CLAYTON UTZ

Brisbane City Council

BCC

Queensland Floods Commission of Inquiry

Inquiry

Fourth Statement of Rory John Kelly - 19 September 2011

Clayton Utz
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Our reference 14118/80117397

QFCI

27/09/

JM

Date:

Exhibit Number:

Fourth Statement of Rory John Kelly

I, Rory John Kelly, Regional Manager of Development Assessment South, Brisbane City Council, of 266 George Street, Brisbane, in the State of Queensland, state on oath as follows:

- A. Attachment **RJK-55** is a copy of a notice from the Commissioner of the Queensland Floods Commission of Inquiry (**Commission**) dated 8 September 2011 requiring me to provide certain information to the Commission with respect to the "Dulux Powder Coating Factory" at 1477 Ipswich Road, Rocklea (**Subject Land**) in the form of a statement (**Notice**). This Statement is provided in response to the Notice.
- B. For the purposes of responding to the Notice and preparing this Statement I have, in my position as Regional Manager of Development Assessment South Branch of the Brisbane City Council (Council), had access to:
 - (a) the business records of Council; and
 - (b) Council officers,

to obtain information to provide a response to the Notice. Unless otherwise stated, the matters set out in this Statement are based on my own knowledge and the information derived from the above sources.

- C. The documents from the above sources and attached to this Statement have been collated by Council officers under my instruction.
- D. I set out below my responses to each of the questions set out in the Notice.

Qualifications and Background

- 1. My qualifications are set out in my First Statement dated 31 August 2011 (First Statement).
- 2. I was not involved in the assessment of the original development application authorising the use of the Subject Land. However, as Regional Manager of Development Assessment South Branch, I currently have responsibility for the area including the Subject Land and have reviewed the relevant Council files.

Rory John Kelly Witness

Response to the Notice

- 1. The defined flood level of the Subject Land prior to the January 2011 flood event;
- 3. Based on Council's records I am aware that prior to the January 2011 flood event, the defined flood level (**DFL**) of the Subject Land was RL 8.0m AHD.
- 2. Whether Council's records indicate that the Subject Land was subject to surface flooding impacts during the January 2011 flood event;
- 4. Council's records indicate that the Subject Land was subject to surface flooding impacts during the January 2011 flood event.
- 3. The date on which the development approval which authorised use of the Subject Land for the Dulux Powder Coating factory (including any development approval for a material change of use for an environmentally relevant activity) was issued;
- 4. In assessing the development application:
 - a. what assessment process was followed specific to flood impacts;
 - b. what consideration, if any, was given to:
 - i. the proximity of the Subject Land to the Brisbane River;
 - ii. the proximity of the Subject Land to Oxley Creek;
 - iii. flood risk or the potential impact of flooding on the Subject Land and measures to address such risk or impact, particularly with respect to the adequacy of the proposed means of storage of chemicals or other hazardous materials on the Subject Land having regard to its potential to adversely impact on waterways and/or sensitive receiving environments (as that term is defined in Brisbane City Plan 2000) if such chemicals or other hazardous materials are discharged during a flood event;
- 5. With respect to the development approval (if any), what conditions were included with respect to protection from impacts of flooding (regardless of its source).
- 5. It is convenient to answer requirements 3, 4 and 5 together.



- 6. I have been unable to find on Council's file an approval to authorise use of the Subject Land for the "Dulux Powder Coating factory".
- 7. It appears that the Subject Land was approved for paint and varnish manufacturing on 14 June 1956. A copy of the memorandum signed by J Hanisch, Acting Team Leader, Development Assessment South, indicating the existence of this approval is Attachment **RJK-56**. Attachment **RJK-57** is an extract from Council's Building Survey and Record Cards indicating that an approval for paint and varnish manufacturing was granted in 1956.
- 8. The oldest Council file I have been able to locate for the Subject Land is dated 10 September 1964 (1964 Approval). Under the 1964 Approval, Council permitted Balm Paints Limited (makers of Dulux) to erect buildings on the Subject Land for the purpose of "Manufacturing Paints and the Storage of raw materials, and for Administration Offices and Staff Amenities". A copy of the 1964 Approval is Attachment RJK-58.
- 9. The 1964 approval relevantly provided the following conditions in relation to flooding:
 - "(c) If any fill is to be placed on this land, such fill is to be in accordance with the requirements of the Chief Engineer and Manager, Department of Works, as depicted in red on the print of drawing No. GV-24257/19.
 - (d) The floor level of proposed buildings to be of the minimum of R.L.21.5."
- 10. Drawing No. GV-24257/19 (included with Attachment **RJK-58**) contains handwritten notations indicating the heel of filling is to be above the "interim limit of reclamation line" which is later described on approved plans as a "flood regulation line". The area available for development is less than the total site area shown on the plan. This appears to indicate that no development is to occur within Stable Swamp Creek corridor.
- The reference to R.L. 21.5 is based on Council datum and empirical units and not the current Australian Height Datum (AHD) based on the metric system. I am informed by Council officers that R.L.21.5 is equivalent to 5.4 metres AHD.
- 12. Council's file indicates that other subsequent approvals were issued in relation to extensions of this use on the Subject Land, but none of these approvals appear to relate to a powder coating factory.
- 13. Council records indicate (derived from flood studies carried out) that the Subject Land is affected by flooding from three sources: the Brisbane River, Oxley Creek and Stable Swamp Creek. The proximity to the Subject Land from each flood source is only partially relevant in determining the highest source of flooding.

All sources of flooding are relevant at the time the development application is lodged, to ensure no adverse impacts upstream or down stream of the site occur.

- 14. In general, in assessing a development application for industrial development on the Subject Land, the location of the building footprint and height of floor levels would be guided by the height of flooding from Oxley and Stable Swamp Creeks, and the findings of a risk assessment that takes into account the height of flooding from the Brisbane River.
- On 23 May 1997, an environmental authority was issued under the *Environmental Protection Act 1994* by the Delegate of Administering Authority, the Environmental Protection Agency in relation to part of the Subject Land (Lot 1 on RP223672). This environmental authority was for ERA 10 "Paint Manufacture manufacturing paint in works having a design capacity of more than 10 000 litres per year". A copy of the environmental authority is Attachment **RJK-59**.
- 16. Conditions of that approval are a matter for the then Environmental Protection Agency..

I make this statement conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act 1867 (Qld).

Dated/9 September 2011

Signed and declared by Rory John Kelly at Brisbane in the State of Queensland thisliday of September 2011

Before me:

Signature of person before whom the declaration is made

Signature of declarant

Christine Jones (Legal Prachtimer)
Full name and qualification of person before whom

the declaration is made

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Fourth Statement of Rory John Kelly dated 19 September 2011

Requirement to provide information

Memorandum of J Hanisch re approval for paint and varnish manufacturing

Extract from Council's building Survey and Record cards re approval of paint and varnish manufacturing

Approval for manufacturing paints and storage of raw materials - 1964

Environmental Authority 23.05.97

Our ref: 1705832

8 September 2011

Rory Kelly Brisbane City Council c/- Clayton Utz

REQUIREMENT TO PROVIDE STATEMENT TO COMMISSION OF INQUIRY

I, Justice Catherine E Holmes, Commissioner of Inquiry, pursuant to section 5(1)(d) of the *Commissions of Inquiry Act 1950* (Qld), require Rory Kelly to provide a written statement, under oath or affirmation, to the Queensland Floods Commission of Inquiry, in which the said Rory Kelly gives an account of the following with respect to the Dulux Powder Coating Factory at 1477 Ipswich Road, Rocklea (**Subject Land**):

- 1. the defined flood level of the Subject Land prior to the January 2011 flood event;
- 2. whether Council's records indicate that the Subject Land was subject to surface flooding impacts during the January 2011 flood event;
- the date on which the development approval which authorised use of the Subject Land for the Dulux Powder Coating factory (including any development approval for a material change of use for an environmentally relevant activity) was issued;
- 4. in assessing the development application:
 - a) what assessment process was followed specific to flood impacts;
 - b) what consideration, if any, was given to:
 - i) the proximity of the Subject Land to the Brisbane River;
 - ii) the proximity of the Subject Land to Oxley Creek;
 - flood risk or the potential impact of flooding on the Subject Land and measures to address such risk or impact, particularly with respect to the adequacy of the proposed means of storage of chemicals or other hazardous materials on the Subject Land having regard to its potential to adversely impact on waterways and/or sensitive receiving environments (as that term is defined in Brisbane City Plan 2000) if such chemicals or other hazardous materials are discharged during a flood event;
- 5. with respect to the development approval (if any), what conditions were included with respect to protection from impacts of flooding (regardless of its source).

In addressing these matters, Rory Kelly is to:

 provide all information in his possession and identify the source or sources of that information;

> 400 George Street Brisbane GPO Box 1738 Brisbane Queensland 4001 Australia Telephone 1300 309 634 Facsimile +61 7 3405 9750 www.floodcommission.qld.gov.au ABN 82 696 762 534

make commentary and provide opinions he is qualified to give as to the appropriateness
of particular actions or decisions and the basis of that commentary or opinion.

Rory Kelly may also address other topics relevant to the Terms of Reference of the Commission in the statement, if he wishes.

The statement is to be provided to the Queensland Floods Commission of Inquiry by Wednesday, 14 September 2011.

The statement can be provided by post, email or by arranging delivery to the Commission by emailing info@floodcommission.qld.gov.au.

Commissioner
Justice C E Holmes

RJK: VH

28th September, 1988.

(6)420/13-NF690/1477(A2)

MEMORANDUM:

Secretary, REGISTRATION BOARD

Proposed Extension to a Hazardous Industry at 1477 Ipswich Road, Rocklea.

An application was submitted by Hughes McNaughton Consultants pursuant to paragraph 8.6.4 of the Town Plan for the City of Brisbane, in respect of the development proposed on the land at 1477 Ipswich Road, Rocklea, described as Lot 1 on Registered Plan 173840 and Lot 1 on Registered Plan 81607, Parish of Yeerongpilly, as depicted on plans of layout nos. R608-1, R608-2, R608-3, R608-4, R608-5, R608-6, R608-7 and R608-8, dated 7th September, 1988.

At its meeting on 14th June, 1956, Registration Board approved the establishment of a paint and varnish manufacture on the subject.

Since then, Council has approved various estensions to the premises to increase the intensity of uses on the site, provide additional storage area, office accommodation and amenity buildings.

Dulux intends to relocate the recently purchased Berger Paint business from Northgate to the subject site and integrate the combined businesses into the Rocklea plant.

They also intent to purchase land adjoining the southern boundary to extend the existing warehouse facilities on site, but the volumes of raw materials and manufactured products currently stored on-site will not alter.

The Department considered the application on the 20th September, 1988 and although the plan of layout requires further traffic amendments, it was resolved that a prima facie case had been established that the proposed development may be deemed to be a permissable development in this instance subject to a satisfactory Health Branch clearance.

The Health Branch have indicated in a report dated 28th September, 1988 that they raise no objections to the proposed use provided that the flammable and combustible liquids are stored in a flammable liquid store, designed, constructed and maintained in accordance with all provisions of the Flammable and Combustible Liquid Regulations of 1976.

They have also requested that $\mathfrak g$ on lodgement of the Building Application, copies of detailed plans of the proposed extension to the flammable liquid store, in accordance with Regulation 7(8) be also submitted.

RECOMMENDATION:

The Council Registration Board as delegate of the Council for that purpose, hereby determines that a prima facie case has been established that by reason of -

- (a) the particular manner in which that development is to be carried out; and
- (b) the area of land available as the site for the purposes of that development;

the carrying out on the abovedescribed land, in the General Industry Zone of the development outlined in the application and depicted on plans of layout nos. R608-1, R608-2, R608-3, R608-4, R608-5, R608-6, R608-7 and R608-8 for the purpose of a hazardous industry -

- (i) in that particular manner; and
- (ii) below a certain intensity of use of the site;

would not -

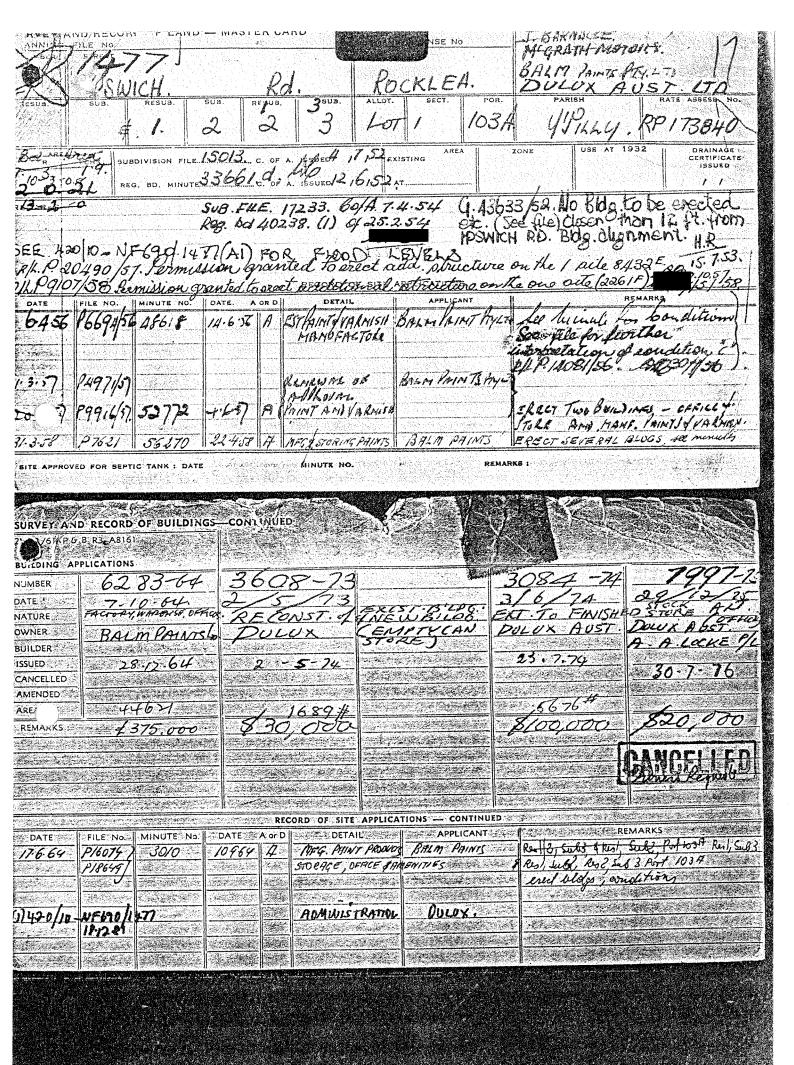
- (A) cause detriment or danger to -
 - (1) the property on or comprising the site of;
 - (2) the conduct of; or
 - (3) the health or safety of persons resident on the site of, or engaged or employed in or in connection with the conduct of;

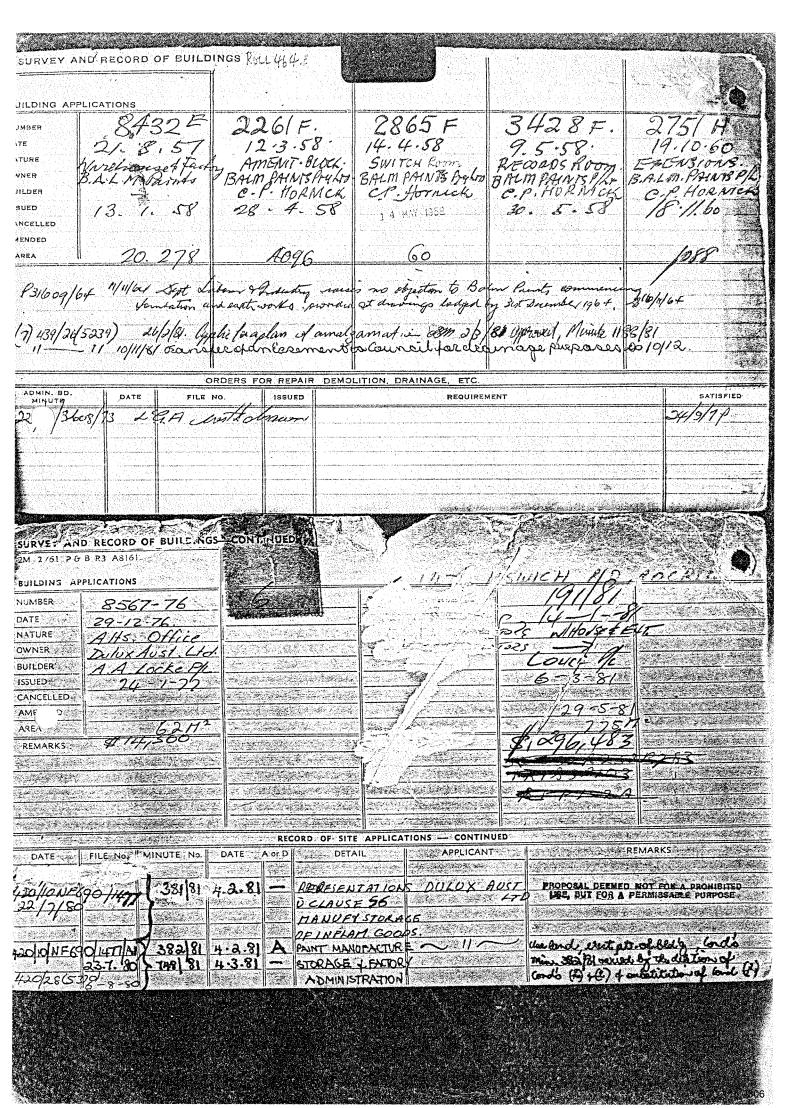
and other development in the vicinity whether existing or likely; or

(B) be obnoxious to persons resident on the site of, or engaged or employed in or in connection with the conduct of any other development in the vicinity whether existing or likely;

therefor deems the proposed development to be a permissable development in this instance.

(J. Manisch) A/TEAM LEADER 2





BRISBANE CITY COUNCIL

COUNCIL REGISTRATION BOARD

Before Board:

1 0 SEP 1964

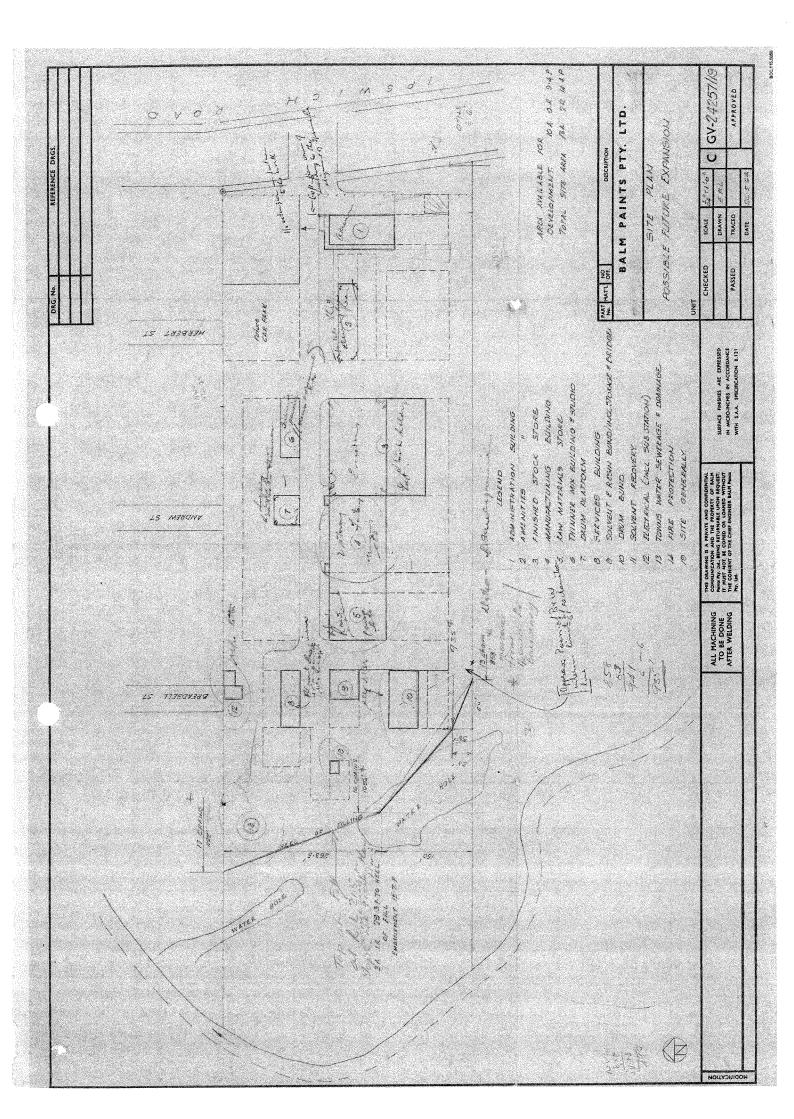
3010/64. PROPOSED ADMINISTRATION OFFICES, STAFF AMENITIES, PAINT MAN UFACTURE AND STORAGE - IPSWICH ROAD, ROCKLEA. P.18649/64.

An application was submitted by Balm Paints Limited, for permission to erect buildings on land containing an area of 10 acres 3 roods 0.9 perches, situated at Ipswich Road, Rocklea, for the purpose of Manufacturing Paints and the Storage of raw materials and for Administration Offices and Staff Amenities.

DECISION: That permission be granted to erect buildings on land described as Resubdivision 1 of Subdivision 3 and Resubdivision 1 of Subdivision 2 of Resubdivision 2 of Subdivision 3 of Portion 103A, Parish of Yeerongpilly, for the purpose of Manufacturing Paints and the Storage of raw materilas and for Administration Offices and Staff Amenities, subject to the following conditions:

- (a) The buildings to be of the sizes and in the positions shown in red on Plan No. GV 24257/19 received by the Council on 19th June, 1964.
- (b) The proposed new buildings to be so designed and constructed as to present a pleasing appdrance with elevations to be sheeted with materials (other than corrugated galvanised iron) to the satisfaction of the Council's Building Surveyor.
- (c) If any fill is to be placed on this land, such fill is to be in accordance with the requirements of the Chief Engineer and Manager, Department of Works, as depicted in red on the print of drawing No. GV-24257/19.
- (d) The floor level of proposed buildings to be of the minimum of R.L.21.5.
- (e) Facilities to be provided within the curtilage of the site for the loading and unloading of service vehicles and for the parking of all vehicles (including employees' vehicles) to be used in connection with the business to be conducted on the land.
- (f) The installation of a suitable septic system with the method of disposal of effluent arising therefrom to the satisfaction of the Chief Engineer and Manager, Department of Water Supply and Sewerage.
- (g) The applicant company to obtain a license as required by the Ordinances for the storage of inflammable liquids on this property.
- (h) The applicant company to obtain approval from the Department of Main Roads concerning the provision of access from this site to Ipswich Road.
- (i) The area designed for car parking to be surfaced or sealed to the satisfaction of the Chief Engineer and Manager, Department of Works.
- (j) Compliance with all relevant Council Ordinances.

This approval will lapse if not availed of within a period



Dangerous Goods Safety Management Regulation 2001

- Section 97(3)

Information Notice - Licence Amendment Granted with Conditions

Caltex Petroleum Services Pty Ltd To:

61 Ashover Street Address:

ROCKLEA QLD 4106

Flammable and Combustible Liquids Licence In respect of:

61 ASHOVER ROAD ROCKLEA Located at:

A003075285 Ref:

DECISION

On 2 September 2011 the delegate decided to amend your licence to store flammable or combustible liquids. Your existing licence has been cancelled and a new licence has been issued subject to conditions.

REASON

Council considers it appropriate to impose site specific conditions in order to achieve an acceptable level of risk associated with the storage of flammable or combustible liquids at your premises. Standard conditions are imposed on all licences in accordance with the Regulation.

RIGHT TO REVIEW

If you are dissatisfied with Council's decision you may apply to Council for a review of the decision within 28 days from the day on which you are given this notice. Applications for review must be in writing and state fully the grounds for review and should be addressed to the Environmental Health Team Leader Compliance and Regulatory Services South Region, South Regional Business Centre, Shop 301/661 Compton Road SUNNYBANK HILLS 4109.

You may purchase a copy of the Act at the Queensland Government Bookshop, or view it online at www.legislation.qld.gov.au and follow the prompts.

If you require further information or assistance please contact me on 3403 8888 during business hours.

DATED AT BRISBANE THIS 2ND DAY OF SEPTEMBER, 2011.

Louisa NOFFKE-SOUTH Environmental Health Officer Compliance and Regulatory Services South Region

BRISBANE CITY COUNCIL

Dangerous Goods Safety Management Regulation 2001

Flammable and Combustible Liquids Licence

Facility Type: Large Dangerous Goods Location

Activity: Service station

This licence has effect on the day stated below and remains in force for one year from that date unless surrendered, suspended or cancelled. Conditions of Approval are contained on the subsequent pages of this document.

Caltex Petroleum Services Pty Ltd

61 ASHOVER RD ROCKLEA QLD 4106

Licence No: A003075285

Effective Date: 02-SEP-2011

Expiry Date: 01-MAY-2012

See Reverse for Approved Storage Details (quantities class and packing group)



Manager, CARS

Caltex Petroleum Services Pty Ltd PO Box 691 ARCHERFIELD QLD 4108

Approved Tank Storage

Tank Identification	Storage Method	Package Group	Capacity
1	Underground	C1	56800
2	Underground	C1	56800
3	Underground	C1	56800
4	Underground	C1	56800
5	Underground	C1	56800
6 decommissioned	Underground	C1	56800
7	Underground	C1	56800
8	Underground	C1	56800
9	Underground	C1	56800
10	Underground	C1	56800
11	Underground	C1	56800
12	Underground	C1	56800
13	Underground	C1	56800
14	Underground	C1	56800
15	Underground	C1	56800
16	Underground	C1	56800
17	Underground	C1	56800
18	Underground	C1	56800

Approved Package Storage

Package Storage Identification	Storage Method	Package Group	Capacity
19	Detached	PG II	49260
20	Detached	PG III	3200

Approved Transfer / Dispenser Pumps

Transfer Pump/Dispenser Type	Number of Pumps/Dispensers	
Single	3	

Reference: A003075285

CONDITIONS OF APPROVAL

Flammable and Combustible Liquids Licence - FC07186395407

1 PLAN APPROVAL/DESIGN REQUIREMENTS

Your facility shall be designed, constructed, maintained and operated in accordance any approved plan(s), design requirements and licence conditions.

Any approved plan(s), design requirements and licence conditions shall be kept on the premises for the life of the installation.

2 COMPLIANCE WITH DGSM

You are required to comply with all relevant provisions of the "Dangerous Goods Safety Management Act 2001", the "Dangerous Goods Safety Management Regulation 2001".

3 DECOMMISSIONED STORAGE OR HANDLING SYSTEMS

In the event the storage or handling system at your facility is to be disposed of or no longer used for the storage or handling of flammable or combustible liquids you must ensure that the storage or handling system is-

- (i) Thoroughly cleaned so that the system is, as far as practicable, free from flammable or combustible liquids; or
- (ii) Otherwise made safe.
- (b) You must provide Council with certification from an appropriately qualified person that your facility has been cleaned or made safe in accordance with the above requirements in the event your facility is to be disposed of or no longer used for the storage or handling of flammable or combustible liquids.

Note: Additional requirements under the "Environmental Protection Act 1994" or "Integrated Planning Act 1997" may apply to your facility in the event flammable or combustible liquids are stored in underground tanks and your facility complies with the criteria for Environmentally Relevant Activity 11(a) - Crude oil or petroleum product storage, as defined in schedule 1 of the "Environmental Protection Regulation 1998".

4 COMPLIANCE

Should you fail to comply with any of the provisions of this approval, your licence may be cancelled or suspended, pursuant to the "Dangerous Goods Safety Management Regulations 2001".

5 CHANGE OF OCCUPIER

In the event you cease to be the occupier of the facility and there is a new occupier of the facility, you must, on ceasing to be occupier, give the new occupier-

- (i) The register under section 41 of the "Dangerous Goods Safety Management Regulation 2001";
- (ii) The written records under sections 18, 19, 25(d), 29(3) and 46(c) of the "Dangerous Goods Safety Management Regulation 2001"; and
- (iii) All applicable approved site plans, design requirement conditions and licence conditions.

Reference: A003075285

6 NEW SYSTEMS/PROCEDURES

You must not use any new installation or system used to store or handle flammable or combustible liquids without ensuring the risk associated with the installation or system is at an acceptable level. An application for licence amendment together with appropriate site plans and specifications of the proposed alteration shall be submitted to Council for assessment prior to the construction and operation of any new installation or system if:

- a) Any new storage quantities of flammable or combustible liquids exceed the maximum prescribed in Table 2.1 of AS1940-2004; or
- b) The risk of any approved storage or handling system is increased.

Reference: A003075285 Page 12606512