

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKAURAU ROHE**

**CIV-2023-404-**

Under Part 19 of the High Court Rules

In the matter of A scheme of arrangement under Part 15 of the Companies Act 1993

Application by **BURGER FUEL GROUP LIMITED**, a duly incorporated company having its registered office at 66 Surrey Crescent, Grey Lynn, Auckland, 1021, New Zealand

Applicant

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**ORIGINATING APPLICATION FOR ORDERS APPROVING SCHEME OF  
ARRANGEMENT UNDER PART 15 OF THE COMPANIES ACT 1993**

Dated: 27 October 2023

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**BUDDLE FINDLAY**

Barristers and Solicitors  
Auckland

Solicitor Acting: **D T Broadmore / Z T P Sinclair**  
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**To:** The Registrar of the High Court at Auckland

**This document notifies you that -**

1. The applicant, Burger Fuel Group Limited (**Burger Fuel**), a duly incorporated company having its registered office at 66 Surrey Crescent, Grey Lynn, Auckland, will at \_\_\_\_\_ on \_\_\_\_\_ 2024 apply to the court for orders that:
  - (a) the proposed scheme of arrangement (**Scheme**) between Burger Fuel and its shareholders, as described in the Arrangement Document (a draft of which is annexed to this application and the final version of which will be submitted to the Court prior to the hearing of this application), is approved and binding upon Burger Fuel, all of its shareholders, and all such other persons as are necessary to give effect to the Scheme; and
  - (b) Burger Fuel is granted leave to apply to the Court for approval of any amendment, modification or supplement to the Scheme.
2. The grounds on which each order is sought are as follows:
  - (a) Part 19 of the High Court Rules requires this application to be made by originating application (High Court Rule 19.2(c)).
  - (b) Section 236(1) of the Companies Act 1993 (**Companies Act**) provides the Court with powers to make orders that the Scheme is binding on Burger Fuel and its shareholders and on such other persons as the Court may specify and upon such terms and conditions as the Court thinks fit.
  - (c) By the date on which this application is determined Burger Fuel will have:
    - (i) complied with the initial orders made by this Court and the requirements of Part 15 of the Companies Act; and
    - (ii) fairly put the Scheme to the class of shareholders affected by the proposal, who will be fairly represented by those in attendance at the meeting;
  - (d) the Scheme is such that:

- (i) an intelligent and honest person of business acting in respect of his or her interest would reasonably approve it; and
- (ii) it is generally fair and equitable.

3. The application is made in reliance on:

- (a) Part 15 of the Companies Act, particularly s 236;
- (b) Part 19 of the High Court Rules;
- (c) the decisions in *Re Auckland International Airport* [2014] NZHC 405; *Re PGG Wrightson Ltd* [2019] NZHC 1780; *Re Tilt Renewables Ltd* [2020] NZHC 1398; *Re Tower Ltd* [2022] NZHC 328; *Re Fonterra Co-Operative Group Ltd* [2023] NZHC 2118 and other cases as set out in the memorandum of counsel filed in support of the application without notice for initial orders and in support of this application.
- (d) the affidavit of Peter Clynton Brook dated 27 October 2023, and any further affidavits/affirmations to be filed in support of this application; and
- (e) the memorandum of counsel filed in support of the application without notice for initial orders and in support of this application.

Dated 27 October 2023



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**D T Broadmore**

Solicitor for the applicant

This document is filed by **David Thomas Broadmore**, solicitor for the applicant whose address for service is at the offices of Buddle Findlay, Level 18, 188 Quay Street, Auckland 1010. Documents for service on the abovenamed may be left at that address or may be:

- 1. Posted to the solicitor at PO Box 1433, Auckland 1010; or

2. Left for the solicitor at a document exchange for direction DX CP24024, Auckland; or
3. Emailed to the solicitor at david.broadmore@buddlefindlay.com and zar.sinclair@buddlefindlay.com.

## ARRANGEMENT DOCUMENT

### Scheme of Arrangement pursuant to Part 15 of the Companies Act 1993

**BETWEEN** Burger Fuel Group Limited and the holders of shares in Burger Fuel Group Limited.

#### 1. Interpretation

1.1 In this document, unless the context otherwise requires:

**Business Day** means a day on which the stock exchange operated by NZX is open for trading.

**Record Date** means [*insert date*], or the date five Business Days after the date on which the final order from the High Court of New Zealand is made pursuant to section 236(1) of the Companies Act 1993 sanctioning the arrangement, whichever is the latest.

**Share** means an ordinary share in Burger Fuel.

**Shareholder** means each person who is registered on Burger Fuel's share register as the holder of Shares at 5:00pm (New Zealand time) on the Record Date.

**Burger Fuel** means Burger Fuel Group Limited.

#### 2. Arrangement

- 2.1 30% of Shares held by each Shareholder shall be cancelled (together with all rights attaching to those Shares). If multiplying the number of Shares owned by Shareholders by 0.30 (being the decimal form of 30%) does not result in a whole number, then the resulting number will be rounded up or down to the nearest whole number of Shares (with 0.5 rounded up).
- 2.2 Within ten Business Days after the Record Date, Burger Fuel shall pay to each Shareholder for each Share registered in the name of that Shareholder which has been cancelled in accordance with clause 2.1, NZ\$0.27.