

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE

CIV-2023-404-2579

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

INITIAL ORDERS UNDER PART 15 OF THE COMPANIES ACT 1993

Dated: 30 October 2023



BUDDLE FINDLAY

Barristers and Solicitors
Auckland

Solicitor Acting: **D T Broadmore / Z T P Sinclair**
Email: david.broadmore@buddlefindlay.com / zar.sinclair@buddlefindlay.com
Tel 64 9 358 7010 Fax 64 9 358 2055 PO Box 1433 DX CP24024 Auckland 1010

To: The Registrar of the High Court at Auckland

And to: Any person the Court directs to be served

This document notifies you that –

1. The without notice interlocutory application for initial orders under Part 15 of the Companies Act 1993 (**Companies Act**) made by Burger Fuel Group Limited (**Burger Fuel**) on 27 October 2023 was determined by the Honourable Justice Lang on the 30th day of October 2023.
2. The determination was made without a hearing.
3. The following orders were made:

Service and hearing date

- (a) That service of this proceeding is dispensed with, except as provided for in these orders.
- (b) The originating application for final orders in this proceeding (**Originating Application**) is to be set down by the Registry for a one-hour hearing on 5 February 2024 at 10 am.

Notice of Scheme Meeting and Shareholder Materials

- (c) Burger Fuel shall send the following information to each person who is, under paragraph 1(d) of these orders, to receive notice of the meeting of shareholders described in these orders (**Scheme Meeting**):
 - (i) formal notice of meeting including the resolution proposing the scheme of arrangement that the shareholders will be asked to vote on at the Scheme Meeting (**Scheme**), which will be accompanied by explanatory information about the Scheme and a copy of the Arrangement Document setting out the proposed Scheme;
 - (ii) a proxy/voting form;
 - (iii) a virtual meeting guide;
 - (iv) a copy of the Originating Application; and
 - (v) a copy of the Court's minute making these interim orders,(together, the **Shareholder Materials**).



- (d) The Shareholder Materials will be sent to the following persons:
 - (i) those shareholders of Burger Fuel whose names appear in the register of shareholders at 5.00pm on the fifth working day before the Shareholder Materials are sent; and
 - (ii) the directors and auditors of Burger Fuel.
- (e) The Shareholder Materials are to be sent at least ten working days before the Scheme Meeting.
- (f) The Shareholder Materials are to be in substantially the same form as the drafts which are referred to in and annexed to the affidavit of Peter Clynton Brook dated 27 October 2023 filed in this proceeding, except as may be amended, revised or supplemented in accordance with paragraph 1(m) below.
- (g) The Shareholder Materials will be sent to the directors and auditors of Burger Fuel by email, and to the shareholders specified in paragraph 1(d) above:
 - (i) by ordinary post in hardcopy format to the physical address recorded for each shareholder unless the shareholder has elected to receive shareholder material from Burger Fuel electronically; and
 - (ii) by electronic means to the email address recorded for a shareholder, if the shareholder has elected to receive shareholder material from Burger Fuel electronically.
- (h) The Shareholder Materials shall be deemed to have been received by all those to whom they were ordered to be sent:
 - (i) on the working day after the Shareholder Materials are sent, for the Shareholder Materials sent by electronic means; or
 - (ii) 5 working days after the Shareholder Materials are posted, for the Shareholder Materials sent by post.
- (i) In accordance with its continuous disclosure obligations, Burger Fuel shall cause the Shareholder Materials to be lodged on the NZX market announcement platform no later than the time it is sent to shareholders.
- (j) Burger Fuel shall make:



- (i) electronic copies of the Shareholder Materials available at Burger Fuel's website: (<https://www.burgerfuel.com/nz/investor-relations#shareholder-information>) not less than ten working days before the Scheme Meeting; and
 - (ii) hard copies of the Shareholder Materials available on written request to Burger Fuel to any person who becomes a registered shareholder of Burger Fuel before the Scheme Meeting but after the date that would have entitled that holder to receive the Shareholder Materials in accordance with these orders.
- (k) The following will not constitute a breach of these orders nor invalidate any resolution passed at the Scheme Meeting (but if any such failure or omission is brought to the attention of Burger Fuel, then it shall use its best endeavours to rectify it by the method and in the time most reasonably practicable in the circumstances):
- (i) the accidental failure or omission by Burger Fuel to send the Shareholder Materials to any persons; or
 - (ii) the non-receipt of the Shareholder Materials by any persons.
- (l) Burger Fuel is not required to send the Shareholder Materials to those shareholders for whom Burger Fuel does not have a known address (being 168 shareholders as at 18 October 2023). In the event that any such shareholder contacts Burger Fuel to update its address details not less than 5 working days before the Scheme Meeting, Burger Fuel shall send a set of the Shareholder Materials to that shareholder.

Power of Amendment

- (m) Burger Fuel is permitted to make such amendments, revisions or supplements to the Arrangement Document or the Shareholder Materials as Burger Fuel may determine are in the best interests of Burger Fuel and its shareholders, as well as any inconsequential amendments to the Arrangement Document and the Shareholder Materials, and the Arrangement Document so amended will set out the Scheme to be submitted to the shareholders at the Scheme Meeting for approval.
- (n) Where possible, any amendments referred to in 1(m) above will be made before Burger Fuel sends the Shareholder Materials and:



- (i) if the Arrangement Document or Shareholder Materials are amended before the Shareholder Materials are sent, Burger Fuel will send amended Shareholder Materials in accordance with these orders; and
- (ii) if Burger Fuel makes any material amendments to the Arrangement Document or the Shareholder Materials after the Shareholder Materials have been sent to shareholders, Burger Fuel will notify shareholders of the amendments as soon as reasonably practicable by lodging notices on NZX's market announcement platform and Burger Fuel's website at <https://www.burgerfuel.com/nz/investor-relations#shareholder-information>.

Scheme Meeting

- (o) Burger Fuel shall hold the Scheme Meeting in December 2023, as a hybrid meeting both:

- (i) in person at a venue in Auckland; and
- (ii) online via the Computershare online web platform at <https://meetnow.global/nz>,

to seek approval of the Scheme (subject to any amendment or variation made in accordance with these orders) by special resolution before consideration by the Court. If Burger Fuel considers it necessary or desirable to do so, the Scheme Meeting may be held as a virtual meeting only or on a later date, in each case to be notified by Burger Fuel to its shareholders through the NZX market announcement platform and on Burger Fuel's website.

- (p) Only persons registered on Burger Fuel's share register as the holders of shares in Burger Fuel at 5:00pm (New Zealand time) on the day which is two working days before the Scheme Meeting are entitled to be represented and vote at the Scheme Meeting or any adjournment or postponement of the Scheme Meeting.
- (q) As to voting on the Scheme:
 - (i) all shareholders shall vote on the Scheme as a single class.
 - (ii) voting will be conducted by poll in accordance with the NZX Listing Rules and Burger Fuel's constitution.



- (iii) the resolution shall be passed if it is approved (whether in person or by proxy) by:
 - (1) at least 75 percent of the votes of those shareholders entitled to vote and voting on the resolution; and
 - (2) a simple majority of the votes of those shareholders entitled to vote; and
- (iv) representatives of Computershare Investor Services Limited (or such other company as Burger Fuel deems fit) shall act as scrutineers at the Scheme Meeting.
- (r) Except as otherwise provided for in these orders, Burger Fuel shall conduct the Scheme Meeting in accordance with the constitution of Burger Fuel, the provisions of the Companies Act and the NZX Listing Rules.
- (s) A shareholder who is entitled to vote at the Scheme Meeting but who is unable to attend may appoint a proxy to attend the Scheme Meeting to act generally and vote on their behalf.
- (t) A shareholder is entitled to attend the meeting online or in person with shareholders to be provided with a virtual meeting link in the Notice of Scheme Meeting.
- (u) As to validity of votes:
 - (i) to be valid, all votes need to be:
 - (1) if voting prior to the shareholder meeting:
 - A. made online at www.investorvote.co.nz using the shareholder's CSN/ Securityholder Number, which can be found on the proxy form; and
 - B. made at least 48 hours prior to the Scheme Meeting; or
 - (2) cast in person at the Scheme Meeting;
 - (3) if attending the virtual meeting, made online via the Computershare Online Meeting Platform at <https://meetnow.global/nz> and following the voting process instructions in the Virtual Meeting Guide;



- (4) if voting by proxy on a validly completed proxy form received by Burger Fuel at least 48 hours prior to the Scheme Meeting;
- (ii) Burger Fuel is entitled to disregard any votes received after the relevant voting deadline; and
- (iii) Burger Fuel may waive, in its discretion, the relevant voting deadline if it deems such waiver to be in its best interests and in the best interests of Burger Fuel's shareholders as a whole.

Reporting the results of the Scheme Meeting

- (v) Burger Fuel shall notify the outcome of the Scheme Meeting by lodging the results on NZX's market announcement platform as soon as practicable after voting at the Scheme Meeting is complete and the results are advised to the Chairperson of the Scheme Meeting.
- (w) Burger Fuel shall, at least eight working days prior to the Court's consideration of the Originating Application, file with this Court an affidavit or affidavits:
 - (i) verifying compliance with these initial orders granted by the Court;
 - (ii) annexing copies of the Arrangement Document and/or the Shareholder Materials if amendments have been made as referred to in paragraph 1(m) above; and
 - (iii) confirming the actions taken at, and the outcomes of, the Scheme Meeting.

Shareholder opposition

- (x) If any shareholder wishes to appear and be heard on the Originating Application, the shareholder must file a notice of appearance or a notice of opposition (as applicable, and in either case containing an address for service), any affidavits and a memorandum of submissions on which they intend to rely, no later than eight working days before the hearing date set for the Originating Application, and on the same day serve a copy on Burger Fuel.
- (y) Burger Fuel shall serve on any shareholder wishing to appear and be heard on the Originating Application, copies of all documents filed in

support of the Originating Application by 5:00pm on the next working day after service on Burger Fuel of the documents referred to in paragraph 1(x) above.

Court file not to be searched

- (z) That the Court file in this proceeding may not be searched, inspected or copied without leave of the Court on notice to Burger Fuel.

Leave to apply for variation at short notice

- (aa) Burger Fuel is granted leave to apply at short notice to vary these orders and to apply for such further orders as may be appropriate.
- (bb) If the shareholders do not vote to approve the Scheme, Burger Fuel will likely discontinue the Originating Application.
- (cc) that the interests of justice require the application to be determined without serving notice of the application.

SHAOREEQ ALI
DEPUTY REGISTRAR

(Registrar/Deputy Registrar)

Sealed this 30th day of October 2023

