depending on their relevance to this Hearing.
- 19) Mr Downs stated that the objection lodged by his clients does not relate to the extension of the licensed area or the sale of unopened alcohol to guests. He stated that the objection was in respect of uncertainty as to what the Licensee was seeking. For example, the application seeks to allow the sale of a 6 pack of beer to lodgers but does not state what type of beer is to be sold. Mr Downs also noted that the sale of alcohol to lodgers and billing to their room account may constitute a breach of the licence condition prohibiting sales of alcohol on "book-up".
- 20) Mr Downs queried the need for the licensed area to be extended to cover the entirety of the Premises if the purpose behind the application was simply to vary the licence from a restaurant licence with the sale of alcohol ancillary to a meal to an on-licence in an expanded restaurant area. He stated that there was no objection to the public of Borroloola utilising the existing restaurant but his clients do have concerns about residents of the township using the premises as a drinking venue with no requirement to purchase a meal. He noted that the applications as advertised were unclear in respect of the sale of alcohol, without a meal, to invitees of lodgers and to people not staying at the Motel.
- 21) Mr Downs referred the Commission to the objection lodged by the Licensee of the Savannah Way Motel to the application by his clients to re-open the public bar of the Borroloola Hotel. At the time they stated that it was the wrong time to open a further licensed venue in Borroloola as the development of the AMP was in progress and the township had suffered in the past due to the history of irresponsible service of alcohol associated with the Borroloola Hotel. He noted that the current application did not address all the initiatives contained in the AMP, including the proposal for 2 alcohol free days per month.
- 22) Mr Downs noted the submissions made on behalf of the Licensee that the majority of their guests were business people and queried whether those clients would regularly require alcohol sales during the day time. In conclusion Mr Downs stated that this application was an example of licence creep in respect of a limited type of licence that had been granted fairly recently. He reiterated that his client's major concern was not the potential for commercial competition but rather the uncertainty associated with the application generally and specifically in respect of the type of alcohol that could be sold were the variations to be granted. He submitted there was no public interest in granting the extension of the licensed area or the variations to licence conditions as sought.
- 23) In response, Mr Buckley reiterated that the applications before the Commission were intended to do no more than allow bona fide lodgers to purchase alcohol without the requirement to consume a meal in the restaurant and to be able to consume that alcohol in areas other than the restaurant. He added that proposal was also that a lodger could also invite three other persons to join him or her in the restaurant for a drink without a meal. Members of the general public who visit the Premises must purchase a meal in the restaurant to be able to purchase alcohol that is the status quo for that category of clients remains.

- 24) Mr Buckley agreed that the Commission should take account of the draft AMP in considering the current applications and that there was nothing in the proposed variations that would infringe on the main thrust and intent of the AMP. He emphasised that apart from the objection by the Nominees of the Borroloola Hotel Motel there had been no objections to the applications from any other person or entity within the Borroloola community. Mr Buckley submitted this was an indication of community support for the proposals put forward by his clients and reflective of the modest amendments to the liquor licence that have been requested.
- 25) Mr Downs stated that a lack of objections was not necessary an indication of community support and noted that there was no indication the applications were supported by the local council. He drew the Commission's attention to two anomalies in respect of the applications the subject of this Hearing. Firstly, the postal address of the Savannah Way Motel is Robinson Road, Borroloola, however the sign advertising the applications for variation of conditions and extension of the licensed area was displayed around the corner of the premises and away from the major thoroughfare of Robinson Road.
- 26) Secondly, Section 32A(5) of the Act requires the Director to inform the CEO of the local council of any application to vary the conditions of a liquor licence. Mr Downs stated that this had not occurred in respect of the Savannah Way Motel applications. Inspector Wood confirmed that, due to an administrative oversight, the CEO of the Borroloola Community Government Council had not been informed of the applications that were now before the Commission. Mr Wood also confirmed that the advertisement notifying members of the public of the applications was fixed to a fence of the Premises, around the corner from Robinson Road, in a location which actually faces the Council offices.
- 27) Mr Buckley submitted that the failure to notify the CEO of the Council was a technical breach of the Act that came about through no fault of his client. He advised that his preference was not to make submissions on this issue from the bar table however, if the Commission required submissions, he would be happy to provide those in due course. Mr Buckley also queried Mr Down's capacity to raise this issue as it is not referred to in his clients' objection letter. He also stated that the question of advising the CEO raised a threshold issue that should have been raised at the outset of the Hearing and not once all the evidence had been adduced.
- 28) Mr Buckley added that the requirement to notify the CEO needs to be assessed in the practical sense, namely by asking "Was the CEO aware of the current application lodged by his clients?" He submitted that allowing that the Council chambers were directly across the road from the Savannah Way Motel the obvious conclusion was that the CEO was aware of the applications currently before the Commission albeit he or she was not formally advised by the Director.

Licensee's response to the Objectors Submissions

- 29) Mr Buckley conceded that the notification of the alterations sought by the Licensee were not as clear as they might have been, resulting in the impression that this was a case of licence creep. He reiterated that this was not the case and the variations were sought to allow the Licensee to offer the types of services normally associated with a Motel through a mini bar facility. He submitted that what was being applied for was not really an on-licence where members of the public could purchase alcohol without a meal but rather a motel type licence where bona fide guests could purchase alcohol for consumption on licensed premises, including in their rooms and on the verandahs.
- 30) Mr Buckley stated that there had been considerable discussion during the Hearing in respect of the sale and supply of alcohol to invitees of guests of the Motel and this seems to have been a cause of some probing by the Commission and concern of the objector. He confirmed that the Licensee was primarily concerned with catering for the needs and requirements of guests of the Motel and was happy to accept the Commission's decision in respect of restrictions in the supply of alcohol to invitees.

- 31) Mr Buckley referred to the apprehension that the Premises may become a drinking venue for local residents. He stated that this was not the aim of the Licensee, however there was nothing that could be done about the apprehension about what may eventuate. He noted that the premises would retain only one point of sale for alcohol, being the restaurant, which would enable the Licensee to properly monitor alcohol sales to individual guests and their invitees.
- 32) Mr Buckley concluded by noting that the Borroloola AMP had been raised during the hearing however, in his submission, there was nothing in the application before the Commission that would offend the AMP. He stated that an enhancement of the facilities available to guests of the Premises was in accordance with the vision statement set out in the AMP of encouraging tourism and creating a community that is a desirable place to visit.
- 33) The Commission resumed the Hearing in camera for the purposes of considering the financial position and trading figures presented by the Licensee.

Consideration of the Issues

- 34) Turning first to the failure to notify the CEO of the of the Borroloola Community Government Council of the application for variation, Section 32A(5) of the Act provides:
- 5) If the application relates to premises within the area of a shire council, the Director must, as soon as reasonably practicable, inform the CEO of the council that the application has been made.*
- 35) Inspector Wood confirmed that no formal letter was sent to the CEO advising him or her of the applications for extension of the licensed area and the variation of licence conditions. The Commission notes the Section merely requires that the Director “inform” the CEO of an application for variation of licence conditions. There is no statutory requirement for formal notification via letter or the like, although it is accepted that this would be the usual means of notification.
- 36) The Commission noted whilst in Borroloola for the Hearing that the sign advising of the applications was posted on a boundary fence of the Savannah Way Motel that faces of the Council chambers. The Commission also notes that the Borroloola Township comprises a relatively small community with a very limited number of licensed liquor outlets and it would be surprising if the CEO was not aware of the applications. Also, the Hearing conducted by the Commission was held in the offices of the Council and yet the CEO had raised no issue in respect of the Director’s failure to provide formal notification. Nor has the CEO given any indication he wished to lodge an objection even when the Hearing was scheduled to be held in Council offices.
- 37) In all the circumstances, and adopting a pragmatic approach, the Commission is satisfied in all probability that the CEO of the Borroloola Community Government Council was aware of the applications and was not minded to lodge any objection, either formally or informally.

Application for Extension of the Licensed Area

- 38) During the course of the Hearing Mr Buckley informed the Commission that the Licensee has reduced the area sought to be included in the extended licensed area significantly so as to include predominantly the accommodation blocks and the area proposed for further accommodation. The objection to this component of the applications raised issues in respect of adequate lighting and the potential for children from the nearby school to be exposed to patrons consuming alcohol near the boundary fences of the premises.
- 39) The Commission is not persuaded that this component of the application raises any risk in terms of the objects of the Act or the public Interest Criteria set out in Section 6. Under the licence as it presently exists lodgers are restricted to consuming alcohol only in the restaurant and only ancillary to the purchase of a meal. Having conducted a viewing of the

premises it is clear to the Commission that the purpose of extending the licensed area is to allow lodgers of the premises to consume alcohol, purchased on the Premises in areas other than the restaurant, for example, in the privacy of their own room or on the verandahs or in the communal areas of the Premises. The Commission agrees with the submission presented on behalf of the Licensee that this is the type of service that is expected to be available in motel style accommodation, either through a mini bar service or some other arrangement as is proposed in this instance.

Application for Variation of Licence Conditions

- 40) The Commission agrees with the position put by Mr Downs that the application in respect of the sale of unopened alcohol to lodgers, as originally framed, was confusing and not clearly articulated. The Commissioners held the same view. However, during the course of the Hearing Mr Buckley clarified what was being sought. Leaving aside the issue of the sale of alcohol to invitees or guests of lodgers, he advised that the Licensee is seeking a variation to allow for the sale of a six pack of beer or a single bottle of wine per day to bona fide lodgers for consumption on the premises, within the proposed extended licensed area identified in Exhibit 1, but outside the current licensed restaurant area.
- 41) The Commission notes the submission of the objector in respect of the lack of any restriction on the type of alcohol that would be available to lodgers for consumption on premises without the purchase of a meal. The Commission is fully aware that the objector's premises, the Borroloola Hotel Motel, is significantly restricted in that regard. However, that submission does not properly take account of the different nature of clientele of the two premises and the different licence types held. The Borroloola Hotel Motel includes a restaurant licence and a public bar that is open to the general public, including residents of Borroloola. In the past and prior to Mr Davis and Ms Whiteman taking over the premises, the manner in which the Borroloola Hotel Motel was operated had a significantly detrimental effect of the amenity of the community through alcohol related violence and anti-social behaviour. The limitation in respect of the types of alcohol available at those premises is reflective of that history, the concessions made by the Licensee at the Hearing and the concerns expressed by objectors to the grant of the Public Hotel licence.
- 42) The Savannah Way Motel liquor licence caters to a far more restricted category of clients, being bona fide guests of the Motel (and their invitees) and restaurant patrons. The existing restaurant licence is not restricted in respect of the type of alcohol that may be sold to clients of the restaurant. The premises has operated its business under the liquor licence without incident or breach of licence conditions since it was granted in August 2009. The Commission largely accepts the submission of Mr Buckley that the variations sought to licence conditions are modest in nature and unlikely to have any impact on the social wellbeing of the community or the alcohol related problems that arise from the indiscriminate sale of alcohol.
- 43) Under the current liquor licence for the Savannah Way Motel, liquor may only be sold for consumption on the premises ancillary to a meal, with the "licensed premises" being limited to the delineated restaurant area. Currently there is no limit on how much or what type of liquor a lodger may purchase and consume so long as the consumption takes place in the restaurant area and is accompanied by the purchase of a meal. As the licence currently stands, walk in diners and guests of lodgers may purchase liquor subject to the same conditions.
- 44) In so far as the variation is applicable to lodgers staying at the premises, the Commission does not view the variation sought as particularly significant or as a variation that is likely to have any detrimental impact of the health, safety and public amenity of the community so far as alcohol consumption is concerned. The variation sought will not create a takeaway licence and alcohol purchased under the proposed varied conditions will still be required to be consumed on the premises, albeit within an enlarged licensed area.

- 45) The Commission notes the evidence of the Licensee that walk in patrons of the restaurant, who are not staying at the Motel, will not be able to purchase alcohol other than as ancillary to a meal, as is the case at present. The Commission is of the view that the same conditions should apply to invitees or guests of lodgers. The Commission notes the concession made during the course of the hearing that invitees would be limited to three per lodger. Even with that limitation, the Commission is not minded to approve a variation that would allow a lodger and three invitees to purchase a six pack each (or four bottles of wine) for consumption in the rooms or in areas other than the restaurant. The Commission is of the view that sales for consumption other than in the restaurant should be limited to six beers or one bottle of wine per lodger. It is a matter for the lodger if he or she wishes to share the alcohol with invitees however the Commission is firmly of the view that sales in this category should be limited to lodgers only.

Decision

- 46) The Commission approves the extension of the licensed area for the Premises to the area outlined in red and marked "Proposed Licensing Zone" on Map 1 tendered during the Hearing and marked as Exhibit 1. That variation will have the effect of authorising the consumption of liquor, purchased from the restaurant, within the redefined licensed area.
- 47) The Commission also approves a variation of the licence conditions to allow for the sale of alcohol to bona fide lodgers other than in conjunction with the purchase of a meal. Such sales are limited to maximum of one six pack of beer or one bottle of wine per lodger per day. The Commission directs that the Licensee implement and maintain a system of recording alcohol sales to lodgers so as to ensure the limitation on sales is adhered to by lodgers and staff of the Licensee. The system is to be developed to the satisfaction of the Director.
- 48) The Commission is not persuaded to vary the licence conditions in respect of the sale of alcohol to invitees or guests of lodgers and those persons will be restricted in respect of the purchase of alcohol in the same way as members of the general public utilising the restaurant.

Richard O'Sullivan
Chairman

19 May 2011