



Director-General of Licensing

Decision Notice

Matter:	Application for Variation of Conditions of Liquor Licence
Premises:	Savannah Way Motel 812 Robinson Road Borrooloola NT 0854
Applicant:	Rodovic Investments Pty Ltd
Nominee:	Ms Patricia Elmy
Licence Number:	80518107
Objector:	Superintendent Steve Heyworth, Northern Territory Police
Legislation:	Section 32A of the <i>Liquor Act</i>
Decision of:	Director-General of Licensing
Date of Decision:	5 April 2016

Background

- 1) Radovic Investments Pty Ltd, the licensee of the Savannah Way Motel in Borrooloola ("the Motel"), applied to the Director-General of Licensing ("the Director-General") pursuant to section 32A of the *Liquor Act* ("the Act") for a variation of the conditions associated with the liquor licence issued for the Motel. The current licence conditions authorise the sale of liquor on premises but only for consumption ancillary to the purchase of a meal at the Motel restaurant. The conditions do however allow for restricted sales of alcohol to bona fide lodgers of the Motel without the requirement to purchase a meal. Alcohol purchased by bona fide lodgers must be consumed within the premises of the Motel.
- 2) The application for variation of licence conditions comprises two discrete variations. Firstly, a relaxation of the requirement for the purchase of liquor to be ancillary to the purchase of a substantial meal and a relaxation on purchase restrictions applicable to bona fide lodgers. The stated purpose for this request is to allow for the holding of prearranged functions where finger food only would be served and to remove the restriction on the volume of alcohol able to be purchased by lodgers. The second component of the application seeks authorisation for the sale of liquor for consumption away from the licensed premises, that is a take away liquor licence.
- 3) The Applicant is seeking the following amendments to the conditions currently attached to the liquor licence:

Current condition:

**Liquor To Be Sold
With Meal**

Liquor shall only be sold for consumption ancillary to a meal.

Proposed condition:

Liquor To Be Sold With Meal Liquor shall only be sold for consumption ancillary to a meal.

Liquor may also be sold to residents and bona fide guests attending at the premises for any pre-arranged function and at which finger food is to be served.

Current condition:

Bona Fide Lodgers Liquor may be sold 7 days a week between the hours of 11.30 and 23.00 to bona fide lodgers other than in conjunction with the purchase of a meal for consumption on the premises.

Bona fide lodgers are limited to a maximum of one six pack of beer or one bottle of wine per lodger per day for consumption on the premises.

Proposed condition:

Bona Fide Lodgers Liquor may be sold 7 days a week between the hours of 11.30 and 23.00 to bona fide lodgers other than in conjunction with the purchase of a meal for consumption on the premises.

- 4) The Applicant also seeks the addition of the following licence condition to authorise the sale of liquor for consumption away from the licensed premises i.e. a takeaway liquor licence:

Takeaway Liquor Liquor may be sold only for consumption away from the premises from Monday to Saturday between the hours of 15:00 and 18:00.

No trading on Sunday, Good Friday or Christmas day.

Restricted Sales Liquor sold for consumption away from the licensed premises is restricted to canned products only with an alcohol content of not more than 3.5% Alc./Vol.

Liquor sold for consumption away from the premises is restricted to a maximum of 30 cans per person per day.

Takeaway Restrictions to Borroloola and Mara Camp Residents The sale of takeaway alcohol to Borroloola residents inclusive of Mara Camp, Yanyula Camp and Garawa Camps (as may be determined by the Director-General from time to time) will be restricted to canned products only with an alcohol content of not more than 3.5% Alc./Vol., and limited to 18 cans per person per day.

Current Situation

- 5) In the amended application dated 7 September 2015 the Applicant made a number of submissions in support of the proposed variations to licence conditions. The Applicant has been the owner of the Motel since 2005 and the directors of Radovic Investments Pty Ltd are residents of the Borroloola community. The applicant notes that so far as the sale of takeaway alcohol is concerned there is only one outlet in the Borroloola Township, being the Malandari Store with the next closest licenced premises being Heartbreak Hotel, located some 110 kilometres from Borroloola.

- 6) The Applicant submits that the needs and wishes of the town, including travelling tourists and other visitors, support a second takeaway facility within the Township. Both the Malandari Store and Heartbreak Hotel are restricted by licence conditions to the sale of a maximum of 18 cans of mid strength alcohol per person per day to Borroloola and town camp residents. This restriction, in the Applicant's submission, contributes to the prevalence of grog running into Borroloola, especially at times when those premises are not trading or trading with sales limits in place.
- 7) The Applicant notes that the Stakeholder Advisory Group and Community Advisory Group have expressed in principal support for measures that will form the basis of an Alcohol Management Plan ("AMP") for the Borroloola community and, subject to the implementation of a permit system, support the operation of two takeaway facilities within the township.
- 8) The Applicant further submits that the application for a second takeaway outlet is underpinned by the community's need for competition and choice in respect of takeaway liquor sales, provided that the supply is delivered in a responsible manner having regard to the specific circumstances of the community.
- 9) The submission on behalf of the Applicant reinforces that, so far as sales of takeaway alcohol to Borroloola residents is concerned, the Motel is agreeable to the imposition of liquor volume and type restrictions, in line with those currently applicable to Malandari Store and Heartbreak Hotel. It is also noted that the Applicant proposes to restrict takeaway alcohol sales to non-Borroloola residents to 30 cans of mid strength alcohol per person per day, as is the case for Malandari Store, so as not to undermine the benefits derived from the voluntary restrictions imposed on the Store. The Application states that there will be no sale of spirits or full strength beer at the Motel, regardless of whether the purchaser is a Borroloola resident or visitor.
- 10) In the same vein, the Applicant notes that the hours of trade in takeaway liquor applied for are considerably less than the norm for similar premises throughout the Northern Territory and in line with the restricted hours during which the Malandari Store offers takeaway liquor sales.
- 11) Should the application be approved, the Applicant intends to install a CCTV system close to the point of sale for takeaway alcohol also to seek the endorsement by the Director-General of the management plan developed for the premises.
- 12) The Applicant acknowledges that the situation in respect of liquor and substance abuse in the local community of Borroloola, including the town camps and surrounding areas, can only be described as challenging.

Advertising and Objections

- 13) The application was advertised in the Katherine Times on 28 October 2015 and 4 November 2015. A sign advising of the application was also erected at the premises as required by section 32A of the Act.

Objections / Submissions

- 14) One objection was lodged in respect of the application, by Superintendent Stephen Heyward of the Arnhem & Western Division of Northern Territory Police. Whilst not framed as a formal objection, comments in respect of the application were received from Ms Frances Pagdin, the Director of Alcohol and Other Drugs Services with the Department of Health. Details of the application were provided to the Roper Gulf Shire, as required by section 32A(5) of the Act, inviting objections or submissions to the proposed variation of licence conditions. No response was received from the Shire prior to the end of the objection period.

Superintendent Stephen Heyward, Northern Territory Police

- 15) Superintendent Heyward objected to the application on behalf of Northern Territory Police, primarily in respect of the application for a takeaway liquor licence. The objection noted that the Motel holds a restaurant liquor licence which provides for the sale of alcohol only to persons consuming a meal at the premises and to guests of the Motel.
- 16) The objection states that there was a significant reduction in alcohol related violence in the Borroloola community following the cancellation of the takeaway liquor licence formerly held by the Borroloola Hotel in 2015 (sic). Police submit that the approval of a takeaway liquor licence for the Motel will place more pressure on local Police to minimise the effects of alcohol related harms.
- 17) Police submit there are two takeaway outlets in the region being the Malandari Store in Borroloola and Heartbreak Hotel which is situated approximately 110 kilometres west of Borroloola via the Carpentaria Highway. The objection further submitted that the reduction in alcohol-related violent offences by over 24% in the year to date was attributable in part to the reduction in access to takeaway alcohol in Borroloola. Police submit that the Borroloola Hotel, situated across the road from the Motel had its takeaway licence revoked early in 2015 which reduced the accessibility to alcohol for residents¹. In 2010 the former Northern Territory Licensing Commission ("the former Licensing Commission") also placed significant restrictions on the quantity of takeaway alcohol that could be sold to Borroloola residents at Malandari Store and Heartbreak Hotel.
- 18) Police submit the approval of the takeaway component of this application would increase the access to takeaway liquor and put more pressure on local police to minimise the effects associated with alcohol abuse. Noting that the Motel is seeking similar licence conditions to those applicable at Malandari Store, Police submit that in the absence of a scanning system the grant of the variation will allow persons to "double-dip" or "triple-dip" by purchasing their prescribed limit at the Store and then proceeding to the Motel for a secondary purchase and perhaps travelling to Heartbreak Hotel for a third supply.
- 19) The Police objection also submits that until the AMP for Borroloola is finalised and a permit system put in place there should be no variation to the liquor licence in place at the Motel to allow for the sale of takeaway liquor. The objection states that if a permit system was in place under an AMP, Police would be prepared to further consider a similar application.
- 20) The Police objection also notes that the Motel holds a restaurant licence, not a pub licence, and the change in conditions applied for could provide an avenue for the premises to obtain a gaming machine licence, potentially creating a further layer of dysfunctionality within the community.
- 21) The objection lodged on behalf of Police made no comment in respect of the proposal to relax the restriction on the purchase of alcohol at pre-arranged functions for on premise consumption without the requirement to purchase and consume a substantial meal.

Submission by Ms Frances Pagdin, the Director of Alcohol and Other Drugs Services, Department of Health

- 22) Ms Pagdin notes in her submission that the Department of Health has no adverse comment to make in respect of the application to authorise the sale of alcohol for on-premises consumption without the requirement to purchase a meal. She also notes however that the Department cannot support the takeaway component of the application based on Northern Territory specific health related data gathered from various studies in respect of the adverse impacts resulting from the irresponsible consumption of takeaway alcohol.

¹ This may be a typographical error as the licence which contained a takeaway provision was cancelled several years earlier in 2006 and was reissued, without the provision of takeaway sales in 2010.

- 23) The submission notes that alcohol misuse has significant social and economic impacts on the Territory, including increased costs and activities for Police, child protection, corrections and health and support services systems. Ms Pagdin also states that alcohol misuse is a major contributing factor to the high levels of Aboriginal disadvantage.
- 24) Ms Pagdin concedes that the Department has no specific data on the impact of a further takeaway outlet in the Borroloola township but notes that the establishment of more premises licensed to sell takeaway alcohol will not diminish the problems.

Response to objection pursuant to attachment 47G of the Liquor Act

- 25) The Applicant responded to the Police objection and the comments from the Department of Health by letter dated 30 December 2015.
- 26) In respect of the objection lodged by Police, the response noted that the variations sought would not have the effect of creating a new pub licence and that the premises would continue to operate primarily as a restaurant with the ability for patrons to purchase alcohol without the requirement to purchase a meal. The response states that the applicant has no intention of applying for a gaming machine licence, regardless of what category the liquor licence falls under.
- 27) The Applicant disputes that Heartbreak Hotel is the second takeaway liquor outlet for Borroloola and contends that the Hotel is a distant supplier to Borroloola and one accessed by residents primarily when supply from Malandari Store is interrupted. The Applicant also notes that Heartbreak Hotel sells sprits whereas Malandari Store does not and that the Hotel has considerably longer hours for the sale of take away liquor in comparison to the voluntary restrictions on the hours during which takeaway alcohol is available at the Store.
- 28) In respect of the Police submission that the grant of additional takeaway licences in Borroloola should be deferred until the AMP is finalised, the Applicant notes that the AMP has been under very uncertain consideration since 2007. The Applicant further submits that there is no process currently underway that would lead to the AMP's proposals being implemented in the short or medium term and that the application should be considered in the circumstances that currently exist.
- 29) In response to the submission from the Department of Health, the Applicant contends it is arguable the submission is framed as comment and not as a formal objection with the result the Director-General need not consider the submission. However, the Applicant does not press that position and has responded as if the submission were a formal objection.
- 30) The Applicant notes that the premises referred to in the submission, Malandari Store and Heartbreak Hotel were found by the former Licensing Commission to be cooperative with Police and Health officials when imposing voluntary curfews when requested to do so as a result of community unrest and violence.
- 31) The Applicant notes that Borroloola is currently serviced by only one takeaway liquor outlet within the township and states that the community in general does not support the monopoly enjoyed by Malandari Store, despite the significant restrictions imposed by the licence conditions and the licensee's voluntary restrictions on trading hours and available products. It is noted that, should the application be approved, the Motel will adopt the same restrictions in respect of trading hours and limitations on liquor products available for sale.
- 32) The Applicant submits that the Department of Health's statement that another takeaway outlet will clearly not diminish the problems experienced in Borroloola can only be supported if the additional outlet was not subject to similar restrictions as those applicable at Malandari Store. The Applicant emphasises that this will not be the case and that similar restrictions will apply at the Motel if the variations to allow for takeaway liquor sales are approved.

- 33) The Applicant refers to previous decisions of the former Licensing Commission in respect of Borroloola licensed premises and submits that problems associated with grog running would be significantly diminished if more consumers in Borroloola were able to obtain their liquor supplies locally from socially and legally responsible licensees, such as the Malandari Store and the Applicant.
- 34) The Applicant concludes by submitting that the delivery of increased competition, without the risk of an increase in the social problems associated with alcohol abuse, accords with community wishes and will reduce the impact of alcohol being brought into the community illegally and irresponsibly.

Assessment of the objections / submissions

- 35) The objection lodged on behalf of Northern Territory Police is valid and in accordance with the relevant provisions of sections 47F(2) and (3) of the Act. The objection is based on the matters set out sections 47F(2)(a) and (b) of the Act alleging the public amenity and social conditions of the neighbourhood and community will be adversely affected in the event the application is approved.
- 36) There was no objection to the application to vary and amend the "*Liquor To Be Sold With Meal*" condition, as particularised above, to allow for the sale of alcohol at pre-arranged functions where only finger food will be provided. That component of the application has merit given the lack of such facilities in Borroloola and I am satisfied the potential for adverse outcomes, including the risks of harm to the community arising, are minimal. I am prepared to approve the variation to licence conditions in that regard.
- 37) The Savannah Way Motel is a long-established guest house in Borroloola originally constructed as the base for mining exploration and the McArthur River Mine in the early 1990's. Ms Elmy is the operational manager and nominee of the premises and previously operated it for many years without a liquor licence. It remains the preferred accommodation provider for government agencies, non-government organisations (NGOs) and tourists and is presently the only operational restaurant in Borroloola.
- 38) The Applicant company was granted a restaurant liquor licence in 2009 later expanding the premises and being authorised to sell alcohol to bona fide residents as the accommodation facilities expanded. There has been no regulatory action taken against the licensee for offences or non-compliance with their obligations under the liquor licence. The licensee is also regarded by Licensing NT as one of those who meets all the necessary compliance requirements when subject to periodic audits.
- 39) As stated by Police, the Motel presently operates under a restaurant liquor licence which ordinarily do not allow for the sale of liquor for consumption away from the premises. The authority to sell takeaway liquor has traditionally been reserved for Store, Hotel, Public Hotel and Tavern type licenses.

Consideration

- 40) In determining any application under the Act the Director-General is required to take account of the objects of the Act, namely:

3 Objects

(1) The primary object of this Act is to regulate the sale, provision, promotion and consumption of liquor:

(a) so as to minimise the harm associated with the consumption of liquor; and

(b) in a way that takes into account the public interest in the sale, provision, promotion and consumption of liquor.

(2) *The further objects of this Act are:*

- (a) *to protect and enhance community amenity, social harmony and wellbeing through the responsible sale, provision, promotion and consumption of liquor;*
- (b) *to regulate the sale of liquor in a way that contributes to the responsible development of the liquor and associated industries in the Territory; and*
- (c) *to facilitate a diversity of licensed premises and associated services for the benefit of the community.*

- 41) The requirement to balance the competing interests prescribed in subsection 3(1) of the Act, being the minimisation of harm and the public interest in the availability and sale of liquor, are immediately apparent when considering this application. Similarly for subsection 3(2), the facilitation of a diversity of licensed premises needs to be balanced against the objective of protecting and enhancing the community amenity and social harmony.
- 42) In addition, whilst the application under consideration is one seeking approval for the variation of licence conditions if the variations requested are approved in totality one of the outcomes would be the grant of a new takeaway liquor licence to the Applicant company. In those circumstances the Director-General is required to take into account the Takeaway Guideline Criteria.
- 43) In December 2014 the former Licensing Commission lifted the moratorium on takeaway liquor licences that had been in place since 2006, with new applications being considered subject to the following guidelines:
- (a) A takeaway liquor licence in a new residential development; or
 - (b) A takeaway liquor licence to be located in an area that has had recent, substantial population increase; or
 - (c) A takeaway liquor licence for a producer of liquor products that enables the licensee to sell as takeaway only the liquor products at the location; or
 - (d) A takeaway liquor licence for a location where there is a very clearly established public need.
- 44) In this instance the Applicant has not addressed the Takeaway Guideline Criteria or provided any submission as to which of the four criteria set out above this application for a takeaway licence would fall under. The lack of submissions in that regard is not fatal to the application as assessment of a particular application against the Guideline is a matter for consideration by the Director-General.
- 45) Criteria (a) and (c) are clearly not applicable in this instance. Information available from the Australian Bureau of Statistics indicates that the population growth in the Roper Gulf Shire has been minimal in recent years. The population of Borroloola at the time of the 2011 census included 926 people over 18 years of age. Whilst more recent data relating to the population of Borroloola is not available a comparison of population growth within the Roper Gulf Shire is informative. The total population of the Shire at the time of the 2011 census was 7,042. By 2013 the population was estimated at 7,216, an increase of less than 200 people. Clearly criteria (b), which requires a recent substantial increase in population, is not applicable in this instance.
- 46) The Applicant does however present a cogent argument that the application falls within the bounds of criteria (d) in terms of public need. Whilst it is acknowledged that some residents of Borroloola do travel the 220 kilometre round trip to purchase alcohol from Heartbreak Hotel that venue is not located in Borroloola and the Malandari Store does, to a great extent, enjoy a monopoly in respect of the sale of takeaway liquor in the Borroloola Township.

- 47) The Guideline also requires that other matters such as public interest and *Liquor Act* requirements must also be taken into consideration along with the following considerations:
- (e) The density of takeaway liquor venues in the vicinity of the proposed application;
 - (f) The proposed business model; and
 - (g) The propensity for alcohol-related anti-social behaviour and harm in the vicinity of the proposed application.
- 48) Allowing that Malandari Store currently enjoys a monopoly in the sale of takeaway liquor within the Borroloola Township no issues arise in respect of take away liquor outlet density. In addition, the Applicant has presented a comprehensive business plan dealing with the manner in which it would operate and control take away sales, including the application of the same restrictions as currently apply to the Malandari Store, including the voluntary restrictions.
- 49) The critical assessment of this application entails careful consideration of criteria (g) above and the propensity for an increase in alcohol-related anti-social behaviour and harm in the vicinity of the licensed premises, in this instance the Borroloola Township. As appropriately acknowledged by the Applicant, the situation in Borroloola in respect of alcohol abuse and the resultant anti-social behaviour and violence are challenging. The former Licensing Commission was involved in a number of interventions in respect of alcohol supply in Borroloola since 2010. Those interventions resulted in significant restrictions as to quantity and types of liquor that could be sold as takeaway liquor at Malandari Store and Heartbreak Hotel, particularly in respect of sales to local residents.
- 50) The Police objection submits that the approval of the takeaway component of this application would increase the access to takeaway liquor and put more pressure on local police to minimise the effects associated with alcohol. Of significance in the context of more alcohol being sold in the community, Police contend the absence of a scanning system will provide an opportunity for residents of Borroloola to “double-dip” or “triple-dip” by purchasing their prescribed limit at the store and then proceeding to the Motel for a secondary purchase and even Heartbreak Hotel for a third daily supply.
- 51) It was acknowledged by stakeholders appearing before the former Licensing Commission that spirits and other hard liquor, colloquially known as “hot stuff”, is regularly brought into Borroloola from Heartbreak Hotel and further afield. Whilst Heartbreak Hotel has a restriction on the sale of liquor to Borroloola residents no such restriction applies to those who are able to provide identification showing their place of residence as being outside Borroloola.
- 52) It is also widely accepted that many people who genuinely or predominately reside in Borroloola have sought to alter their place of residence, for example on a driver’s licence, to circumvent the restrictions. This however is a matter for the organisations issuing the identification and is not an issue that the licensees themselves are able to control.
- 53) It may be argued the ending of the perceived monopoly enjoyed by Malandari Store would be desirable to the community in general and would provide a choice to residents that is not currently available. That said, as submitted by Police, there is presently no permit system or identification system that would prevent purchasers attending all three premises on the same day. Such activity would of course heighten concerns regarding potential harm arising from alcohol abuse.

- 54) Conversely it could be argued as a result of the non-existence of a structured scanning system people usurping the restrictions may be satisfied with their Borrooloola purchases and not take the third trip to Heartbreak Hotel. This of course is a speculative consideration only and there is no data to support it. It should also be noted that it is common practice for persons to travel to Heartbreak Hotel to purchase liquor as well as purchasing it at Malandari Store later on the same day. There is little doubt that hard core drinkers will at least attempt to circumvent the restrictions limiting the amount and type of alcohol that may be purchased on any given day. The lack of a structured identification system across the liquor outlets in the vicinity of Borrooloola increases the prospect of those persons being successful in purchasing significantly greater quantities of alcohol than they can at present.
- 55) It is without doubt that the Borrooloola Township has an unfortunate history of alcohol abuse and resultant prevalence of anti-social behaviour and alcohol fuelled violence. The level of dysfunction was previously such that the licence for the only hotel in Borrooloola was cancelled in 2010 and, subsequently, the severe but necessary supply restrictions currently in place were introduced. Nothing has changed in terms of the situation facing town camp residents since those restrictions were put in place. Residents of the town camps are still prohibited from consuming alcohol in their own homes under a permit system and, as a consequence, resort to drinking in unsafe and uncontrolled environments, essentially in the scrubland surrounding the Township.
- 56) Whilst acknowledging the good record of the applicant in terms of the responsible sale and service of alcohol, on balance I must reject the application for variation of licence conditions to allow for takeaway alcohol sales on the basis of the associated risk a further takeaway outlet presents in terms of increasing alcohol-related anti-social behaviour and harm in a community that already suffers significant harm from alcohol abuse.

Decision

- 57) For the reasons outlined above, I have determined, in accordance with section 32A(7)(a) of the Act to approve the variation of licence conditions relating to the requirement to sell alcohol only in conjunction with the purchase of a meal and for the removal on the restriction of the volume of alcohol available to bona fide lodgers. Those licence conditions will be varied as requested by the Applicant and as set out in paragraph three above as proposed conditions.
- 58) Also on the basis of the reasons set out above, I have determined in accordance with section 32A(7)(b) of the Act to refuse to vary the licence conditions for the Savannah Way Motel that would result in the licensee being authorised to sell takeaway alcohol.

Review of Decision

- 59) Section 120ZA of the Act provides that a decision of the Director-General, as specified in the Schedule to the Act, is a reviewable decision. A decision by the Director-General to vary or refuse to vary licence conditions is specified in the Schedule and is a reviewable decision. 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. For the purpose of this decision, and in accordance with section 120ZB(c) of the Act, the affected persons are the Applicant and the objector Northern Territory Police.



Cindy Bravos
Director-General of Licensing

5 April 2016