

Northern Territory Licensing Commission

Decision on Whether Objections Will Proceed To Hearing

Premises:	Rum Jungle Tavern
Applicant:	Stamen Investments Pty Ltd
Dual Nominee:	Mr Michael McElwee and Mrs Janet McElwee
Licence Number:	80317827
Objectors:	Mr Richard Skinner and Mrs Myra Skinner, Batchelor Aviation Batchelor Community Health Centre Mr Adrian Mitchell, Director of Batchelor Institute of Indigenous Tertiary Education
Legislation:	Sections 47F to 47I of the <i>Liquor Act</i> and Section 28 of the <i>Interpretation Act</i>
Decision of:	Mr Richard O'Sullivan (Chairman)
Date of Decision:	5 April 2013

Background

- 1) Mr Michael McElwee and Mrs Janet McElwee, Directors of Stamen Investments Pty Ltd and Dual Nominees of the Rum Jungle Tavern have applied, pursuant to Section 32A of the *Liquor Act* ("the Act"), for a variation to licence conditions for the Rum Jungle Tavern, located at 5 Nurndina Street, Batchelor. The variation applied for consists of amending trading hours for takeaway liquor from 10:00 hours to 19:00 hours seven days a week to 10:00 hours to 22:00 hours seven days a week.
- 2) The Application was advertised in the NT News on Friday 18 January 2013 and Wednesday 23 January 2013 pursuant to Section 32A(3) of the Act.
- 3) The advertisement was as follows:

Stamen Investments Pty Ltd, hereby give notice that it has applied to the Northern Territory Licensing Commission for a "Variation of Licence Conditions" to the premises known as Rum Jungle Tavern (Liquor Licence number 80317827) located at 5 Nurndina Street, Batchelor.

Proposed variations are:

To increase Liquor Takeaway Hours of the Rum Jungle Tavern from 10:00 hours to 19:00 hours seven days a week, to 10:00 hours to 22:00 hours seven days a week.

This is the first notification of application. The notice will be published again on Wednesday, 23 January 2013.

The objection period is deemed to commence from Wednesday, 23 January 2013 (date of publication of second notice).

Pursuant to Section 47F(2) of the Liquor Act an objection may only be made on the ground that the variation of the licence conditions 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 8999 1800. Objections to this application should be lodged in writing with the Director of Licensing, GPO Box 1154, Darwin, within thirty (30) days of the commencement date of the objection period.

Dated this 18th Day of January 2013.

- 4) The applicant is seeking to extend takeaway trading hours to have parity with the Rum Jungle Motor Inn, the licence of which enables takeaway liquor trading until 22:00 hours seven days per week.
- 5) The applicant has attached letters of support for the application from several residents of the area (nine in all), together with a petition to the Northern Territory Licensing Commission signed by over 160 petitioners supporting the takeaway hours applied for.
- 6) The applicant submits that the licence has been held since 2007 during which time they have operated as a community pub and with alcohol related incidents in the community declining in recent years. Their submission outlines the inconvenience to townspeople, tourists and shift workers who wish to purchase takeaway alcohol after 19:00 hours from the Rum Jungle Tavern and who are currently unable to do so. Their application seeks takeaway hours in line with other trading outlets in the Batchelor and nearby areas.
- 7) 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 Friday 22 February 2013.
- 8) 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:

(b) an application for a variation of the conditions of a licence, as notified under Section 32A;

(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;*

(e) *an Agency or public authority that performs functions relating to public amenities, including health, education and public safety;*

9) Three objections have been lodged in response to the application and the applicant has provided a response to these objections pursuant to Section 47G of the Act. Under Section 47I of the Act the Commission must determine whether objections received are to proceed to Hearing.

10) Section 47F(1)(b) provides that a person may lodge an objection to an application for variation of licence conditions.

Objection from Mr Richard Skinner and Mrs Myra Skinner, Batchelor Aviation

11) The objection by Mr Richard Skinner and Mrs Myra Skinner of Batchelor Aviation was signed on 14 February 2013 and received by the Director of Licensing within time. The objection outlines that an increase in takeaway sales hours “*would cause more problems in our community*”. The objection also refers to the likely increase in drinking around the oval and in community parks, which the objector states would “*cause more domestic violence, children missing school due to drunk parents*”.

12) The objectors live and work within the Batchelor Township, have lodged their objection within the required time and have raised issues consistent with Section 47F(2)(a).

Objection from Batchelor Community Health Centre

13) An objection has been submitted by the Batchelor Community Health Centre (“the Health Centre”) and was submitted with a number of signatures on 4 February 2013 with an addendum of additional signatories faxed to the Director of Licensing on 14 February 2013. Both pieces of correspondence are within time.

14) The Health Centre has standing under the Act under Section 47F(3)(e), being an agency or public authority that performs functions relating to health in the area.

15) The objection raises the issue that as the Health Centre it is required on a very regular basis to deal with “*serious repercussions of excessive alcohol intake, including motor vehicle accidents, violent assaults and neglect of children*”. The objection refers to the latest takeaway hours operating at the other licensed outlet in

Batchelor as being 21:00 hours and is referred to as the Big 4 Caravan Park. (It is assumed that the licence referred to is the Rum Jungle Motor Inn.)

- 16) The objection refers to the extension of takeaway hours to 22:00 hours as likely to result in increased alcohol consumption and therefore harm.
- 17) The objection is valid as it was submitted within time, is by an authority who has status under the Act and the objection covers the grounds of public safety and health pursuant to requirements of Section 47F(2) of the Act.

Objection from Mr Adrian Mitchell, Director of Batchelor Institute of Indigenous Tertiary Education

- 18) The Director of the Batchelor Institute of Indigenous Tertiary Education (“the Batchelor Institute”) has made objection to the application on 22 February 2013. The objection was therefore lodged within time as prescribed by the Act.
- 19) The Batchelor Institute has status as an objector under Section 47F(3)(e) in that it is an agency that performs an education function in the area.
- 20) The objection outlines that the Batchelor Institute staff and students provide a significant patron source for businesses in the area, including the Rum Jungle Tavern. The objection raises the general issue of alcohol being a “*disproportionate threat to the wellbeing of Indigenous people compared to other Australians*”.
- 21) The Batchelor Institute provides education under a residential training program and the objector submits that the availability of alcohol in the past has posed a problem to the operations of the Batchelor Institute and the successful outcomes of the training for its resident students.
- 22) The objector raises the history of the Batchelor Institute in objecting to the initial takeaway licence condition. The objection also refers to the 2010 application to declare Batchelor a Public Restricted Area under the Act to prevent consumption of alcohol in public areas. An application which was supported by the Batchelor Institute and ultimately approved by the Commission.
- 23) The objection refers to improvements in training conditions and the better management of alcohol impacts on its students in recent times. “*The Institutes capacity to deliver its statutory functions and the Township’s amenity, public safety and social conditions would be further compromised if the Commission approved this current application*”.
- 24) The objection was lodged within time, was lodged by an authority with status under the Act and the objection grounds are consistent with requirements under Section 47F(2) of the Act.

Applicant’s Response to Objections

- 25) The applicant has made response to the objections in three separate pieces of correspondence dated 4 March 2013.
- 26) In response to the objection and concerns expressed by the Batchelor Institute, the applicant refers to students who have mental and drug reliance conditions and the requirement to fully supervise such students, and refers to students wandering the streets at midnight.

- 27)The applicant also refers to the Batchelor Township being a Public Restricted Area and that this status makes it an offence to drink in public places without a permit. The applicant also advises that in discussions with local Police, the Police have indicated a decline in the number of alcohol related incidents in the Batchelor Township in recent years.
- 28)In response to the objection from the Community Health Centre, the application advises that not all problems in the community are alcohol related but many are mental, drug and personal family feud related matters. The applicant points out that the reference to the other liquor outlet in the Township, the Rum Jungle Motor Inn, closing its takeaway at 21:00 hours and having a 21:00 hour restriction for takeaway sales is incorrect as that licence provides for takeaway trade up until 22:00 hours.
- 29)The applicant points out that they operate their licence under the Act and in doing so take into consideration the health, public safety and social conditions relating to their trade. The applicant indicates that all persons served takeaway are under camera surveillance to back up their requirement to serve only non-intoxicated persons.
- 30)In reference to the objection from Mr and Mrs Skinner, the applicant advises that all they are only asking for the same trading hours as their competitor.

Consideration of the Issues

- 31)The Commission notes the support for the application through letters and the petition of over 160 nearby residents in favour of the extended takeaway trading hours. The Commission also notes that an original objection by the Coomalie Community Government Council was rescinded when it became evident to the Council that the application for 22:00 hours takeaway trading hours was in conformity with the other liquor licensed outlet in the community, that being the Rum Jungle Motor Inn, whose takeaway hours extend to 22:00 hours for the seven days of the week.
- 32)The Commission also notes Police have not objected to the application.
- 33)Whilst noting the above matters, the matter under consideration in this Decision is the validity of the objections under the Act and whether they have standing under the Act in order to determine the requirement to have the matters put before the Commission at a Hearing.
- 34)The powers under the Act, following consideration of an objection, require the Commission to either dismiss the objection or determine that the Commission must conduct a Hearing in relation to the objection pursuant to Section 471(3)(c)(ii).
- 35)All three objectors have status under the Act as they are either residents of the community or organisations that provide an education or health services to the community.
- 36)All objections were submitted within time as prescribed, that is the objection must be lodged within thirty days after the publication of the last advertisement in the relevant newspaper, in this instance the NT News.
- 37)The Act also requires that the objection must be made on the grounds that the licence variation would adversely affect the amenity of the neighbourhood or the

health, education, public safety or social conditions in the community as required under Section 47F(2)(a) or (b).

38) Mr and Mrs Skinner have raised issues relating to public safety and social conditions in the community in that they have referred to increased takeaway hours causing more problems, domestic violence and other undesirable social consequences.

39) The Health Centre has raised objection of increased trading hours will increase alcohol related harm and in particular will adversely affect the health, public safety and health conditions of Batchelor.

40) The Director of the Batchelor Institute has detailed a history of alcohol issues in the community. Concerns over the application include its capacity to deliver education in the Batchelor Township with increased potential of alcohol sales with increased takeaway hours. Additionally the objection raises the amenity, public safety and social conditions in the community which the submission alleges would be further compromised if the current application was approved.

41) Objection by Mr and Mrs Skinner, the Health Centre and the Director of the Batchelor Institute are made on grounds in conformity with the Act under Section 47F(2)(a) or (b).

Decision

42) The Commission has determined that all three objections lodged meet the criteria described in the Act and are therefore valid. It is determined that the objection of:

- Mr Richard Skinner and Mrs Myra Skinner of Batchelor Aviation;
- The Batchelor Community Health Centre;
- Mr Adrian Mitchell, Director of the Batchelor Institute;

are all valid and require a Hearing pursuant to Section 47I(7) of the Act.

Richard O'Sullivan
Chairman

April 2013