



BURGER FUEL GROUP LIMITED

NOTICE OF SPECIAL MEETING OF SHAREHOLDERS

Introduction and important information

Notice is given that a special meeting of shareholders of Burger Fuel Group Limited (**Company**) will be held at Rakiura Room, Parkside Hotel & Apartments, 100 Greys Avenue, Auckland, 1010 and via the Computershare online web platform at <https://meetnow.global/nz> commencing at 11:30am (New Zealand time) on Thursday 14 December 2023.

In the event that the Board determines a physical meeting is inappropriate for any reason including health and safety reasons, the Company may decide to hold a virtual only meeting. If this occurs, the Company will provide shareholders with notice through an announcement to the NZX and on the Company's website.

Guidance on meeting participation is included in the Notice of Special Meeting and in the form accompanying the Notice of Special Meeting entitled "Virtual Meeting Guide".

The special meeting is called for the shareholders to consider and, if thought fit, to pass the following special resolution:

THAT the scheme of arrangement relating to the return of capital to shareholders, as set out in the Arrangement Document incorporated in the Explanatory Notes in the Notice of Special Meeting, be approved.

Meeting date/time: **11:30am, Thursday 14 December 2023**

Last date for receipt of proxy forms: 11:30am, Tuesday 12 December 2023

By order of the Board:

Mark Piet,
Company Secretary / Chief Financial Officer,
Burger Fuel Group Limited
Auckland, New Zealand
15 November 2023



CHAIRMAN'S LETTER

15 November 2023

Dear Shareholder,

Capital Return

On 27 October 2023, Burger Fuel Group Limited (**Burger Fuel** or the **Company**) announced its intention to return approximately NZ\$4.077 million of capital to shareholders.

The return of capital will not alter your proportionate shareholding in the Company, or your proportionate voting and distribution rights, and will be by way of a Court and shareholder-approved process.

1. Why is Burger Fuel returning this money to me?

- 1.1 The Company currently has excess cash, that is, over and above the cash needed for its working capital requirements for the foreseeable future.
- 1.2 The origins of the Company's excess cash and unrestricted capital assets is a result of the issue of shares to, and subsequent buy-back of shares at a lower cost from, Franchise Brands LLC, a company affiliated to the Subway® Corporation of USA, in connection with expansion plans which were not fully implemented (as more fully described at paragraph 4 of the Explanatory Notes to the Notice of Special Meeting). As such, most of the cash was surplus capital that is not being used for a particular investment opportunity.
- 1.3 The Company has been through an extensive exercise to determine the best use of its excess cash. The directors of the Company (**Board**) do not believe that any suitable opportunities exist at present or are likely in the short to medium term for the full amount of the cash currently held within the Company.
- 1.4 After taking into account the Company's balance sheet structure, investment opportunities and operating outlook, the Board has determined that approximately NZ\$4.077 million of this cash should be returned to shareholders by way of a pro rata return of capital effected by way of a Court approved scheme of arrangement under Part 15 of the Companies Act 1993. Following the return, the Company will still have approximately NZ\$4.100 million of cash on hand (plus on-going earnings) to continue operating and growing its business.



2. How will the return of capital actually work and how am I affected?

- 2.1 30% of your shares will be cancelled (together with all rights attaching to those shares) and in return you will receive NZ\$0.27 for each cancelled share. Shareholders registered on the Company's share register as the holder of shares in the Company at 5:00pm (New Zealand time) on the Record Date (as that term is defined in the Arrangement Document incorporated in the Explanatory Notes in the Notice of Special Meeting) will have shares cancelled and be paid the NZ\$0.27 for each share cancelled. If multiplying the number of shares you own 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 It is important to note that following the cancellation of shares, you will have the same proportionate shareholding and voting interest as before that cancellation.
- 2.3 The tax consequences of the return of capital are set out in section 3 of the Explanatory Notes to the Notice of Special Meeting. Shareholders should obtain independent tax advice on the effect of the capital return, based on their individual circumstances.

3. Process and Approvals for the Return of Capital

- 3.1 Burger Fuel has now obtained initial orders from the New Zealand High Court which include directions about the holding of a special meeting of shareholders to consider a special resolution to approve the capital return.
- 3.2 Accompanying this letter is:
- (a) a Notice of Special Meeting. This includes an explanation of the capital return proposal which I recommend you read carefully;
 - (b) a form entitled "Virtual Meeting Guide". Details as to how to attend the meeting virtually, as well as how to ask questions and to vote, are set out on that form;
 - (c) a proxy form (if you are receiving this notice via post and an online proxy form link if you are receiving this via email). This form or link can be used if you do not wish to attend the meeting in person and, if used, must be deposited or completed online with the Registry, Computershare using one of the methods outlined on the proxy form by 11:30am (New Zealand time) on Tuesday 12 December 2023 (being 48 hours before the start of the meeting);
 - (d) a copy of the originating application to the Court for orders sanctioning the return of capital to shareholders (dated 27 October 2023); and
 - (e) a copy of the Court's minute, making the interim orders that are being sought.



4. What do I need to do?

- 4.1 The capital return requires approval by at least 75% of the votes cast on the resolution at the special meeting and a simple majority of the votes of those shareholders entitled to vote.
- 4.2 If the return of capital is approved by shareholders at the special meeting, Burger Fuel will then seek final Court approval in early February 2024 before completing the return of capital.

5. Meeting participation

- 5.1 The special meeting will be held at Rakiura Room, Parkside Hotel & Apartments, 100 Greys Avenue, Auckland, 1010 and via the Computershare online web platform at <https://meetnow.global/nz> commencing at 11:30am (New Zealand time) on Thursday 14 December 2023. The online meeting will open online at 11.00am to allow you time to log into the platform. In the event that the Board determines a physical meeting is inappropriate for any reason including health and safety reasons, Burger Fuel may decide to hold a virtual only meeting. If this occurs, Burger Fuel will provide shareholders with notice through an announcement to the NZX and on Burger Fuel's website. Guidance on meeting participation is included in the Notice of Special Meeting and in the form accompanying the Notice of Special Meeting entitled "Virtual Meeting Guide".

6. Board's recommendation

- 6.1 The Burger Fuel Board recommends that you vote in favour of the capital return.

Yours sincerely

A handwritten signature in black ink that reads 'Peter Brook'.

Peter Brook
Chairman



IMPORTANT INFORMATION

1. The meeting referred to in this Notice of Special Meeting has been convened by an order of the High Court of New Zealand made at Auckland on 30 October 2023.
2. The scheme of arrangement referred to in the special resolution is recorded in the Arrangement Document incorporated in the Explanatory Notes explaining the special resolution and accompanying this Notice of Special Meeting.
3. A copy of the Company's originating application to the Court for orders sanctioning the return of capital to shareholders (dated 27 October 2023) and a copy of the Court's minute making the interim orders that are being sought accompanies this Notice of Special Meeting.
4. The persons who will be entitled to vote at (or prior to) the meeting (including by proxy or representative) are those persons registered on the Company's share register as the holder of shares in the Company at 5:00pm (New Zealand time) on Tuesday 12 December 2023 which is two working days before the meeting.
5. There are three methods by which you can exercise your right to vote. Namely:
 - (a) by voting online in advance of the meeting at www.investorvote.co.nz;
 - (b) attending the meeting in person or via the Computershare Online Meeting Platform and voting during the meeting; or
 - (c) by appointing a proxy to attend virtually or in person to vote in your place.All voting at the Special Meeting will be by poll in accordance with the NZX Listing Rules and the Company's constitution.
6. Shareholders may choose to vote before the meeting online at www.investorvote.co.nz or by scanning the QR code on the proxy form which accompanies this Notice of Special Meeting and Explanatory Notes. You will need to provide your CSN/Shareholder Number, which can be found on the proxy form, and postcode or country of residence (if outside New Zealand) to vote online. Online voting prior to the meeting must be done by 11:30am (New Zealand time) on Tuesday 12 December 2023 (being 48 hours before the start of the meeting).
7. Shareholders can vote at the physical meeting by being present and voting in person. If you are entitled to vote and wish to do so in person at the Special Meeting, please bring your proxy form with you, as the barcode will assist with your registration. Those attending the virtual meeting via the Computershare online web platform at <https://meetnow.global/nz> can cast their vote online during the meeting.



Instructions on how to complete this process are included in the Virtual Meeting Guide. If you wish to vote online during the meeting, login as a shareholder using your CSN/Shareholder Number, which can be found on your proxy form, for verification purposes.

8. A shareholder of the Company entitled to attend the special meeting and vote is entitled to appoint a proxy to attend and vote in that shareholder's place. The proxy need not be a shareholder of the Company. Shareholders who wish to appoint a proxy must deposit the proxy form with the Company using one of the methods noted below (and outlined on the proxy form) by 11:30am (New Zealand time) on Tuesday 12 December 2023 (being 48 hours before the start of the meeting). Shareholders may choose to appoint a proxy online at www.investorvote.co.nz or by scanning the QR code on the proxy form, and will be required to enter their CSN/Shareholder Number and postcode or country of residence (if outside New Zealand). Alternatively, shareholders may choose to appoint a proxy by delivering the proxy form to the Company's share registry, Computershare Investor Services Limited, at either Private Bag 92119, Auckland 1142 or at Level 2, 159 Hurstmere Road, Takapuna, Auckland, provided that this is received by 11:30am (New Zealand time) on Tuesday 12 December 2023 (being 48 hours before the start of the meeting).
9. If you wish, you may appoint 'The Chairman of the Meeting' as your proxy. Any corporation that is a shareholder of the Company may appoint a person as its representative to attend the meeting and vote on its behalf, in the same manner as that in which it could appoint a proxy. You may either direct your proxy how to vote for you, or you may give your proxy discretion to vote how they see fit. If you wish to give your proxy discretion you should mark the appropriate boxes on the proxy form. Any undirected votes in respect of a resolution, where the chairman or any other director is appointed proxy, will be voted in favour of the relevant resolution, other than when they are prohibited from voting on that resolution. If you do not name a person as your proxy or your named proxy does not attend the meeting, the chairman will act as your proxy and will vote in accordance with your express direction, and any undirected proxies will be voted in accordance with the chairman's discretion.
10. The special resolution must be approved by at least 75% of votes of shareholders who are entitled to vote and exercise their right to vote on the resolution and a simple majority of the votes of those shareholders entitled to vote. No shareholder is prohibited on voting on the special resolution and all shareholders will vote together as one class.
11. This Notice of Special Meeting has been submitted to NZX Limited in accordance with NZX Listing Rule 7.1.1 and NZX has provided written confirmation that it does



not object to this Notice of Special Meeting. However, NZX accepts no responsibility for any statement in this Notice of Special Meeting.

12. The Board recommends that you vote in favour of the special resolution to approve the return of capital. The Directors intend to vote their own shares in favour of the return of capital.

13. Meeting Participation

- 13.1 The special meeting will be held at Rakiura Room, Parkside Hotel & Apartments, 100 Greys Avenue, Auckland, 1010 and via the Computershare online web platform at <https://meetnow.global/nz> commencing at 11:30am (New Zealand time) on Thursday 14 December 2023. In the event that the Board determines a physical meeting is inappropriate for any reason including health and safety reasons, Burger Fuel may decide to hold a virtual only meeting. If this occurs, Burger Fuel will provide shareholders with notice through an announcement to the NZX and on Burger Fuel's website. In order to participate remotely, shareholders should visit <https://meetnow.global/nz> on their desktop or mobile device and click "GO" under the Burger Fuel Group meeting and then click "JOIN MEETING NOW". By using the meeting platform, you will be able to attend the meeting online, vote and ask questions online using your smartphone, tablet or desktop device. Please refer to the enclosed Virtual Meeting Guide for more information. You will need the latest version of Chrome, Safari or Edge to access the meeting. Please ensure your browser is compatible.
- 13.2 If shareholders have any questions or need assistance with the online process, please contact Computershare at corporateactions@computershare.co.nz or on 0800 650 034 or +64 9 488 8777 (outside of NZ) between 8.30am and 5.00pm (New Zealand time) Monday to Friday. Shareholders will be able to view the presentations, vote on the resolutions to be put to shareholders and ask questions, by using their own computers or mobile devices. Shareholders will still be able to appoint a proxy to vote for them as they otherwise would, by following the instructions on the proxy form and this Notice of Special Meeting. Please note that not all questions may be able to be answered during the meeting. In this case, questions will be followed up after the meeting.
- 13.3 Details of how to participate "virtually" are provided in the accompanying Virtual Meeting Guide, with instructions for accessing the virtual meeting. Shareholders are encouraged to review this guide prior to the special meeting. Shareholders will require their CSN/Shareholder Number, which can be found on their proxy form (or top right of their email), for verification purposes. The safety of our shareholders remains our key focus and if anyone is feeling unwell, they must not attend the meeting in person.



EXPLANATORY NOTES

1. Introduction

- 1.1 On 27 October 2023, the board of Directors of the Company (**Board**) announced its intention to undertake a capital repayment to shareholders of the Company. The Board proposes to return to shareholders, on a pro rata basis, approximately NZ\$4.077 million.
- 1.2 The proposal to return capital will be put to shareholders for approval by a special resolution at a special meeting scheduled for 14 December 2023. The amount to be paid out under the proposed capital return will be funded by cash reserves.
- 1.3 The Board has determined that this return of capital should be effected by way of a Court approved arrangement under Part 15 of the Companies Act 1993 (**Scheme**). The Board considers the proposed Scheme to be fair to all shareholders as it achieves a return of capital on a pro rata basis, with the result that the return of capital does not alter the shareholders' relative voting and distribution rights.
- 1.4 On 27 October 2023, the Company applied to the High Court of New Zealand for an order directing the Company to put the Scheme to shareholders. The Court made initial orders on 30 October 2023 which require (amongst other things) the Scheme to be approved by special resolution of shareholders (that is, a resolution passed by a 75% majority of the votes of all shareholders entitled to vote and voting at the meeting) and a simple majority of the votes of those shareholders entitled to vote. If the resolution is passed, the Company will seek final orders from the High Court sanctioning the return of capital. The final orders that are being sought by the Company sanctioning the Scheme are set out in the copy of the Company's originating application to the Court (dated 27 October 2023), which accompanies this Notice of Special Meeting.
- 1.5 If shareholders do not approve the Scheme, it will not proceed and the Company's application to the High Court will be discontinued.
- 1.6 The Company has received confirmation from Mason Roberts Holdings Limited, the Company's largest shareholder, that it intends to vote all of the shares it holds in the Company in favour of the Scheme.

2. The Arrangement and Its Effect

- 2.1 Subject to approval by shareholders, and receipt of final orders from the High Court sanctioning the return of capital, the Scheme will result in:
 - (a) the cancellation of 30% of shares held by each shareholder in the Company (together with all rights attaching to those shares). If multiplying the number of shares you own 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); and

- (b) the payment to each shareholder of NZ\$0.27 for each share cancelled. Shareholders registered on the Company's share register as the holder of shares in the Company at 5:00pm (New Zealand time) on the Record Date (as that term is defined in the Arrangement Document incorporated in the Explanatory Notes in the Notice of Special Meeting) (**Record Date**) will have shares cancelled and be paid the NZ\$0.27 for each share cancelled.

In this way, the Company will return to shareholders, on a pro rata basis, approximately NZ\$4.077 million of capital. On the Record Date there are expected to be 50,336,863 shares on issue. Based on this number, cancellation of 30% of the total shares on issue will result in 15,101,059 ordinary shares being cancelled (subject to rounding). This will leave the total number of ordinary shares on issue at approximately 35,235,804 (subject to rounding).

- 2.2 Subject to the approval of shareholders, the final orders from the High Court sanctioning the Scheme are expected to be made on 5 February 2024.
- 2.3 The share register will close at 5pm (New Zealand time) on the Record Date. This will be for the purpose of determining the number of shares to be cancelled and the amount to be returned to those shareholders whose names appear in the share register at that time.
- 2.4 Payment to shareholders will be made by direct credit in the case of those shareholders who have previously provided bank account details to Computershare. Direct credits will be made within ten business days after the Record Date. Shareholders will be issued with a new shareholding statement showing the new number of shares held following the cancellation of shares. Both the payment to shareholders and the provision of a new shareholding statement will be undertaken by Computershare.
- 2.5 For those shareholders that have not previously provided their bank account details to Computershare, you can provide them by:
 - (a) Updating your details online at Computershare's online portal www.investorcentre.com/nz (recommended); or
 - (b) emailing your updated bank details to enquiry@computershare.co.nz together with your CSN/Shareholder number.
- 2.6 If Computershare has valid contact details for shareholders, Computershare will attempt to make contact to obtain bank account details by the Record Date. Payment will then be made within ten business days of valid details having been provided (without interest) if they are not provided by the Record Date with the



funds being dealt with as unclaimed distributions in the meantime in accordance with the Company's constitution (see clause 4.3). Shareholders are encouraged to ensure that they have provided valid, up to date contact details and bank account details to Computershare to ensure payment is able to be made in a timely manner.

2.7 The timetable for the proposed Scheme is set out in the table below.

Event	Date
Special meeting of shareholders	Thursday 14 December 2023
Final orders made by High Court*	Monday 5 February 2024
Record Date*	Tuesday 13 February 2024
Payment to shareholders*	Tuesday 27 February 2024

* The dates above are indicative only. If the final court orders have not been made by Monday 5 February 2024 the Record Date will be five business days after the date on which the final orders from the High Court sanctioning the Scheme are made. Payment will be made to shareholders within ten business days after the Record Date.

3. Taxation

- 3.1 The following is provided as general guidance as to the tax effect in New Zealand. Shareholders should obtain independent taxation advice on the effect of the Scheme based on their individual circumstances.
- 3.2 The Scheme meets the requirements under the Income Tax Act 2007 (NZ) to be treated as a return of capital and not a dividend.
- 3.3 The amount to be returned to shareholders is significantly less than the Company's available subscribed capital which is approximately NZ\$11.913 million. As the amount to be returned to shareholders is less than the Company's available subscribed capital and certain other requirements in the Income Tax Act 2007 (NZ) are satisfied, the amount paid to shareholders will be treated as a return of capital and not as a dividend for New Zealand income tax purposes.
- 3.4 This means the payment will generally not be taxable for New Zealand shareholders unless:
- (a) the shareholder is a share dealer;
 - (b) the shares were acquired for the purpose of resale; or
 - (c) the amount received by a shareholder is derived from a profit-making undertaking or scheme.



- 3.5 If one of the above limbs applies to any shareholder they should seek professional tax advice to ascertain whether any deduction may be available.
- 3.6 As the amount being returned under the Scheme is more than 15% of the value of the Company on the date of announcement of the return of capital, there is no requirement to obtain confirmation of the tax treatment from Inland Revenue. In addition, the Company has not applied for a binding ruling as to the tax treatment of the capital return, but has relied on advice that in the circumstances a binding ruling need not be obtained.

4. Rationale for the Return Of Capital

- 4.1 Since 2014 the Company has had surplus capital following the issue of 4,357,298 shares in the Company (**New Shares**) to Franchise Brands LLC (**FBL**), a company affiliated to the Subway® Corporation of USA, on 28 February 2014 at \$1.35 per share raising \$5,882,352 of new capital to help fund the Company's plans to expand into the United States under a collaboration agreement with FBL. Following the death of the founder of Subway® in September 2015 the expansion plans stalled and the collaboration agreement was terminated.
- 4.2 As part of the termination arrangements, the Company agreed to buy all of FBL's shares in the Company (including the New Shares) at \$0.37 per share in tranches during 2018 and 2019 resulting in a net capital surplus on the balance sheet after these transactions of \$3,675,910. At this time, the Company looked at possible utilisations of its unrestricted capital but did not consider that there were any transactions (including any material acquisitions or investments) that would be suitable for the Company to undertake.
- 4.3 In March 2020, the Covid-19 pandemic began in New Zealand. At the early stages of the pandemic the board considered that all cash should remain in the Company until the pandemic was clearly over and the Company's business had returned to a foreseeable, regular trading pattern.
- 4.4 The Company currently has excess cash, that is, over and above the cash needed for its working capital requirements for the foreseeable future.
- 4.5 The Company has been through an extensive exercise to determine the best use of its excess cash. The Board does not believe that any suitable opportunities exist at present or are likely in the short to medium term for the full amount of the cash currently held within the Company.
- 4.6 After taking into account the Company's balance sheet structure, investment opportunities and operating outlook, the Board has determined that approximately NZ\$4.077 million be returned to shareholders by a pro rata return of capital effected by way of a Court approved scheme of arrangement under Part 15 of the



Companies Act 1993. Following the return the Company will still have approximately NZ\$4.100 million of cash on hand (plus on-going earnings) to continue operating and growing its business.

- 4.7 In determining the amount of capital to be returned to shareholders, the Board considered a number of factors, including:
- (a) any potential need for capital expenditure over the next 1 – 2 years;
 - (b) the Company's ability to comfortably meet all of its liabilities;
 - (c) the Company's credit quality;
 - (d) likely future revenues and liabilities; and
 - (e) the solvency position of the Company's subsidiaries.
- 4.8 In determining the preferred form of capital return, the Company sought advice from its external legal advisers, its auditors, and tax advisers. After careful consideration by the Board, it was decided that the Scheme was the preferred option available as it was the most tax efficient means of returning excess cash to shareholders.
- 4.9 In reviewing the options for the return of capital, the Company's objectives included:
- (a) certainty that the return of capital would proceed (with a low level of execution risk);
 - (b) ensuring that the payment made to shareholders is appropriately treated as a return of capital for New Zealand tax purposes (see further information in section 3 under the heading "Taxation");
 - (c) ensuring the return of capital will be made in a timely manner, so that shareholders receive cash in the near term; and
 - (d) adopting a method that ensured all shareholders are treated on the same basis and that the return of capital does not alter any shareholder's proportionate voting or distribution rights.

5. Effect on Shareholders

Shareholder value

- 5.1 The Scheme involves 30% of shares registered in the name of each shareholder that is registered on the Company's share register as the holder of shares in the Company at 5:00pm (New Zealand time) on the Record Date being cancelled (together with all rights attaching to those shares). In return shareholders will receive a cash sum of NZ\$0.27 for each share cancelled. 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).



Directors' holdings

5.2 Directors of the Company and associated persons of Directors who legally and/or beneficially own shares in the Company will participate in the return of capital in exactly the same way as all other ordinary shareholders of the Company. Directors and/or their associated persons are entitled to vote on the special resolution to approve the return of capital.

6. Further Information

6.1 Shareholders who have any questions about the effect of the Scheme on their investment should consult their financial advisers.

6.2 Copies of the originating application filed with the Court in relation to the Scheme and the initial Court orders accompany this Notice of Special Meeting and are also available on the Company's website at <https://www.burgerfuel.com/nz/investor-relations#shareholder-information>.

7. Board Recommendation

7.1 The Board recommends that shareholders vote in favour of the Scheme.



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 13 February 2024, 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.



DIRECTORY

Burger Fuel Group Limited

66 Surrey Crescent

Grey Lynn

Auckland 1021

Solicitors

Buddle Findlay

Level 18, HSBC Building

188 Quay Street

Auckland 1010