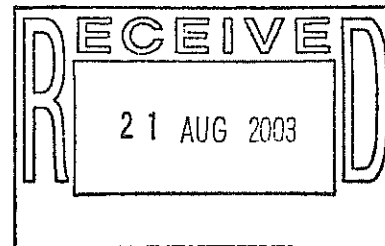




SEQWATER

Wivenhoe, Somerset & North Pine Dams

Quality of water. Quality of life.



WS 20/1:GLG

20 August 2003

noted

[REDACTED]
General Manager (Asset Strategy)
Tarong Energy Corporation Ltd
GPO Box 800
BRISBANE QLD 4001

Dear [REDACTED]

DEED OF AMENDMENT AND CONSOLIDATION

Attached please find one copy of the signed Deed of Amendment and Consolidation for the operation of our respective works at Wivenhoe Dam.

If you require any further information, please contact me on [REDACTED] (ph) [REDACTED] [REDACTED] (fax) or [REDACTED]

Yours sincerely

[REDACTED]
[REDACTED]
Commercial Manager

*(1) Original to Legal Services
(2) copy to Wivenhoe for filing.
(3) Planned copy for our knowledge base
JH 21/8/03*





SEQWATER
Wivenhoe, Somerset & North Pine Dams
Quality of water. Quality of life.



**TARONG
ENERGY**

WIVENHOE DAM AND WIVENHOE POWER STATION

DEED OF AMENDMENT AND CONSOLIDATION

**SOUTH EAST QUEENSLAND WATER
CORPORATION LIMITED**

AND

TARONG ENERGY CORPORATION LIMITED

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DEED OF AMENDMENT AND CONSOLIDATION

DATED:

PARTIES

1. **SOUTH EAST QUEENSLAND WATER CORPORATION LIMITED** ABN 14 088 729 766 of Level 3, 240 Margaret Street, Brisbane, Queensland ("SEQWater").
2. **TARONG ENERGY CORPORATION LIMITED** ABN 52 078 848 736 of Level 10, AMP Place, 10 Eagle Street, Brisbane ("TEC").

BACKGROUND

- A. The antecedent organisations of TEC and SEQWater entered into a Deed of Practice on 22 October 1987 for the operation of their respective works at Wivenhoe Dam (the "Deed of Practice").
- B. SEQWater and TEC wish to restate, amend and consolidate the Deed of Practice as set out in this Deed.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

Words used in this Deed and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this Deed.

2. COMMENCEMENT

The Parties agree that the amendments to the Deed of Practice as set out in the Schedule will commence on the date of execution of this Agreement by both Parties.

3. AMENDMENTS

The Parties agree that the Deed of Practice is restated, affirmed, amended and consolidated, in the form contained in the Schedule.

4. DEFINITIONS AND INTERPRETATION

4.1 Definitions

In this Deed unless the context otherwise requires:

Deed of Practice means the deed of practice described in Recital A.

4.2 Interpretation

In this Deed unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) reference to a person includes any other entity recognised by law and vice versa;
- (d) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (e) any reference to a party to this Deed includes its successors and permitted assigns;
- (f) any reference to any agreement or document includes that agreement or document as amended at any time;
- (g) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (h) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally; and
- (i) reference to a provision described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this Deed means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment.

EXECUTED as a DEED

Signed for and on behalf of **SOUTH EAST QUEENSLAND WATER CORPORATION LIMITED** ABN 14 088 729 766 by [REDACTED]

[REDACTED] in the presence of:

[REDACTED]

Signature of Witness

[REDACTED]

Name of Witness (print)

[REDACTED]

[REDACTED]

Signed for **TARONG ENERGY CORPORATION LIMITED** ABN 52 078 848 736 by an authorised officer in the presence of:

[REDACTED]

Signature of officer

[REDACTED]

Signature of witness

[REDACTED]

Name of officer (print)

[REDACTED]

Name of witness (print)

[REDACTED]

Office held

4.

SCHEDULE

DEED OF PRACTICE



SEQWATER
Wivenhoe, Somerset & North Pine Dams
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**TARONG
ENERGY**

DEED OF PRACTICE

BETWEEN

**SOUTH EAST QUEENSLAND WATER
CORPORATION LIMITED**

AND

TARONG ENERGY CORPORATION LIMITED

FOR

**WIVENHOE DAM AND WIVENHOE POWER
STATION**

THIS DEED is made this Twenty Second day of October 1987

BETWEEN: **SOUTH EAST QUEENSLAND WATER CORPORATION LIMITED** ABN 14 088 729 766 of Level 3, 240 Margaret Street, Brisbane, Queensland ("SEQWater").

AND: **TARONG ENERGY CORPORATION LIMITED** ABN 52 078 848 736 of Level 10, AMP Place, 10 Eagle Street, Brisbane ("TEC").

WHEREAS:

- A. The assets and undertakings relating to the Wivenhoe Dam are owned by SEQWater.
- B. The assets and undertakings relating to the Wivenhoe Power Station are vested in TEC pursuant to the Queensland Government's restructure and corporatisation of the Queensland electricity supply industry.
- C. TEC has a right to take and use water from Wivenhoe Dam for use in connection with the operation of the Wivenhoe Power Station, subject to the terms of this Deed.

NOW THIS DEED WITNESSES that the parties hereto covenant and agree as follows:-

1. DEFINITIONS

- (a) Unless the content implies to the contrary, the following expressions shall in this Deed have the meanings respectively ascribed:

"**Contractor**" means the contractor to SEQWater for the operation and maintenance of Wivenhoe Dam;

"**EL**" means elevation in metres from Australian Height Datum;

"**Manual of Operational Procedures for Flood Mitigation for Wivenhoe and Somerset Dam**" means the Manual of Operational Procedures for Flood Mitigation for Wivenhoe and Somerset Dam that has been approved by the Chief Executive as provided for in Chapter 9, Part 2, Division 3 of the *Water Act 2000*;

"**Operating Agreement**" means the Operating Agreement between SEQWater and the Contractor for the supervision, management, operation and maintenance of Wivenhoe Dam;

"**Pollution**" means a substance in the water that is likely to cause a significant risk to the health of the general community;

"**Property or Works**" means:

- (a) with respect to SEQWater, buildings, plant, equipment and other works or infrastructure constructed at Wivenhoe Dam and owned by SEQWater;

and

- (b) with respect to TEC, buildings, plant, equipment and other works or infrastructure constructed at Wivenhoe Dam or Splityard Creek Dam and owned by TEC;

"Wivenhoe Dam" means the complex consisting of the dam constructed on the Brisbane River at Wivenhoe and all the works constituted or provided in association with that dam;

"Wivenhoe Power Station" means the complex consisting of the dam constructed on Splityard Creek, the inlet canal from the Wivenhoe Dam, and all the works constructed or provided in association with both dams for the purpose of or ancillary to the generation and conveyance of electricity.

- (b) Headings, sub-headings and notes are inserted for guidance only and shall not affect the construction of any of the provisions hereof.
- (c) Words importing the singular number or plural number shall respectively include the plural number and singular number.

2. OBLIGATIONS OF SEQWATER

- 2.1 SEQWater acknowledges and agrees that the efficient operation of Wivenhoe Power Station requires that the level of water in Wivenhoe Dam be not less than EL49.00 nor more than EL67.00.
- 2.2 ~~SEQWater covenants and agrees~~ that SEQWater, subject to the availability of water, shall use its best endeavours to manage Wivenhoe Dam so that at all times, except in times of flood and drought the level of water in Wivenhoe Dam is not less than EL49.00 and not more than EL67.00, subject to the primary responsibilities of SEQWater in respect of Wivenhoe Dam set out in clause 3.1.

3. OBLIGATIONS OF TARONG ENERGY

- 3.1 TEC acknowledges and agrees that:
 - (a) the primary responsibilities of SEQWater in respect of Wivenhoe Dam are to manage the dam in such manner as to ensure the adequate supply of water to its customers and to achieve the maximum measure of flood mitigation in the Brisbane River; and
 - (b) ~~SEQWater's obligations are constrained by its duties under the Water Act 2000 and the rights of the Minister under that Act.~~
- 3.2 TEC covenants and agrees that, subject to its obligation to achieve the efficient and cost effective generation of electric power, TEC shall operate Wivenhoe Power Station in such manner as to assist as far as practicable the achievement by SEQWater of its primary responsibilities.

4. NOTICE BY SEQWATER

4.1 SEQWater shall:

- (a) regularly advise TEC of any changes in the level of water in Wivenhoe Dam; and
- (b) give notice to TEC as soon as practicable of SEQWater's intention to act or omit to act which may result in the variation of the level of water in Wivenhoe Dam.

4.2 SEQWater shall not, except in the case of an emergency, take such proposed action in clause 4.1(b) until TEC has had reasonable opportunity to comment on the proposed action and SEQWater has in good faith tried to take those comments into account and used its best endeavours, subject to the primary responsibilities of SEQWater in respect of Wivenhoe Dam, to give practical effect to strategies to mitigate any negative impacts on TEC's operation of the Wivenhoe Power Station.

5. NOTICE BY TEC

5.1 TEC shall give notice to SEQWater as soon as practicable after becoming aware of any happening or event caused by TEC's operation of Wivenhoe Power Station or occurring on any property under the control of TEC which has:

- (a) damaged, or is in the opinion of TEC likely to damage, SEQWater property; or
- (b) polluted, or is in the opinion of the TEC likely to cause pollution to, the water in Wivenhoe Dam.

5.2 To the extent that TEC has caused such damage or unlawful pollution, TEC shall immediately after becoming aware of any such occurrence take such action as TEC considers reasonably necessary, and as SEQWater may reasonably require, to repair any such damage or to remove any such pollution and to use its reasonable endeavours and do such things as SEQWater may reasonably require to prevent any further such damage or pollution as the case may be.

6. LIABILITY FOR DAMAGE

6.1 Each Party shall be liable to the other for any loss or damage (other than consequential damage or loss of revenue or profits) caused to the Property or Works of the other by the wilful or negligent action, default or omission of the Party, its servants or agents in breach of this Deed.

6.2 Each party is excused from its obligations to the other in respect of non-performance caused by or resulting from any act of God or happenings beyond the control of that Party and against which that Party could not have reasonably been expected to take reasonable precautions.

7. MANUAL OF OPERATIONAL PROCEDURES

7.1 TEC and SEQWater acknowledge the Manual of Operational Procedures for Flood Mitigation for Wivenhoe and Somerset Dam.

7.2 TEC shall as far as practicable observe and assist SEQWater in the implementation of the Manual of Operational Procedures for Flood Mitigation for Wivenhoe and Somerset

Dam and any alteration thereto or substitutions therefore, PROVIDED THAT SEQWater shall give notice to TEC of any proposed alteration or substitution and shall give TEC reasonable opportunity to make comment on such proposed alteration or substitution and SEQWater has in good faith tried to take those comments into account and used its best endeavours, subject to the primary responsibilities of SEQWater in respect of Wivenhoe Dam, to give practical effect to strategies to mitigate any negative impacts of the proposed alteration of substitution on TEC's operation of the Wivenhoe Power Station.

8. CO-OPERATION OF PARTIES

- 8.1 SEQWater and TEC shall each co-operate with and assist the other to achieve the purpose for which the works were vested in each of them, including the exchange of all technical data in respect of the joint works and shall advise and consult with the other as far as may be necessary.

9. ACCESS RIGHTS

- 9.1 SEQWater and TEC covenant and agree that each of them shall allow the other such rights of access to the Property or Works under their respective control at all reasonable times as may be necessary to enable that other party to perform all obligations, duties or functions which may be imposed upon that party by any statute or pursuant to this Deed.

10. OPERATING AGREEMENT

- 10.1 TEC acknowledges that SEQWater and the Contractor have entered into an Operating Agreement for the supervision, management, operation and maintenance of the Wivenhoe Dam.
- 10.2 TEC covenants and agrees that it will deal and communicate in the first instance directly with SEQWater with respect to day-to-day operational matters concerning Wivenhoe Dam and Wivenhoe Power Station if obliged to communicate under this Deed.

11. DISPUTES

- 11.1 The Parties shall negotiate in good faith to settle between themselves, any claim, disputes, or controversy arising out of or in connection with this Deed, or the breach of this Deed. If no resolution is reached, the dispute shall be referred to the Chief Executives of each of the Parties.
- 11.2 If the Parties have not resolved the dispute by negotiation within a period of twenty-one (21) days after referral to the Chief Executives, any Party may approach the President of the Australian Commercial Dispute Centre Limited (Qld), (the "ACDC"), to organise mediation. The mediation shall be held in accordance with the Rules of the ACDC in force at the date of the dispute and be held in Brisbane, or any alternate location that the Parties shall agree.
- 11.3 Nothing in this clause shall prevent a Party from seeking urgent equitable relief before an appropriate court.