

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
License Number:	80518107
Objectors:	Daviswhiteman Pty Ltd Ms Toya Whiteman and Mr Andrew Davis
Legislation:	Sections 4F to 47I of the <i>Liquor Act</i> and Section 28 of the <i>Interpretation Act</i>
Decision of:	Richard O'Sullivan
Date of decision:	24 March 2011

Summary of Decision

- 1) That the Commission conduct a Hearing in respect of the objection received on behalf of Daviswhiteman Pty Ltd (Ms Toya Whiteman and Mr Andrew Davis).

Background

- 1) On 15 December 2010 Ms Patricia Elmy, Nominee of Radovic Investments Pty Ltd trading as Savannah Way Motel Borroloola applied pursuant to Sections 32A of the *Liquor Act* for an extension of licensed area and variation of licence conditions..
- 2) The Application was advertised in the Katherine Times on Wednesday 19 January 2011 and Wednesday 26 January 2011 pursuant to Sections 119(3) and 32A(3)(a) of the Act.
- 3) The advertisement was as follows:

Liquor Act

1st notice of application for Extension of licensed area and variation to licence conditions

Radovic Investments Pty Ltd, hereby gives notice that it has applied to the Northern Territory Licensing Commission for an Extension of Licensed area and Variation of liquor licence conditions for the premises known as Savannah Way Motel Borroloola (Number 80518107) located at 812 Robinson Road, Borroloola, NT.

The Extension of the licensed area is to include the fenced boundary of the property.

The Variation to the liquor licence will include the following:

- *The change from a Restaurant category licence to that of an On Licence.*
- *Deletion of the condition that liquor shall only be sold for consumption ancillary to a meal.*

The following licence conditions to be included:

- *Liquor shall only be sold to members of the public for consumption ancillary to a meal.*
- *Liquor may be sold seven (7) days a week between the hours of 11.30 and 23.00 to bona fide lodgers and guests of the bona fide lodger (in the presence of the lodger) without the requirement of a meal.*
- *Light meals and snacks to be available at all times the premises is open for trade.*
- *Bona fide lodgers may purchase a bottle of wine or a six pack of beer only to consume in the room of the lodger.*

All proposed sales from the current restaurant point of sale.

This application will be advertised in the Katherine Times on a Wednesday 19 January 2011, and on the following Wednesday 26 January 2011.

The objection period is deemed to commence from the publication date of the second advertisement.

Pursuant to Section 47F(2) of the Liquor Act an objection may only be made on the ground that the grant of the licence 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 8973 8811. Objections to this application should be lodged in writing with the Director of Licensing, PO Box 2138, Katherine, within thirty (30) days of the date of the second advertisement.

Dated this 12 January 2011

- 4) Pursuant to Section 47F(4)(d) an objection must be lodged within thirty (30) days after the publication of the last notice, namely on or before Thursday 24 February 2011
- 5) 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:*
 - (a) an application for the grant of a licence, as notified under Section 27*
 - (b) an application for a variation of the conditions of a licence, as notified under Section 32A*
 - (c) an application for the substitution of other premises for the premises specified in a licence, as notified under Section 46A*

- (d) *an application for approval to make a material alteration to licensed premises, as notified under Section 119*
- (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)*
- 6) Section 47F(1)(b) provides that a person or organisation may object to an application for variation of licence conditions under Section 32A, and Section 47F(1)(c) allows for objections to an application for substitution of other premises under Section 46A, the types of applications lodged Sloaney Pty Ltd.
- 7) Northern Territory Police have responded to the application as follows:

“Police will not be lodging a formal objection to this licence providing the conditions as stipulated...are stringently imposed.”

No response was provided by the Department of Health and Community Services. One objection was lodged on behalf of Daviswhiteman Pty Ltd, Licensees of the Borroloola Hotel Motel, by Mr Antony Downs of NT Law.

Objection from Daviswhiteman Pty Ltd - Ms Toya Whiteman and Mr Andrew Davis:

- 8) Both Mr Andrew Davis and Ms Toya Whiteman as Directors of Daviswhiteman Pty Ltd and Dual Nominees of the Borroloola Hotel Motel are residents of Borroloola and have their business within close proximity to the Savannah Way Motel.
- 9) The objection states that it is lodged on the grounds that the grant of the licence extension and variation as sought will adversely affect the amenity of the neighbourhood and the health, education, public safety and social conditions of the community.
- 10) The objection also refers to a Commission decision of 18 December 2007 in relation to an application for a liquor licence by Trfck Pty Ltd (then owners of the Borroloola Hotel Motel). In that decision the Commission recommended the establishment of an Alcohol Management Plan for Borroloola as a priority. The decision further stated that the plan should address issues such as:

- takeaway alcohol including the amount of takeaway a person should be able to purchase and at what premises
- options for on-premise drinking including appropriate venues
- alcohol free days

11) The objection states that the applicant is applying for a licence creep and is not consistent with the proposed Alcohol Management Plan for the township. It further adds that there is nothing to suggest the community needs another liquor outlet of the type proposed by the applicant.

Applicant's Response to Objections

- 12) Cridlandsmb, Lawyers on behalf of the applicants, have responded to the objection by raising administrative issues of the standing of the objection and of the objectors.
- 13) The response to the objection also raises the point that the grounds for the objection are framed identically to Section 47F(2) of the *Liquor Act* ("the Act"). It maintains that this recital of the Act is not supported by any material evidence as to how the applicants proposed variations will impact on the amenity of the neighbourhood or the health, education, public safety or social conditions in the community as required by the Act.
- 14) In relation to the possible commercial grounds for the objection, the applicant's lawyers point out that this objector is the only objection to the application.
- 15) With regard to the objectors raising the Commission's previous decision of 18 December 2007, the response is that the application should be dealt with on its merits rather than based on previous decisions which may have been based on different factors.
- 16) The objection has raised the issue of licence creep to which the applicant's lawyers have responded that the primary business of the Savannah Way Motel will not be changing. The response states that the application is in line with improvements to the premises and expansion of its accommodation capacity.

Determination

- 17) While there may be some motivation on competition grounds for the raising of the objection, the objection itself does encompass the grounds required under Section 47F(2) of the Act.
- 18) The Commission is also of the view that although Mr Antony Downs is the author of the objection, he is validly acting for the Licensee and its Directors. The Commission does not see grounds for dismissing the objection on both the standing of the objection or the objectors as outlined in the response by Cridlandsmb Lawyers.
- 19) Reference by the objector to earlier Commission decisions where the Commission was encouraging the development of a Borroloola Alcohol Management Plan, have application in this instance as the Alcohol Management Plans are key tools addressing health, public safety and social conditions in the community.
- 20) The objection was lodged within the required time as the closing date for objections was 24 February 2011 and the objection was received by the Director of Licensing on 22 February 2011.
- 21) Based on the above the Commission has determined that the objection is valid and requires a Hearing.

Richard O'Sullivan
Chairman

24 March 2011