

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

APPLICANT:	Stamen Investments Pty Ltd
APPLICATION:	Application for Takeaway Component of Tavern Liquor Licence
DATE OF HEARING:	23 October 2008
DATE OF DECISION:	26 November 2008
PREMISES:	Rum Jungle Tavern 5 Nurndina Street Batchelor NT 0845
APPEARANCES:	Mr Des Crowe, Counsel for the Applicant Mr Michael McElwee, Joint Nominee Brevet Sergeant Scotty Mitchell, NT Police Brevet Sergeant Paul Maccioni, NT Police Mr Robert Davis, Objector Mr Rob Hobbs, Objector
HEARD BEFORE:	Mr Richard O'Sullivan (Chairman) Mr Philip Timney Mr Wally Grimshaw

BACKGROUND

- 1) In October 2005 Mannin Pension Fund Pty Ltd applied for a liquor licence for proposed premises at Batchelor to be called the Rum Jungle Tavern ("the Tavern"). The premises are located at 5 Nurndina Street, Batchelor. The application was for a tavern licence with a takeaway component.
- 2) The three (3) objections were received within the objection period, those being from Assistant Commissioner Mark Payne for Northern Territory Police, Mr Robert Davis, Operator of the Rum Jungle Motor Inn and Mr Ron Hobbs, Manager / Co-owner of the Historic Retreat.

ORIGINAL HEARING BEFORE THE COMMISSION

- 3) The hearing in respect of the Tavern Licence with a takeaway component commenced in Batchelor on 2 March 2006 and reconvened on 4 March 2006 for further evidence to be taken. It was then adjourned part heard for further hearing on 19 June 2006 in Darwin.

- 4) The Commission determined that both the objectors and the residents in Batchelor who gave evidence had no opposition to the applicants being granted a tavern licence for the “on premise” sale of alcohol provided that issues such as noise and late trading hours were properly addressed in the licence. The Police and the local community also appeared to the Commission to be supportive of the general need for a community tavern in Batchelor with a focus on providing entertainment and a place to meet.
- 5) On 23 June 2006 the Commission published its decision and determined to grant an “in principle” liquor licence for the Tavern to allow for the on premises sale and consumption of liquor, subject to a number of special conditions. (Upon completion of the renovation and refit of the Tavern building, a licence for on premises alcohol consumption was issued.) In addition, the Commission reserved its decision on the application for a takeaway licence for further consideration.
- 6) The original application for a takeaway licence included a request for approval of the following operating hours:

Liquor may be sold for consumption away from the premises between the hours of:

Sunday to Friday: 1000 hours to 2200 hours;

Saturdays and Public Holidays: 0900 hours to 2200 hours.

No trading Good Friday or Christmas Day.

- 7) On 17 July 2006, the Commission published a separate decision in respect of the application for a takeaway component of the licence and determined:

“DECISION: The Application for a takeaway licence is adjourned. At the request of the applicant, the hearing panel will reconvene to consider the adjourned application no earlier than six (6) months after the premises open for business.”

- 8) The Commission, as currently constituted to consider the takeaway application, notes that the application currently under consideration is in fact a continuation of the hearing conducted in March and June 2006. On the basis that none of the current Commissioners was involved with the original hearing, and for the purpose of ensuring that all previous considerations are now taken into account, the full reasons for decision delivered by the Commission on 17 July 2006 in respect of the adjournment of the takeaway licence application are set out below:

“REASONS FOR DECISION (delivered 17 July 2006)

- 1) *When we made the decision recently to grant an “in principle” tavern licence for on premises consumption to the applicant, we adjourned the question of whether or not to include a takeaway component for further consideration. We have now had the opportunity to consider this matter and have reached a decision on this aspect of the application.*
- 2) *The McElwees have put forward some persuasive arguments in support of the granting of a takeaway licence to them. Their probity and ability to manage a good hotel or tavern has not been questioned. We accept that*

they will be responsible Licensees with a community focus and a history of dealing with "problem drinking" in Timber Creek.

- 3) The Commission must remain aware, however, that once we have granted a licence, it can easily be onsold subject to basic probity requirements being fulfilled. We must be satisfied therefore that it is appropriate to grant a further takeaway licence in Batchelor based principally on neighbourhood amenity issues and not principally on the good character of the applicant.*
- 4) The evidence before us suggests that one of the main reasons the community generally supports another takeaway outlet in Batchelor is to provide competition in the hope of creating a cheaper supply of alcohol. The applicants, by their own admissions see takeaway (to be sold from behind the bar) as a minimal part of their business. With such minimal sales envisioned, it is doubtful they could make great inroads into the Batchelor pricing structure and we do not find this argument compelling.*
- 5) The main neighbourhood amenity issue for us to consider is the impact further takeaway might have on the social fabric of Batchelor. Concerns about increased noise, litter and antisocial behaviour that occurred regularly in the public areas of Batchelor when the club was open are well documented. There is good evidence, however, that the club was badly run and conversely that during that period, Batchelor won "Tidy Town" at least once.*
- 6) The police and some objectors oppose the takeaway component of the application. Superintendent O'Brien, who was in charge at Batchelor both during the Club's operation and after its closure, gave compelling evidence of the improvement to the amenity of the township once takeaway from the club ceased. We cannot ignore his evidence and note that the major offenders were the students from Batchelor College (a Dry campus) who had nowhere to drink takeaway apart from public spaces within the town area.*
- 7) The 8 point proposal put forward by the applicant regarding the sale of takeaway alcohol is certainly a very responsible attempt to maintain the amenity of the Batchelor area. This includes the proposal to require customers to register for takeaway on the basis that only those with a private residential address where they can consume their drink (or tourists passing through) will be eligible to buy. As Batchelor College is a Dry campus, the students could not buy takeaway from the applicant's outlet unless we assume they could persuade the Licensee that they had another private space available to them. (NB They could however, continue to buy from the other licensed premises on the edge of town.)*
- 8) Whilst we support harm minimisation strategies, we query whether the refusal to serve takeaway to those who do not have private homes to go to could be construed as indirectly discriminatory. Whilst we in no way reject this proposal, it is not without its practical problems and the impact of this condition on relationships in the town would be a matter for careful consideration.*

- 9) ***Further, if a customer declares that he is not going to drink in public areas, the publican would have to serve him/her at least the first time. He would then have to devise some way of checking up on the customer. The difficulty in policing any breaches of the registration system is apparent.*** (Emphasis added).
- 10) *Over the past fortnight, the hearing panel have weighed up the positives and negatives with respect to the granting of a takeaway licence to the applicant. We accept that proposed restrictions on opening hours for takeaway sales and on the persons eligible to buy are both serious attempts at harm minimisation strategies. We have some lingering concerns however about the likely effectiveness of some aspects of those strategies. **We have therefore decided to give the applicants time to establish their tavern for on premises drinking and to adjourn this application for further consideration no earlier than six (6) months after the premises open for business. We emphasise that this decision is not affected in any way by the 12-month moratorium on fresh takeaway licence applications announced recently. We simply remain undecided as to whether or not the takeaway licence should be granted and intend to revisit the issue when the tavern is up and running.*** (Emphasis added).
- 11) *A further matter is worth addressing in this decision. At the hearing, we discussed whether there was any support for an Alcohol Management Plan for Batchelor. The applicant, the other publican and the police welcomed this idea-as did the Commission. To this end, the Commission will ask the Office of Alcohol Policy to discuss with major stakeholders including Batchelor College and the Coomalie Council the viability, benefits and scope of such a proposal.*

*John Flynn, Chairman
17 July 2006*

- 9) By letter dated 5 September 2008 the Chairman advised the parties (the applicant and the objectors) that, following an application by the Licensee, the Commission had decided to re-convene the application in respect of the takeaway sale of alcohol.
- 10) *The Commission as now constituted to hear the takeaway licence application notes particularly that the former Commission, having heard all the evidence of the objectors, were not moved to refuse the grant of a takeaway licence. Instead the former Commission determined to adjourn the application “to give the applicants time to establish their tavern for on premises drinking and to adjourn this application for further consideration no earlier than six (6) months after the premises open for business. We emphasise that this decision is not affected in any way by the 12-month moratorium on fresh takeaway licence applications announced recently. We simply remain undecided as to whether or not the takeaway licence should be granted and intend to revisit the issue when the tavern is up and running.”*

- 11) As a starting point, the current Commission is of the view that, in now considering the application for a takeaway licence, it must take significant notice of the performance of the Licensee in managing the business and minimising alcohol related harm in the operation of the Tavern since the grant of the on premise licence.

FURTHER SUBMISSIONS

- 12) The letter from the Chairman, referred to above, further advised that the by notice dated 11 July 2008, the Director of Licensing sought written submissions from the Batchelor community concerning the revived application for the grant of a takeaway licence. A total of thirteen (13) submissions was received by the Director and may be summarised as follows:

Author / Status	For / Against Application	Reasons
Mr Bruce Jones Resident	For	Fair trading between licensed establishments
Mr & Mrs Stewart Residents	For	Convenience. Competition
Lisa Wain CEO Coomalie Community Government Council	For (but concerned about trading hours)	Council resolution to support application for second takeaway licence for Batchelor
Professor Tom Evison Deputy Vice- Chancellor Batchelor Institute of Indigenous Territory Education ("The Institute")	Against	Potential impact of takeaway licence so close to The Institute premises on student activity
CP Horne Batchelor Butterfly Farm	Against	Pubic drunkenness and littering. Previously refused application for liquor licence, as for Batchelor Store
Rum Jungle Bungalows	Against	One licence sufficient for Batchelor. Likely to lead to increase in consumption. Will bring anti-social behaviour to town centre
Brevet Sergeant Scotty Mitchell NT Police	Against	Relying on matters raised in original formal objection
Mr & Mrs Bulmer Residents	For	Increased competition for takeaway sales of alcohol. Problems not caused by Tavern but by students of The Institute who have no controlled drinking area
Ms Gillian Hunter Resident	Against	"Industrial" noise created by Tavern fridge compressor and tourist busses visiting the Tavern. Drunks in the park

Ms Christine Bond Resident	Against	Problems with drinking and anti-social behaviour in park opposite Tavern. Further strain on resources
Mr Steve McNamee Property Owner	For	Convenience. Tavern adds to amenity of Batchelor
Mr and Mrs Douglas Cokes Tours / Residents	For	Convenience
Judy McGinn Batchelor General Store	Against	Concerns re litter and broken glass on the oval. Application for takeaway licence by Batchelor Store rejected. Extended trading hours for takeaway sales

- 13) In all there were six (6) submissions in support of the grant of the takeaway licence and seven (7) against. Those persons who opposed the grant of the takeaway licence relied primarily on the same issues raised by the objectors. Namely, drinking and anti social behaviour moving from the “drinking paddock” to the central area of the township near to the Tavern.
- 14) Those who lodged submissions supporting the application raised the issues of convenience in purchasing takeaway alcohol, for example following a meal at the Tavern, and increased competition with the introduction of an alternate takeaway licence to the Batchelor Township.
- 15) From the submissions received the Commission is entitled to conclude that support for the application is evenly balanced in the Batchelor Community, at least amongst those residents who went to the trouble of lodging a submission. Of some significance in the Commission’s deliberations is the fact that the Coomalie Community Government Council (“the Council”), by a formal resolution, determined to support the application for a takeaway licence, albeit with restricted hours to those applied for by the Licensee.

THE HEARING

- 16) Since the original application by Mannin Pension Fund Pty Ltd, a restructure of the business has resulted in the continued application being made by Stamen Investments Pty Ltd. The Chairman opened the hearing by advising the parties that the Commission had been reconstituted due to the retirement of two (2) of the Commissioners who had sat on the previous hearing. The Chairman also advised the parties that, contrary to previous advice, the former Commission’s decision in respect of the takeaway component of the licence application had been located. Copies of the decision were provided to the parties.

SUBMISSIONS OF MR CROWE

- 17) Mr Crowe, on behalf of the applicant, advised the Commission that this application had been on foot for almost three (3) years since the initial application. The decision in respect of the grant of the Tavern Licence was published on 23 June 2006 and the decision deferring the takeaway application was published on 17 July 2006. He further advised that his client had reduced the takeaway hours sought to 7.00pm on all nights – a daily reduction of three (3) hours trading.
- 18) Mr Crowe noted that in the past there had been two (2) takeaway licences in Batchelor, up to time of the closure of the Rum Jungle Recreation Club in 2003. Since that time an application for a takeaway licence by the Batchelor General Store had been refused. The objectors in that instance were NT Police and Mr Robert Davis, a principal of the other takeaway liquor licence in Batchelor.
- 19) Mr Crowe submitted that a significant proportion of alcohol related problems in Batchelor arose as a result of The Institute's policy of banning alcohol on its campus. He submitted that students of the Institute were adults who, despite the ban on drinking on campus, were entitled to purchase and consume alcohol. The fact that the Institute does not provide a venue at which students could drink resulted in pushing the Institute's alcohol related problems into the Batchelor community, particularly the public areas.
- 20) Mr Crowe submitted that because students could not take alcohol back to the Institute they were consuming it in the "drinking paddock" and this was exacerbating anti-social behaviour in the Batchelor township. He noted that the "drinking paddock" was not an authorised drinking area however it was a venue used to consume takeaway alcohol purchased from the Rum Jungle Motor Inn. Mr Crowe confirmed that the applicant would co-operate with any initiatives introduced by the Institute, including enforcing bans the Institute may wish to impose on particular students.
- 21) Mr Crowe also submitted that many of the alcohol related problems that had arisen in the past were the result of the poor management of Rum Jungle Recreation Club. He also noted that the Police had made essentially the same objection when the Batchelor Store had applied for a takeaway licence. Mr Crowe noted the comments of the Commission in its decision refusing to grant that licence that it had not been swayed to do so on the basis of the objections, but rather as a result of the failure of the applicant to persuade the Commission that a licence should be granted.
- 22) Mr Crowe submitted that in the course of the original licence application for the Tavern the Commission had heard the evidence of the objectors and yet had not refused the licence application in respect of the takeaway component. Rather the Commission had given the Licensee time to establish the business with a licence for consumption of alcohol on the premises and adjourned the takeaway application for a period of six (6) months to see how the business traded.

- 23) Mr Crowe advised that his client, having established and operated the tavern for some time, was now seeking the grant of a takeaway licence, as foreshadowed in the Commission's earlier decision. In support of the application Mr Crowe drew the Commission's attention and in particular to the support of the Coomalie Community Government Council for the grant of the takeaway licence.
- 24) Mr Crowe also referred the Commission to the report prepared by Licensing Inspector Doug Bell and the comment that he had met with the local Police who had no problem with the application except for the proposed trading hours. Mr Bell's report also stated; "*Police want the Tavern's takeaway sales to cease by 18:00 hours. Police did agree that this was a big ask when you consider the Rum Jungle Motor Inn, which is located close by, can trade until 22:00 hours*". Mr Crowe informed the Commission that whilst the Motor Inn had voluntarily reduced its takeaway trading hours to 9.00 pm, it could still sell takeaway alcohol legally until 10.00 pm.
- 25) Mr Crowe noted that Licensing & Regulation had arranged for a large notice to be published seeking written submission from Batchelor residents in respect of the takeaway licence application. Whilst a number of submissions had been received Mr Crowe queried the manner in which the submissions would be treated by the Commission, allowing that the authors of the submissions were not objectors in terms of the requirements of the *Liquor Act*. (Note: the Commission in its response advised that the submissions were a means of obtaining an update on community alcohol issues and feeling towards a takeaway application, they did not constitute objections and would not be treated as such.) Mr Crowe noted that a number of the submissions expressed support for the grant of the takeaway licence.
- 26) Mr Crowe submitted that since the grant of the Tavern Licence his client had traded in a responsible manner and had passed the test of responsible management, as envisaged by the Commission in its earlier decision to adjourn the takeaway application. In addition, the Council was now in support of the grant of the licence as opposed to its earlier position. The Council had submitted that it favoured both Batchelor licensed premises having takeaway hours reduced to 7.00pm. Mr Crowe submitted that the change of heart on the part of the Council stemmed in part from concerns about the management of the former Rum Jungle Recreation Club and that the Council now supported this application, having had the opportunity to observe the operation of the Tavern and the management style of the current Licensee.
- 27) Mr Crowe advised the Commission that he expected the Police objection to be along the usual lines, that being an objection to the grant of all new liquor licences and failing that, a call for the reduction of trading hours. Mr Crowe informed the Commission that the applicant had agreed, in the face of the submissions received and objections lodged, to reduce the trading hours applied for so that takeaway sales would cease at 7.00 pm.
- 28) Mr Crowe noted that the previous hearing for the Tavern licence had not addressed the tourism issues and the difficulty in attracting tourists to Batchelor. He confirmed that tourists are using the facilities offered by the Tavern including the restaurant, gaming machines and ATM. The Licensee is currently losing

business as it cannot offer takeaway alcohol sales and the tourists visiting the Tavern were going elsewhere for those purchases. Mr Crowe also submitted that currently in the Batchelor district there were very limited options so far as takeaway alcohol is concerned. He stated that there was a demand for takeaway alcohol in Batchelor from both tourists and locals alike.

- 29) Mr Crowe stated that, given the move away from takeaway sales by stores and small supermarkets, Taverns and Hotels were a more appropriate venue for those sales.
- 30) So far as the public interest criteria set out in the *Liquor Act* was concerned, Mr Crowe noted that this was raised during the first hearing and that his client was committed to the responsible service of alcohol and had arranged for staff training in that regard. Staff employment contracts would refer to the Responsible Service of Alcohol ("RSA") requirements. In addition, Mr McElwee was in regular contact with the local Police to discuss their concerns in respect of alcohol related issues in Batchelor.
- 31) Mr Crowe informed the Commission that his client intended to introduce a number of voluntary measures if the takeaway licence was granted, including the banning of trouble makers and staff seeking identification from persons who were unknown to them. In addition, patrons would be able to impose a self ban if they chose to do so. Problem drinkers will be noted on a banned list and would be prevented from purchasing alcohol, for both consumption in the Tavern and for takeaway. Mr Crowe also advised that his client would place people on the banned list if they purchased takeaway alcohol from the Tavern and consumed it in breach of the two kilometre laws.
- 32) Mr Crowe submitted that his clients would accept the standard licence condition regarding the sale of alcohol on credit and would impose a voluntary ban on the sale of four (4) litre cask wine and port wine. His clients would also encourage cans rather than glass for takeaway beer sales. Whilst the Licensee did not wish to have a licence condition banning the takeaway sale of alcohol in glass containers, it would encourage the sale of cans rather than bottles.
- 33) Mr Crowe reiterated that the Licensee had agreed to restrict takeaway sales to 7.00 pm, a significant concession considering the allowable trading hours for the Motor Inn. He confirmed that takeaway sales would be conducted over the bar inside the premises of the Tavern providing staff with an opportunity to observe the patrons and identify any who were on the banned list.
- 34) Mr Crowe reiterated that the Commission had already conducted a hearing into the takeaway licence application, including hearing submissions from the objectors, and had not been persuaded to reject the application. The Commission had in fact decided to adjourn the application to see how the Licensee operated the Tavern before re-considering the takeaway application. Since that time the Licensee had successfully operated the Tavern, with no adverse comment or complaint from Police or Licensing and Regulation. Mr Crowe submitted that in the circumstances, and taking account of the Licensee's track record in running the Tavern, the grant of the licence should now be approved by the Commission. Mr

Crowe tendered the previous decision of the Commission in respect of the application for a takeaway licence as an exhibit.

SUBMISSIONS OF BREVET SERGEANT SCOTTY MITCHELL

- 35) Mr Mitchell advised the Commission that NT Police were opposed to the grant of a takeaway licence to the Tavern due to the existing alcohol related anti-social behaviour in the Batchelor township and the prospect of those problems being exacerbated by the addition of another takeaway alcohol venue in the township. In reference to the Tavern he commented that the new licence had increased problems slightly, but had not had a significant impact. He added that the premises is well run and that there were no significant issues with management.
- 36) Mr Mitchell submitted that whilst it was acknowledged that many of the problems came from students of The Institute it was not the role of the Institute to vet students on the basis of their alcohol consumption tendencies. The Institute recruits students nationally, not just from the NT. All of the township of Batchelor is within the two (2) kilometre zone and drinking was unlawful on any of the public land within the township.
- 37) Mr Mitchell advised that Batchelor was within a Police Region that also included five (5) other communities. It is a difficult region to manage due to the area covered and the fact that only two (2) officers are stationed in the Region, although an Aboriginal Community Police Officer ("ACPO") had recently been transferred to the region to assist, amongst other matters, in dealing with indigenous people breaching the two kilometre law. Police resources in the area were barely sufficient and the overtime costs for the Region were well above normal. He submitted that Police call outs to alcohol related incidents involved predominantly takeaway alcohol.
- 38) Mr Mitchell submitted that Territory wide statistics demonstrated a steady increase in the numbers of people taken into protective custody and being referred to sobering-up shelters. He advised that he was able to provide copies of relevant statistics for Batchelor if required by the Commission. Mr Mitchell noted that there was no sobering up shelter in Batchelor and that placed a further strain on Police resources with people being taken into protective custody being transferred to Darwin, thus taking the Police officers out of the community for regular and prolonged periods.
- 39) Mr Mitchell advised that the local officers had reported that the reintroduction of the Night Patrol had been a success and was working well. This service has reduced the pressure on Police in respect of call outs to alcohol related incidents.
- 40) Mr Mitchell referred the Commission to a number of incidents at the Tavern that had required calls to Police, including drunks fighting in the car park and on the oval, general disturbances and one official noise complaint. A print out from the Police Realtime Online Management Information System ("PROMIS") database was tendered as an exhibit.

- 41) Mr Mitchell submitted that should the Commission be minded to grant the takeaway licence it should be subject to the same type of restrictions as are currently in place in Alice Springs and Nhulunbuy. In response to a question from the Chairman, Mr Mitchell confirmed that Police would like to see the same sort of restrictions placed on the Rum Jungle Motor Inn's licence.
- 42) Mr Mitchell advised that NT Police could see no benefit in an additional takeaway licence being granted for Batchelor. People were currently using the "drinking paddock" to consume takeaway alcohol purchased from the Motor Inn. The paddock has no official standing as a drinking area and was within two kilometres of licensed premises. He advised that Police were enforcing the two kilometre law in the drinking paddock however this had the effect of moving the drinkers further into the bush into more secluded and potentially dangerous areas.
- 43) Mr Mitchell acknowledged that all licensed premises have incidents but added that research indicated that increases in the number of licensed premises resulted in Licensees cutting corners and lowering standards to try and maintain market share. He stated that experience showed that the granting of an additional takeaway licence was likely to result in increases in domestic violence and road accidents.
- 44) Following evidence from Mr Mitchell the Commission adjourned to undertake a site inspection of the Tavern.

SUBMISSION OF MR ROBERT DAVIS

- 45) Mr Davis is Owner/Director of the Batchelor Resort and Rum Jungle Motor Inn. He advised the Commission that his original objection to the Tavern licence concerned noise issues and those had been addressed at the first hearing. Since the Tavern had opened he had observed some noise problems emanating from the Tavern at his premises, which were some half to three quarters of a kilometre from the Tavern. His concerns about noise related to his caravan park users who had no escape from the noise. He submitted that word travelled amongst caravanners and bad reports would impact on people intending to use his caravan park.
- 46) Mr Davis conceded that his objection to the grant of a takeaway licence was predominantly on commercial grounds and he did not want to go into specific details in that regard. Mr Davis informed the Commission that the licence for the Motor Inn allowed takeaway sales from 10.00 am to 10.00 pm and that he had voluntarily reduced the trading hours to cease at 9.00 pm. Sales of alcohol for consumption on premises extended to 11.00 pm and bona fide lodgers could purchase takeaway alcohol for extended hours.

SUBMISSIONS OF MR ROBERT HOBBS

- 47) Mr Hobbs informed the Commission that he was the manager of the Historic Retreat, a bed and breakfast facility located on the other side of the oval from the Tavern. He had decided not to sell or supply alcohol in the operation of his business, however guests were permitted to consume their own alcohol on the

premises. Mr Hobbs informed the Commission that he marketed his premises as being located in a peaceful and tranquil environment.

- 48) Mr Hobbs submitted that when the Tavern licence was granted the Chairman had warned Mr McElwee that noise issues could result in a loss of the licence. He had subsequently made two (2) noise complaints to Licensing and Regulation and had not received any response to date.
- 49) Mr Hobbs informed the Commission that in his original objection he had submitted that takeaway sales ceasing at 6.00 pm would be acceptable to him. He has subsequently revised his position and said he cannot now support the takeaway licence at all.
- 50) Mr Hobbs further explained his concerns regarding noise emanating from the Tavern and advised that he could not see why the Licensee could not contain the noise within the premises.

FURTHER SUBMISSIONS FROM MR CROWE

- 51) At the conclusion of the evidence on behalf of the objectors the Chairman invited Mr Crowe to present submissions in response on behalf of the Licensee.
- 52) Mr Crowe submitted that the Police objection was well known and consistent with the policy position of opposing all applications for new licences. The objection was of a generic nature and whilst some of the matters raised may be relevant Territory wide they were not specific to the Batchelor area or to the Rum Jungle Tavern itself. Mr Crowe submitted that the Police objection at this hearing had produced no new evidence since the initial hearing. Mr Crowe reiterated his submission that the objections at the first hearing had not been considered sufficient to persuade the Commission to reject the application for a takeaway licence. He submitted that the evidence of the objectors on this occasion did not advance their cause any further than previously.
- 53) Mr Crowe noted that Hobbs had originally advised that a takeaway licence to 6.00 pm would be acceptable to him however he was now objecting to the takeaway licence totally. He submitted that Mr Hobb's objections in respect of noise problems with the Tavern were not relevant to the takeaway licence application currently being considered.
- 54) Mr Crowe submitted that the objection of Mr Davis was based on commercial considerations and should be rejected by the Commission. He submitted that Mr Davis' premises had benefited commercially since the closure of the Recreation Club by having a monopoly on takeaway alcohol sales in Batchelor. Mr Crowe added that whilst Mr Davis currently enforced a self imposed closure of takeaway sales at 9.00 pm there was nothing preventing him from trading to 10.00 pm as per his licence.

- 55) Mr Crowe submitted that having inspected the Tavern premises the Commission would have noted that the premises provided a modern and secure environment for patrons, enhanced by the installation of up to date CCTV equipment. He submitted that the Council's support for the application was reflective of the general community support for an additional takeaway licence in Batchelor. Tourism numbers for the area were significant and mining activity had resulted in an increased demand for alternative licensed premises, including a demand for diversified facilities and for the purchases of takeaway alcohol.
- 56) The Director had ensured that the takeaway application was brought to the community's attention via the large advertisement calling for submissions. The Licensee had responded to the matters raised in those submissions, including by agreeing to cease takeaway sales at 7.00 pm. He added that a number of the submissions were in support of the application and those opposed had not raised any new issues that were not considered at the first hearing. Mr Crowe submitted that the Commission should place significant weight on the support for the application from the Council.
- 57) Mr Crowe concluded by reiterating that the Commission had heard the objections previously and that the objections had not been sufficient to cause the Commission to refuse to grant the licence. The Licensee had been given a trial period to allow the Commission to observe how the Tavern was managed. No new evidence had been tendered to the Commission this time by the objectors and the Tavern has operated without significant incident since opening. On that basis Mr Crowe submitted that the Commission should now grant the takeaway licence.

SUBMISSIONS RECEIVED FOLLOWING THE HEARING

- 58) During the course of the hearing Mr Mitchell undertook to provide additional information to the Commission in respect of statistics compiled by Police since the opening of the Rum Jungle Tavern. The additional material was received under cover of a letter dated 2 November 2008 and included the following information and statistics:
- Sobering Up Shelter Statistics;
 - Police Protective Custody Statistics;
 - Statistics of alcohol related incidents in the Batchelor Township;
 - National Research Document – National Drug Law Enforcement Research Funds (“NDLERF”) “Predicting alcohol-related harms from licensed outlet density: A feasibility study”; and
 - Map of the Batchelor district.
- 59) In respect of the materials provided, Mr Mitchell noted that protective custody incidents for the Batchelor Township had remained relevantly static since the opening of the Tavern. However, he also submitted that the statistics in respect of alcohol related incidents showed a marked increase in offending since the Tavern had commenced trading, particularly in respect of alcohol-related incidents involving aggravated assault, domestic disturbance and general disturbance. Mr Mitchell submitted that the disturbing trend of increases in offences recorded was

attributable to the additional liquor licence in Batchelor since the opening of the Tavern.

60) Mr Crowe was invited to respond, on behalf of the applicant, to the further submissions received from Mr Mitchell. Mr Crowe's further submissions may be summarised as follows:

- The Sobering Up Shelter Statistics and Police Protective Custody Statistics do not relate specifically to the Batchelor Township and that the statistics of alcohol related incidents in Batchelor provide no raw data but rather summary lists only;
- The late submissions of the materials deprived the applicant of the opportunity to test the collection methodology or conclusions drawn from the statistics during the course of the hearing;
- The Commission has previously expressed concern in respect of the effectiveness of similar statistics to draw conclusions as to cause and effect (Batchelor Store decision);
- The statistics were not in accord with submission made on behalf of Police at the hearing. Namely, that the Tavern licence had not had a significant impact on the drinking aspects of the community and that the Tavern was, in the main, well run;
- Mr Crowe submitted that Mr Mitchell should not be treated as an expert witness by the Commission as his evidence was not independent but rather a view presented on behalf of Police;
- The NDLERF Report in respect of liquor outlet density does not propose a "one size fits all" model in predicting community impact of additional liquor licences;
- Police had ample opportunity to prepare for the hearing and present its case, supported by whatever materials were required. The late submission of further material denied the Applicant the opportunity to cross examine Mr Mitchell on the materials now submitted and also deprived the Commission of the benefit of evidence that may have arisen from that examination of the Police evidence; and
- In all the circumstances the Commission should apply little weight to the additional materials provided by Police.

CONSIDERATION OF THE ISSUES

64) The Commission attaches significant weight to the fact that, whilst the validity of the original objections was not in question, the Commission as previously convened was not persuaded to reject outright the initial application for a takeaway licence. Whilst the previous Commission certainly had concerns in respect of the Applicant's capacity and ability to operate the Tavern, it was

prepared to adjourn the takeaway component of the application rather than refuse to grant it.

65) In the decision published on 17 July 2006 the Commission noted:

We have therefore decided to give the applicants time to establish their tavern for on premises drinking and to adjourn this application for further consideration no earlier than six (6) months after the premises open for business. We emphasise that this decision is not affected in any way by the 12-month moratorium on fresh takeaway licence applications announced recently. We simply remain undecided as to whether or not the takeaway licence should be granted and intend to revisit the issue when the tavern is up and running.

66) The Tavern has now been operating since mid 2006. The Commission accepts the submissions on behalf of the Applicant that the Licensee has operated the premises without significant incident or, for that matter, any reported breach of the licence conditions or the Act. That situation was supported by the evidence of Inspector Bell and, although a contentious point, by the comments of local police officers.

67) Turning to the submissions of the objectors presented at the most recent hearing, the Commission does not give significant weight to the objection of Mr Davis, who conceded candidly that his original objection was in relation to noise issues and the objection to the takeaway licence was based on commercial considerations, being a competitor Licensee. As such, Mr Davis' submissions in respect of the takeaway licence did not altogether constitute a valid objection.

68) The submissions of Mr Hobbs were primarily concerned with the amenity of the neighborhood and, in particular noise emanating from the Tavern and impacting on the operation of his business located near the Tavern. The Commission accepts that objections of such nature are a valid consideration in respect of the grant of the Tavern licence and were, appropriately, taken into account at the time the Commission determined to grant the Tavern licence. However, the Commission is not persuaded that the objection is particularly relevant to this takeaway licence application allowing that the anti-social behaviour that Mr Hobbs complains is occurring now, both in the vicinity of the Rum Jungle Motor Inn and the public areas of the township. Obviously the current problems relating to anti-social behaviour arising from the consumption of takeaway alcohol cannot be attributed to this applicant.

69) In respect of Mr Hobbs submissions regarding the consumption of alcohol and disruptive noise in public areas near the sports oval, the Commission notes the advice from police that all public areas within Batchelor are within 2 km of licensed premises with the result public drinking is prohibited. The Commission was given some assurance by the applicant that persons who purchase alcohol from the Tavern and are found to have consumed it in breach of the 2 km law will be banned from future purchases of takeaway alcohol from the Tavern.

- 70) The Commission acknowledges the matters raised in the objection by Police in respect of alcohol related incidents and the apparent increase in those incidents since the opening of the Tavern. Whilst the statistics presented raise significant concerns the Commission is unable, on the materials and evidence provided, to find a conclusive or definite nexus between the increase in incidents and the opening of the Tavern. Alcohol, including takeaway alcohol has always been available in Batchelor since the closure of the Rum Jungle Recreation Club. In the Commission's view there are other factors which may have impacted on the number of offences recorded, including the reintroduction of the Night Patrol and the addition of a temporary ACPO to the compliment of Police officers stationed at Batchelor.
- 71) The Commission does however share the concerns raised by Police and Mr Hobbs by in respect of the trading hours applied originally applied for by the Applicant for takeaway sales. The Commission notes the concession made by the applicant during the course of the hearing to agree to reduce the trading hours sought to 10.00 am to 7.00 pm. The Commission regards this as a significant concession on the part of the Applicant, particularly as the Rum Jungle Motor Inn is permitted to conduct takeaway sales until 10.00 pm, albeit a self-imposed restriction limits the sales to 9.00 pm.
- 72) The Commission was not persuaded that the grant of a takeaway licence to the Tavern would result in an increase in the sale and consumption of alcohol in the Batchelor Community and an increase in alcohol related anti-social activity. Takeaway alcohol is currently available from the Rum Jungle Motor Inn and the addition of a further licence would, in the opinion of the Commission, result in similar sales volumes shared between the competing venues.
- 73) In reaching its decision to grant the takeaway licence the Commission is particularly mindful of the background to this application and the fact that the Applicant has been required to present submissions in response to the same objections on two (2) separate occasions. The Commission reiterates that, whilst the Commission as formerly constituted heard and considered the evidence of the three (3) objectors, it was not persuaded to refuse to grant the licence. Similarly, having heard again from the same objectors, including providing an opportunity to submit matters not referred to in the initial hearing, the Commission in this instance is not persuaded to refuse to grant the licence.

FURTHER MATTERS TO BE CONSIDERED

- 72) Batchelor Township has a unique demographic and provides accommodation and services for a range of industries. Commissioners were informed that the township comprises seven hundred (700) permanent residents and is also usually host to students attending The Institute whose number can swell to six hundred (600) students at peak periods. This mix of population appears to provide a background to, or root cause of much of the township disturbance, much of which follows consumption of alcohol and subsequent behaviour.

- 73) It must be recognised that many of the enrolled students come from communities where the availability of alcohol is very restricted and controlled or where, under law, alcohol is not able to be possessed, consumed or brought into that community. The temptation for these students to take advantage of the comparatively liberal availability of alcohol purportedly has a significant impact on the township. Much of the noisy and anti social behaviour referred to in submissions and at hearing is from these students and to a less extent from their extended family, a number of whom are residents of public housing in Batchelor. Consumption of takeaway alcohol by students often occurs in the late evenings and early hours of the morning and in itself this behaviour cannot be conducive to the desired educational outcomes for residential study at The Institute.
- 74) Drinkers' use of a "drinking paddock" close to the Rum Jungle Motor Inn was specifically referred to during the hearing. An issue, beyond it being unlawful under the "two kilometre law", is that many of the drinkers become noisy and where students are involved, this noisy behaviour disrupts the peaceful amenity of the township when students walk through the town to return to The Institute.
- 75) It is noteworthy that in supporting the application for takeaway sales from the Tavern, the Council has made submission that both the Rum Jungle Tavern and the Rum Jungle Motor Inn should have takeaway hours restricted to 7.00 pm.
- 76) While the applicant has agreed to restrict takeaway hours to 7.00 pm, this in itself will not solve many of the existing alcohol related problems within the township. There is a need for a more holistic approach to the control of liquor sales in the township and better ways to govern the behaviour of people following the consumption of alcohol, particularly takeaway, to minimise the impact on the quiet wellbeing of the neighbourhood.
- 77) With the grant of the application the restriction of takeaway, both in terms of the 7.00pm closing and in terms of not selling four (4) litre wine casks will have little impact on the township's problems while the nearby competing outlet has more liberal hours and no restriction on the product sold.
- 78) A more coherent and holistic approach would look at the issues from the township's perspective which could include a supply plan with restrictions on takeaway product and hours, measures which so far have had success in quantifiable terms in Alice Springs and other townships where "Supply Plans" have been put in place. The township's pivotal role in providing tourism services and accommodation for the Litchfield National Park must also be a factor in considering alcohol supply issues.
- 79) Under the *Liquor Act* the Director of Licensing, Local Government Council or the Commissioner of Police can make application for a Public Restricted Area. A Public Restricted Area or "Dry Town" would introduce arguably better controls against unlawful public drinking and is worthy of further consideration.

DECISION

80) The Commission grants to Stamen Investments Pty Ltd a licence for the sale of alcohol for consumption away from the premises for the following hours:

Sales to General Public:

Sunday – Saturday: 10:00am to 19:00pm

81) In accordance with the submission of the applicant, a special condition of licence will be applied to the licence prohibiting the takeaway sales of four (4) litre cask wine. The Commission notes the undertaking made by the applicant during the course of the hearing to put in place a system whereby persons who consume takeaway alcohol in breach of the two kilometre law will be banned from the Tavern and from further takeaway sales. Whilst the Commission is not minded to impose that undertaking as a condition of licence it does expect the Licensee to comply with the undertaking and to put the appropriate measures in place from the commencement of takeaway sales.

Richard O'Sullivan
CHAIRMAN

26 November 2008