

# Northern Territory Licensing Commission

## Statement of Reasons for Decision

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<b>Applicant:</b>	Mr Malcolm Kevin McGinn on behalf of Dannah Pty Ltd
<b>Premises:</b>	Batchelor General Store
<b>Objectors:</b>	Mrs Myra Skinner Miss L Wills Ms Ros Jones Ms Prue King Ms Jaclyn M Miller Ms Sirpa Hopf Ms Wendy Leach Mr A Scarton Acting Assistant Commander Maxwell Pope NT Police Tony Otway, Principal Batchelor Area School and Batchelor Outdoor Education Unit Ms Veronica Arbon Director Batchelor Institute of Indigenous Tertiary Education Mr R Davis, Batchelor Resort
<b>Matter under Consideration:</b>	Whether the letters written by the individuals listed as objectors are objections under section 47F of the <i>Liquor Act</i> and if they are objections, whether any among them should be dismissed or whether they should proceed to hearing
<b>Relevant Legislation:</b>	Sections 47F, 47G, 47I and 127 of the <i>Liquor Act</i>
<b>Date of Decision:</b>	8 September 2003

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### Background:

1. On 18 June 2003 and 20 June 2003 Mr McGinn placed advertisements in the *NT News* notifying the public of the application for a takeaway liquor licence for the premises known as Batchelor General Store (the Store). The advertisement specified that objections to the application were to be lodged with the Director of Licensing within 30 days of the date of the second advertisement.
2. Twelve objections were received in relation to the application. This statement of reasons relates to the objections lodged by:
  - Mrs Myra Skinner on 2 July 2003;
  - Miss Wills on 10 July 003;
  - Ms Ros Jones on 17 July 2003;
  - Ms Prue King on 16 July 2003;
  - Ms Jaclyn Miller on 23 July 2003;
  - Ms Sirpa Hopf on 14 July 2003;
  - Ms Wendy Leach on 21 July 2003;
  - Mr A Scarton on 18 July 2003

- Acting Assistant Commissioner Maxwell Pope, Operations Command, Northern Territory Police, on 30 July 2003;
  - Mr Tony Otway, Principal Batchelor Area School and Batchelor Outdoor Education Unit, on 16 July 2003;
  - Ms Veronica Arbon, Director, Batchelor Institute of Indigenous Tertiary Education on 3 July 2003; and
  - Mr R Davis, Batchelor Resort on 17 July 2003.
3. The letters of objection were sent to the applicant for a response. Morgan Buckley Lawyers responded on behalf of the applicant in a letter dated 21 August 2003.
  4. On 29 August 2003 the matter was allocated to a Commission member to consider the standing objections in accordance with sections 47F, 47G and 47I of the *Liquor Act*.

### Legislation:

5. Section 47F of the *Liquor Act* (the Act) states that a person, group or organisation may make an objection to an application for the grant of a liquor licence in particular circumstances. This section reads in part:
  - (1) *Subject to this section, a person, organisation or group may make an objection to an application for the grant of a licence.*
  - (2) *An objection under subsection (1) may only be made on the ground that the grant of the licence may or will adversely affect the amenity of the neighbourhood where the premises the subject of the application are or will be located.*
  - (3) *Only the following persons, organisations or groups may make an objection under subsection (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 of the Police Force;*
    - (d) *a member of the Fire and Rescue Service within the meaning of the Fire and Emergency Act;*
    - (e) *an Agency or a public authority that performs functions relating to public amenities;*
    - (f) *a community-based organisation or group (for example, a local action group or a charity)...*
6. Subsections 47F(2) and 47F(3) therefore place limitations on both the grounds for objections and the types of people, groups or organisations that can object.
7. Subsection 47F(4) requires that an objection must be in writing, must be signed by or on behalf of the person, group or organization, must set out the facts to be relied on to “*constitute the ground on which the objection is made*” and must be lodged with the Director within 30 days of the last advertisement for the application.
8. After giving the applicant with an opportunity to provide a written response to any objection, the Director must forward the objections and responses to the Chairperson of the Commission. Pursuant to section 47I the Chairperson must then select a member of the

Commission to consider the substance of any objection lodged under section 47F and any response from the applicant received under section 47G. The member may also inquire into any circumstance relating to the objection as he or she considers appropriate. The member must then make a decision to either dismiss the objection or to forward the objection, response and the member's findings to the Commission for hearing.

9. An objection is to be dismissed where the Commission Member is satisfied that it is of a frivolous, irrelevant or malicious nature or that it does not describe circumstances that may or will adversely affect the amenity of the neighbourhood (see subsection 47I(3)(c)(i)).
10. Where the member dismisses the objection he or she must direct the Director to inform the person, organisation or group who made the objection that the objection has been dismissed and to provide the member's reasons for dismissing the objection (subsections 47I(4), (5) & (6)).
11. Where the objection is not dismissed, the member must determine that the Commission must conduct a hearing in relation to the objection and forward the objection, the applicant's reply to the objection and the member's findings in relation to the objection to the Commission.

## **Description of the objections and the response:**

### **Mrs Skinner**

12. Mrs Skinner's letter of objection states that she has been a resident of Batchelor since 1977. The focus of her concerns is on the prospect of people drinking alcohol at the oval and in the parks and the litter and social problems this might cause. She is particularly concerned about the effect of a liquor licence on students at the Batchelor Institute and on tourism.
13. The applicant's lawyer, Mr Kelvin Currie, does not concede that Mrs Skinner's objection conforms to the requirements of the Act, but does not explain where the legal shortcomings are to be found. His argument seems to be that her submission lacks logic.

### **Miss L Wills**

14. Miss Wills' letter of objection states that she is a long term resident of Batchelor township. Her letter raises concerns about walkways and the park becoming uncomfortable, untidy and unsafe if the store gets a liquor licence. She also raises concerns about the effect of a liquor licence on the education of students at Batchelor Institute and the comfort and safety of all Batchelor citizens whether residents, visitors or tourists.
15. Mr Currie states that the objection does not conform to the Act or raise facts that support a ground recognised under the Act. No further explanation of this position is given.

### **Ros Jones**

16. Ms Ros Jones states that she has been a Batchelor resident for 35 years. She is concerned about the prospect of intoxicated people hanging around the Store and the effect of this on tourists, visiting school children and locals. Her concerns include alcohol related litter, people being accosted by people bludging money to buy alcohol, abusive language and unacceptable behaviour. She believes that liquor licence clientele will make the Store an unpleasant place for women and children.
17. Mr Currie states that the objection is not strictly in conformity to the Act and appears to be based on stereotypical views of the evils of alcohol.

### **Ms Prue King**

18. Ms King says she has been a resident of Batchelor since 1994. In her letter of objection she focuses on the lack of a place for Batchelor Institute students to drink takeaway alcohol

given that the campus is Dry. She believes that a takeaway licence for the Store will result in people drinking in the grassed areas round the Store. She seems to argue that it would be more appropriate to get the licensed club operating again.

19. Mr Currie states that the objection is not in conformity to the Act and says that Ms King is assuming that the Club will be sold and will obtain a licence.

### **Ms Jaclyn Miller**

20. Ms Miller's letter dated 21 July 2003, and received on 23 July 2003, says that she has lived in Batchelor since January 1996. She says that the granting of a liquor licence to the Store would result in students from Batchelor Institute drinking illegally in the grassed area near the store or illegally at the Institute and that the latter would cause problems for other students. She also has a concern about the teenage staff employed at the store having to deal with drunken people demanding alcohol. She argues that there are, or will be with the reopening of the Club, sufficient liquor outlets in the town. She also states that "Increased availability of liquor usually leads to an increase in anti-social behaviour".
21. Mr Currie argues that Ms Miller's letter "is not an objection containing facts that support the ground under the Act".
22. Ms Miller's letter includes issues pertinent to the amenity of the neighbourhood, however, some of the issues she raises may be marginal, for example she does not explain any link between illegal behaviour and amenity, nor how the number of liquor licences may affect amenity, nor how the potential problems faced by teenage staff would affect the amenity of the neighbourhood. That said, my task is to decide whether, on the balance of probabilities, the objection *does not* describe circumstances that may or will adversely affect the amenity of the neighbourhood. It is arguable that all these issues potentially do affect the amenity of the neighbourhood; it is just a question of Ms Miller explaining the link.
23. The other issue arising from Ms Miller's objection is whether it meets the requirement to have been lodged within 30 days of the last advertisement. Arguably 30 days finished on Sunday 20 July 2003. Ms Miller's letter was not written until Monday 21 July 2003, and not received until Wednesday 23 July 2003.

### **Ms Serpa Hopf**

24. Ms Hopf, a resident of Batchelor, expresses concern about the potential for customers using the store, including her two children, being accosted by people who have run out of money for alcohol or being exposed to obnoxious behaviour. She also expresses concerns about potential litter problems in the parks and gardens and groups of people congregating under trees in the area waiting for opening time, under the influence of alcohol or sleeping off the effects of alcohol. She also claims that the town already has enough liquor outlets.
25. Mr Currie argues that "Ms Hopf does not make an objection under the Act or in our opinion any relevant objection".

### **Ms Wendy Leach**

26. Ms Leach, a resident of Batchelor, argues that Batchelor does not need another takeaway liquor outlet. She echoes the concerns of the other objectors that a takeaway licence for the store may contribute to drinking, anti-social behaviour and litter in the parks around the store. She anticipates that most of the problems would be associated with students of Batchelor Institute, given that there are few places they can drink. She points out that there is already of problem of this nature associated with the Rum Jungle Pub but says the effects are ameliorated by the fact that the problems are contained in one area. She points to past problems when the Rum Jungle Recreation Club was operating. She also expresses concern about people congregating outside the premises looking for handouts to buy liquor, thus discouraging others who frequent the store for shopping and collection of their mail. She also expresses a concern about the depressed economy in Batchelor potentially leading to boredom and an increase in alcohol problems.

27. Mr Currie again states that the objection is not in conformity with the Act. He concedes that Ms Leach is correct in her comment that the advertised takeaway licence times do not coincide with the current hours of the store. He says that, in practice, it is expected that there will be no sales after 7.00 pm.

### **Mr A Scarton**

28. A Scarton's letter states that he is a works in Batchelor in the tourist industry. Further inquiries by a licensing inspector indicated that he works at the Batchelor Resort and lives about 500 metres from the Store. In his letter, Mr Scarton states that Batchelor already has sufficient liquor licences (3) for its population (600 people) and that the granting of an additional licence would have a negative impact on tourists and locals through antisocial behaviour. He pointed out that the Store is in the middle of town, that a licence would have a negative impact on amenity and there would be increased risks to safety from violent behaviour, broken glass and litter.
29. Mr Currie states that Mr Scarton is a "commercial objector" and that none of the points he makes constitute an objection pursuant to subsection 47F(2). Among other things, he claims that Mr Scarton's letter does not contain any facts that indicate that the grant of the licence would have an adverse effect on the amenity of the neighbourhood.

### **Acting Assistant Commissioner Maxwell Pope, Operations Command, Northern Territory Police**

30. Acting Assistant Commissioner Pope (A/AC Pope) faxed his objection to the Director of Licensing on 30 July 2003. He had been granted approval to lodge a late application by the Chairman on that day.
31. A/AC Pope explained that the Police object to the application on the grounds that the licence will adversely affect the amenity of the neighbourhood. A/AC Pope points to a significant decrease in levels of crime, antisocial behaviour and litter in the area around the Rum Jungle Social Club and Store since the Club closed. He predicts that these problems will return if the Store is granted a licence. He also asserts that the advertised trading hours are excessive and will promote anti-social behaviour and that the majority of residents and organisations are opposed to the application. He points out that the Store contains the township's post office, is the primary food and grocery outlet and is frequented by many young children.
32. Mr Currie argues that A/AC Pope is attempting to equate the perceived situation when the Rum Jungle Social Club was operating directly with the granting of a licence to the Store. He says that there is no indication that the situations are the same. He says that A/AC Pope makes broad generalisations and does not give any data from which an assessment might be made.

### **Mr Tony Otway, Principal of Batchelor Area School and Batchelor Outdoor Education Unit**

33. Mr Otway asks to register his concerns about the application on a number of grounds. He reflects on the problems that existed when the Club was still open. He said that there were a series of complaints from visiting teachers and students residing at Batchelor Outdoor Education Unit (BOEU) about being harassed by inebriated individuals. These problems ceased when the Club closed. He expressed concern about possible consumption outside the Store which would affect the BOEU. He said the total ban on alcohol in the Batchelor Institute grounds encourages public drinking.
34. Mr Currie argues that the objection is not in conformity with the requirements of the Act and says that Mr Otway's main objection is to the selling of alcohol within the neighbourhood of BOEU.
35. Mr Otway says some of the Batchelor Area School (BAS) students already suffer from the effects of their parent's drinking and is concerned that a further outlet would exacerbate

this. Whilst this is a genuine concern, it is not one that fits the criteria of amenity of the neighbourhood.

### **Ms Veronica Arbon, Director, Batchelor Institute of Indigenous Tertiary Education**

36. Ms Arbon objects to the application in her capacity of Director of the Institute. She notes that there has been a decrease in alcohol related problems for students since the Club closed. She expresses concern that the grant of licence at the Store and/or extended liquor trading hours may or will adversely affect the good order and peace of the Batchelor Institute of Indigenous Tertiary Education, which is located in the neighbourhood of the Store.
37. Mr Currie queries the standing of the Batchelor Institute to object under subsection 47F(3)(e) and says that the problems described do not adversely affect the amenity of the neighbourhood.
38. I note that, whatever the standing of Batchelor Institute, Ms Arbon is a person who is working in the neighbourhood where the premises that are the subject of this application are located.

### **Mr Robert Davis**

39. Mr Davis lives in Batchelor and is the business proprietor of the Batchelor Resort. In his letter he states that history “has proven takeaway liquor in the town centre has resulted in adverse effects on the amenity of the town centre”. He cites a range of problems which, he says, existed when there was a takeaway liquor licence in the town centre. These include: people being afraid to walk the streets in the town centre at night; gang muggings; rubbish in the park; humbugging for money, cigarettes and drinks; yelling, foul language, cheek and abuse to passers-by in the town centre and adjacent parks during the day and night; urinating and defecating in public parks; negative affect on tourism with drunken people loitering in the town centre; and increased demands on the Police. Mr Davis goes on to write about the economic history of the town, the current socio-economic status of residents and to raise concerns about the Store potentially having a takeaway liquor licence on the same premises as the bank agency and post office.
40. Mr Currie addresses each of the issues that Mr Davis has raised.

### **Findings and application of the law:**

41. The concept of neighbourhood is critical to determining the standing of objections lodged pursuant to section 47F of the *Liquor Act*. In this case I have determined that the whole of the Batchelor Township and the surrounding rural area should be considered to be the neighbourhood of the Batchelor General Store.

### **Mrs Skinner**

42. As the Commission member considering the status of this objection I make the following findings:
  - Mrs Skinner is a person residing and working in the neighbourhood where the premises the subject of the application are to be located and therefore she meets the requirements of subsection 47F(3)(a);
  - Mrs Skinner’s letter of objection was lodged with the Director within 30 days of the last advertisement placed by Mr McGinn and therefore meets the requirements of subsection 47F(4);
  - the letter raises a range of concerns about the effect of the grant of a liquor licence on the amenity of the neighbourhood and therefore meets the requirements of subsection 47F(2); and

- on the information before me, I am satisfied that the objection is not of a frivolous, irrelevant or malicious nature.

### **Miss Wills**

43. As the Commission member considering the status of this objection I make the following findings:

- Miss Wills is a person residing in the neighbourhood where the premises the subject of the application are to be located and therefore she meets the requirements of subsection 47F(3)(a);
- Miss Wills' letter of objection was lodged with the Director within 30 days of the last advertisement placed by Mr McGinn and therefore meets the requirements of subsection 47F(4);
- the letter raises a range of concerns about the effect of the grant of a liquor licence on the amenity of the neighbourhood and therefore meets the requirements of subsection 47F(2); and
- on the information before me, I am satisfied that the objection is not of a frivolous, irrelevant or malicious nature.

### **Ms Ros Jones**

44. As the Commission member considering the status of this objection I make the following findings:

- Ms Jones is a person residing in the neighbourhood where the premises the subject of the application are to be located and therefore she meets the requirements of subsection 47F(3)(a);
- Ms Jones' letter of objection was lodged with the Director within 30 days of the last advertisement placed by Mr McGinn and therefore meets the requirements of subsection 47F(4);
- the letter raises a range of concerns about the effect of the grant of a liquor licence on the amenity of the neighbourhood and therefore meets the requirements of subsection 47F(2); and
- on the information before me, I am satisfied that the objection is not of a frivolous, irrelevant or malicious nature.

### **Ms Prue King**

45. As the Commission member considering the status of this objection I make the following findings:

- Ms King is a person residing in the neighbourhood where the premises the subject of the application are to be located and therefore she meets the requirements of subsection 47F(3)(a);
- Ms King's letter of objection was lodged with the Director within 30 days of the last advertisement placed by Mr McGinn and therefore meets the requirements of subsection 47F(4);
- the letter raises a concern about the effect of the grant of a liquor licence on the amenity of the neighbourhood and therefore meets the requirements of subsection 47F(2); and
- on the information before me, I am satisfied that the objection is not of a frivolous, irrelevant or malicious nature.

### Ms Jaclyn Miller

46. As the Commission member considering the status of this objection I make the following findings:

- Ms Miller is a person residing in the neighbourhood where the premises the subject of the application are to be located and therefore she meets the requirements of subsection 47F(3)(a);
- as discussed, Ms Miller's letter was written and posted on Monday 21 July 2003, some 31 days after the last advertisement. Section 28 of the *Interpretation Act* states that, where the last day of any period for the doing of a thing prescribed by an Act falls on a Saturday, Sunday or public holiday, the thing may be done on the first day that is not a Saturday, Sunday or public holiday. The *Liquor Act* also provides at subsection 47F(5) that, if an objection is lodged by post, it is taken to be duly lodged with the Director on the day it is delivered to an office of Australia Post for transmission to the Director. What this means is that Ms Miller's letter of objection can be accepted as a valid objection, despite being written and posted just outside the 30 days from the last advertisement prescribed by subsection 47F(4) of the *Liquor Act*;
- Mr Miller's letter raises a concern about the effect of the grant of a liquor licence on the amenity of the neighbourhood and therefore meets the requirements of subsection 47F(2); and
- on the information before me, I am satisfied that the objection is not of a frivolous, irrelevant or malicious nature.

### Ms Serpa Hopf

47. As the Commission member considering the status of this objection I make the following findings:

- Ms Hopf is a person residing in the neighbourhood where the premises the subject of the application are to be located and therefore she meets the requirements of subsection 47F(3)(a);
- Ms Hopf's letter of objection was lodged with the Director within 30 days of the last advertisement placed by Mr McGinn and therefore meets the requirements of subsection 47F(4);
- the letter raises concerns about the effect of the grant of a liquor licence on the amenity of the neighbourhood and therefore meets the requirements of subsection 47F(2); and
- on the information before me, I satisfied that the objection is not of a frivolous, irrelevant or malicious nature.

### Ms Wendy Leach

48. As the Commission member considering the status of this objection I make the following findings:

- Ms Leach is a person residing in the neighbourhood where the premises the subject of the application are to be located and therefore she meets the requirements of subsection 47F(3)(a);
- Ms Leach's letter of objection was lodged with the Director within 30 days of the last advertisement placed by Mr McGinn and therefore meets the requirements of subsection 47F(4);
- the letter raises concerns about the effect of the grant of a liquor licence on the amenity of the neighbourhood and therefore meets the requirements of subsection 47F(2); and

- on the information before me, I am satisfied that the objection is not of a frivolous, irrelevant or malicious nature.

### **Mr A Scarton**

49. As the Commission member considering the status of this objection I make the following findings:

- Mr Scarton is a person working and residing in the neighbourhood where the premises the subject of the application are to be located and therefore he meets the requirements of subsection 47F(3)(a);
- Mr Scarton's letter of objection was lodged with the Director within 30 days of the last advertisement placed by Mr McGinn and therefore meets the requirements of subsection 47F(4);
- the letter raises concerns about the effect of the grant of a liquor licence on the amenity of the neighbourhood and therefore meets the requirements of subsection 47F(2); and
- on the information before me, I am satisfied that the objection is not of a frivolous, irrelevant or malicious nature.

### **Acting Assistant Commissioner Maxwell Pope, Operations Command, Northern Territory Police**

50. As the Commission member considering the status of this objection I make the following findings:

- A/AC Pope is a member of the Police Force and therefore meets the requirements of subsection 47F(3)(c);
- although A/AC Pope's letter of objection was not lodged with the Director within 30 days of the last advertisement placed by Mr McGinn as required by subsection 47F(4), he obtained an extension from the Chairman of the Commission. Section 127 allows the Commission to extend or abridge timelines otherwise specified in the Act;
- the letter raises concerns about the effect of the grant of a liquor licence on the amenity of the neighbourhood and therefore meets the requirements of subsection 47F(2); and
- on the information before me, I am satisfied that the objection is not of a frivolous, irrelevant or malicious nature.

### **Mr Tony Otway**

51. As the Commission member considering the status of this objection I make the following findings:

- Mr Otway is a person working in the neighbourhood where the premises the subject of the application are to be located and therefore he meets the requirements of subsection 47F(3)(a);
- Mr Otway's letter of objection was lodged with the Director within 30 days of the last advertisement placed by Mr McGinn and therefore meets the requirements of subsection 47F(4);
- the letter raises concerns about the effect of the grant of a liquor licence on the amenity of the neighbourhood and therefore meets the requirements of subsection 47F(2);
- Mr Otway also raises a concern about the potential effect on school students of any increased alcohol abuse on the part of their parents. While this is a genuine concern, it does not raise issues of amenity of the neighbourhood; and

- on the information before me, I am satisfied that the objection is not of a frivolous, irrelevant or malicious nature.

### **Ms Veronica Arbon, Director, Batchelor Institute of Indigenous Tertiary Education**

52. As the Commission member considering the status of this objection I make the following findings:

- Ms Arbon is a person working in the neighbourhood where the premises the subject of the application are to be located and therefore she meets the requirements of subsection 47F(3)(a);
- Ms Arbon sought to lodge her objection under subsection 47F(3)(e), an Agency or public authority providing functions relating to public amenities, however, it is not clear whether an educational institution would fit into this category. In any event, it is not necessary to determine this issue as Ms Arbon has standing pursuant to subsection 47F(3)(a);
- Mr Arbon's letter of objection was lodged with the Director within 30 days of the last advertisement placed by Mr McGinn and therefore meets the requirements of subsection 47F(4);
- the letter raises concerns about the effect of the grant of a liquor licence on the amenity of the neighbourhood and therefore meets the requirements of subsection 47F(2); and
- on the information before me, I am satisfied that the objection is not of a frivolous, irrelevant or malicious nature.

### **Mr Robert Davis**

53. As the Commission member considering the status of this objection I make the following findings:

- Mr Davis is a person working and residing in the neighbourhood where the premises the subject of the application are to be located and therefore he meets the requirements of subsection 47F(3)(a);
- Mr Davis' letter of objection was lodged with the Director within 30 days of the last advertisement placed by Mr McGinn and therefore meets the requirements of subsection 47F(4);
- the letter raises many concerns about the effect of the grant of a liquor licence on the amenity of the neighbourhood and therefore meets the requirements of subsection 47F(2); and
- on the information before me, I am satisfied that the objection is not of a frivolous, irrelevant or malicious nature.

### **Decision:**

54. As the member of the Commission appointed to consider the standing of objections to the Batchelor General Store application, I have decided that the letters from Mrs Skinner, Miss Wills, Ms Jones, Ms King, Ms Miller, Ms Hopf, Ms Leach, Mr Scarton, Acting Assistant Commissioner Pope, Mr Otway, Ms Arbon and Mr Davis are objections under section 47F of the *Liquor Act*, that there are no grounds for dismissing these objections, and that the Commission must conduct a hearing. Those issues identified in my findings as not involving the amenity of the neighbourhood are, however, to be excluded from the hearing of the objections.

55. It should be noted that my decisions regarding these objections are confined to the threshold issues of standing under the legislation and cannot be taken as judgments about the merits of any particular objection or the appropriate outcome of the licence application. These issues will be addressed by the Commission at the formal hearing.

Ms Jill Huck

Member selected by the Chairman pursuant to subsection 471(2) of the *Liquor Act*