

Western Australia

Natural Gas (Canning Basin Joint Venture) Agreement (Termination) Bill 2017

Contents

1.	Short title	2
2.	Commencement	2
3.	Act amended	2
4.	Long title amended	2
5.	Section 3 amended	2
6.	Section 4A inserted	3
	4A. Ratification of termination agreement	3
7.	Section 6 amended	3
8.	Schedule 3 inserted	4
	Schedule 3 — Termination agreement	

Western Australia

LEGISLATIVE ASSEMBLY

**Natural Gas (Canning Basin Joint Venture)
Agreement (Termination) Bill 2017**

A Bill for

An Act to amend the *Natural Gas (Canning Basin Joint Venture) Agreement Act 2013* to provide for the ratification of an agreement for the termination of the Natural Gas (Canning Basin Joint Venture) Agreement and for related purposes.

The Parliament of Western Australia enacts as follows:

s. 1

1 **1. Short title**

2 This is the *Natural Gas (Canning Basin Joint Venture)*
3 *Agreement (Termination) Act 2017*.

4 **2. Commencement**

5 This Act comes into operation as follows —

6 (a) sections 1 and 2 — on the day on which this Act
7 receives the Royal Assent;

8 (b) the rest of the Act — on the day after that day.

9 **3. Act amended**

10 This Act amends the *Natural Gas (Canning Basin Joint*
11 *Venture) Agreement Act 2013*.

12 **4. Long title amended**

13 In the long title after “**State,**” insert:

14

15 **to ratify a further agreement for the termination of that**
16 **agreement,**

17

18 **5. Section 3 amended**

19 In section 3 insert in alphabetical order:

20

21 **termination agreement** means the agreement a copy of
22 which is set out in Schedule 3;

23

1 **6. Section 4A inserted**

2 After section 4 insert:

3

4 **4A. Ratification of termination agreement**

5 The termination agreement is ratified.

6

7 **7. Section 6 amended**

8 (1) After section 6(1) insert:

9

10 (1A) The termination agreement operates and takes effect
11 despite any enactment or other law.

12

13 (2) In section 6(2) delete “agreement or the 2015 variation
14 agreement” and insert:

15

16 agreement, the 2015 variation agreement or the termination
17 agreement

18

s. 8

1 **8. Schedule 3 inserted**

2 After Schedule 2 insert:

3

4 **Schedule 3 — Termination agreement**

5

[s. 3]

6

2017

7

**THE HONOURABLE MARK McGOWAN
PREMIER OF THE STATE OF WESTERN AUSTRALIA**

8

9

and

10

BURU ENERGY LIMITED

11

ACN 130 651 437

12

DIAMOND RESOURCES (FITZROY) PTY LTD

13

ACN 145 113 177

14

DIAMOND RESOURCES (CANNING) PTY LTD

15

ACN 145 113 186

16

and

17

MITSUBISHI CORPORATION

18

19

20

NATURAL GAS (CANNING BASIN JOINT VENTURE)

21

AGREEMENT 2012

22

TERMINATION AGREEMENT

23

24

25

26

[Solicitor's details]

27

1 **THIS AGREEMENT** is made this 27th day of November 2017

2

3 **BETWEEN**

4

5 **THE HONOURABLE MARK McGOWAN**, BA LLB, M.L.A., Premier of
6 the State of Western Australia, acting for and on behalf of the said State and its
7 instrumentalities from time to time (**State**) of the one part,

8 **AND**

9 **BURU ENERGY LIMITED** ACN 130 651 437 of Level 2, 16 Ord Street,
10 West Perth, Western Australia, **DIAMOND RESOURCES (FITZROY) PTY**
11 **LTD** ACN 145 113 177 of Level 36, 120 Collins Street, Melbourne, Victoria
12 and **DIAMOND RESOURCES (CANNING) PTY LTD** ACN 145 113 186 of
13 Level 36, 120 Collins Street, Melbourne, Victoria (hereinafter collectively
14 called the **Joint Venturers** in which term shall be included their successors and
15 permitted assigns) of the second part

16 **AND**

17 **MITSUBISHI CORPORATION** of 3-1, Marunouchi 2-Chome, Chiyoda-Ku,
18 Tokyo, Japan (**Guarantor**) of the third part.

19

20 **WHEREAS:**

21 **A.** The State, the Joint Venturers and the Guarantor are now the parties
22 to the agreement dated 7 November 2012, which agreement was
23 ratified by the *Natural Gas (Canning Basin Joint Venture) Agreement*
24 *Act 2013* (WA), and as varied by agreement dated 1 July 2015 is
25 referred to in this Agreement as the **Principal Agreement**.

26 **B.** The State, the Joint Venturers and the Guarantor wish to terminate the
27 Principal Agreement in the manner and on the terms set out in this
28 Agreement.

29

s. 8

1 **NOW THIS AGREEMENT WITNESSES:**

2 **1. Definitions**

3 In this Agreement subject to the context:

4 **Operative Date** has the meaning given in clause 3(2).

5 **Petroleum Act** means the *Petroleum and Geothermal Energy*
6 *Resources Act 1967* (WA).

7 **Petroleum Minister** means the Minister responsible for the
8 administration of the Petroleum Act.

9 **Petroleum Titles** has the same meaning as in the Principal Act and at
10 the date of this Agreement comprises the titles listed in the Schedule.

11 **Ratifying Act** means the Act of the Parliament of Western Australia
12 to ratify this Agreement referred to in clause 3.

13 **this Agreement, hereof and hereunder** refer to this Agreement,
14 whether in its original form or as from time to time added to, varied or
15 amended.

16 **2. Interpretation**

17 In this Agreement:

18 (a) clause headings do not affect interpretation or construction;

19 (b) words in the singular shall include the plural and words in the
20 plural shall include the singular according to the requirements
21 of the context;

22 (c) a reference to one gender includes the other genders;

23 (d) a covenant or agreement by more than one person binds, and
24 is enforceable against, those persons jointly and each of them
25 severally;

26 (e) a reference to a "person" includes a body corporate;

27 (f) a reference to an Act includes the amendments to that Act for
28 the time being in force and also any Act passed in
29 substitution therefor or in lieu thereof and the regulations for
30 the time being in force thereunder;

-
- 1 (g) a reference to any document includes that document as from
2 time to time added to, varied or amended and notwithstanding
3 any change in the identity of the parties;
- 4 (h) a reference to a clause or schedule is a reference to a clause in
5 or schedule to this Agreement, and a reference to a subclause
6 or paragraph is a reference to the subclause of the clause or
7 paragraph of the clause or subclause as the case may be in, or
8 in relation to, which the reference is made;
- 9 (i) a reference to this Agreement includes all recitals, schedules
10 and annexures; and
- 11 (j) "including" means "including, but not limited to".

12 **3. Ratification and operation**

- 13 (1) This Agreement, other than this clause and clauses 1 and 2, does not
14 come into operation except in accordance with subclause (2).
- 15 (2) This Agreement, other than this clause and clauses 1 and 2, comes
16 into operation on the day after the date on which it is ratified by an
17 Act of the Parliament of Western Australia (**Operative Date**) unless,
18 before that day, it terminates under subclauses (4) or (5).
- 19 (3) The State must introduce in the Parliament of Western Australia
20 before 31 March 2018, or a later date agreed between the parties to
21 this Agreement, a Bill to ratify this Agreement and must endeavour to
22 secure its passage as an Act.
- 23 (4) If by 31 December 2018 or such later date agreed between the parties
24 to this Agreement, this Agreement has not been ratified by an Act of
25 the Parliament of Western Australia then, unless the parties to this
26 Agreement otherwise agree, this Agreement terminates on that day
27 and no party hereto will have any claim against any other party hereto
28 with respect to any matter or thing arising out of, done, performed, or
29 omitted to be done or performed under this Agreement.
- 30 (5) The parties agree that if the Principal Agreement is otherwise
31 determined in accordance with its provisions on a day prior to the
32 Operative Date, then this Agreement shall also terminate on and from
33 that day and no party hereto will have any claim against any other
34 party hereto with respect to any matter or thing arising out of, done,
35 performed, or omitted to be done or performed under this Agreement.

s. 8

- 1 **4. Termination of Principal Agreement**
- 2 (1) Subject to this clause, the Principal Agreement is hereby terminated
3 with effect on and from the Operative Date and, except as otherwise
4 provided in this Agreement, neither the State nor the Joint Venturers
5 shall have any claim against the other with respect to any matter or
6 thing in or arising out of the Principal Agreement.
- 7 (2) Notwithstanding subclause (1) the Joint Venturers shall remain liable
8 for any antecedent breach or default under the Principal Agreement
9 and in respect of any indemnity given under the Principal Agreement.
- 10 (3) Notwithstanding subclause (1) the Guarantor shall remain liable in
11 respect of any guarantee given under the Principal Agreement in
12 relation to any antecedent breach or default by Diamond Resources
13 (Fitzroy) Pty Ltd or Diamond Resources (Canning) Pty Ltd under the
14 Principal Agreement.
- 15 (4) On and from the Operative Date:
- 16 (a) each Petroleum Title shall continue in force only under and,
17 except as provided in this subclause, subject to the provisions
18 of the Petroleum Act and, for the avoidance of doubt, each
19 Petroleum Title shall cease to have the benefit of the rights
20 and privileges conferred by, and be subject to the obligations
21 or restrictions imposed by, the Principal Agreement;
- 22 (b) any modification of the Petroleum Act made by the Principal
23 Agreement in relation to a Petroleum Title shall cease to
24 apply and each Petroleum Title shall continue in force under
25 and subject to the Petroleum Act for the balance of its term as
26 extended in accordance with paragraphs (c) and (d) below;
- 27 (c) the State shall cause the Petroleum Minister to enter as soon
28 as reasonably practicable a memorial in the register referred
29 to in section 70 of the Petroleum Act recording that
30 Petroleum Titles EP 371, EP428, EP431 and EP 436 shall
31 continue in force until 30 July 2023 and the year end for each
32 work requirement relating to these titles shall be suspended
33 and extended for the additional period of 4 years and such
34 extension of the term of the titles and variation of work
35 requirements shall be effective for all purposes on and from
36 the date of entry of the memorial in the register;

- 1 (d) the State shall cause the Petroleum Minister to enter as soon
2 as reasonably practicable a memorial in the register referred
3 to in section 70 of the Petroleum Act recording that
4 Petroleum Title EP 391 shall continue in force until
5 31 January 2024 and the year end for each work requirement
6 relating to this title shall be suspended and extended for the
7 additional period of 4 years and such extension of the term of
8 the title and variation of work requirement shall be effective
9 for all purposes on and from the date of entry of the memorial
10 in the register;
- 11 (e) in relation to the STP-LNA-0006 declaration of location over
12 the Valhalla-Asgard Field affecting Petroleum Title EP371
13 the period in which application may be made for a retention
14 lease under section 48A of the Petroleum Act or a production
15 licence under section 50 of the Petroleum Act shall end on
16 30 June 2021; and
- 17 (f) for the avoidance of doubt, clauses 39 and 45 of the Principal
18 Agreement will not survive termination of the Principal
19 Agreement.
- 20 (5) On and from the Operative Date the Joint Venturers will indemnify
21 and keep indemnified the State and the State's employees, agents and
22 contractors in respect of all actions, suits, claims, demands or costs of
23 third parties arising out of or in connection with any work carried out
24 by the Joint Venturers pursuant to the Principal Agreement or relating
25 to its operations under the Principal Agreement or arising out of or in
26 connection with the construction, maintenance or use by the Joint
27 Venturers or their employees, agents, contractors, assignees or
28 sublessees of the Joint Venturers' works or services the subject of the
29 Principal Agreement. This indemnity shall remain in force for a
30 period ending on the date which is 20 years after the Operative Date.
- 31 **5. Mitsubishi Corporation guarantee of subsidiaries' performance**
- 32 The Guarantor hereby guarantees to the State the due performance by
33 each of Diamond Resources (Fitzroy) Pty Ltd and Diamond
34 Resources (Canning) Pty Ltd of all of their obligations under this
35 Agreement.

s. 8

1 **6. Applicable law and submission to jurisdiction**

2 This Agreement is to be interpreted according to the law for the time
3 being in force in the State of Western Australia and the parties to this
4 Agreement submit to the jurisdiction of the courts of Western
5 Australia in relation to any action or proceeding to settle any dispute
6 or question arising out of or in connection with this Agreement.

7

8

SCHEDULE

9

Petroleum Titles

10

Petroleum Exploration Permits No.	Blocks
11 EP371*	45
12 EP391	26
13 EP428	79
14 EP431	52
15 EP436	30

16

- 17 • *Includes STP-LNA-0006 Declaration of Location over the
18 Valhalla-Asgard Field

19

20

1 **EXECUTED** as a deed.

2 **SIGNED** by the **HONOURABLE**)
MARK McGOWAN in the)
presence of:)

[Signature] [Signature]
.....
Signature of witness

NADEEN LYN ROBERTS
.....
Name of witness

3 **EXECUTED** by **BURU**)
ENERGY LIMITED)
ACN 130 651 437 in accordance)
with section 127 of the)
Corporations Act 2001)
(Commonwealth):)

[Signature] [Signature]
.....
Signature of director: Signature of company secretary:
Name of director: Eric Streitberg Name of company secretary:
Shane McDermott

4

s. 8

EXECUTED by DIAMOND)
RESOURCES (FITZROY) PTY)
LTD ACN 145 113 177 in)
accordance with section 127 of the)
Corporations Act 2001)
(Commonwealth):)

[Signature]
.....
Signature of director:

[Signature]
.....
Signature of director:

Masashi Shiraishi
.....
Name of director:

Tadashi Hara
.....
Name of director:

1

2

EXECUTED by DIAMOND)
RESOURCES (CANNING) PTY)
LTD ACN 145 113 186 in)
accordance with section 127 of the)
Corporations Act 2001)
(Commonwealth):)

[Signature]
.....
Signature of director:

[Signature]
.....
Signature of director:

Masashi Shiraishi
.....
Name of director:

Tadashi Hara
.....
Name of director:

3

SIGNED for and on behalf of)
MITSUBISHI CORPORATION)
in the presence of:)

[Signature]
.....
Signature of witness:

[Signature]
.....
Signature of duly authorised
representative:

Tadashi Hara
.....
Name of witness:

Fuminori Hasegawa
.....
Name:

Senior Vice President
Division COO,
Energy Business Division A
.....
Title:

