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## Forestlands (No.2) Limited (In Liquidation) ('the Company')

Company No. 959461

2 October 2020 | 01127

### 1. Introduction

Neale Jackson and Grant Robert Graham ('Liquidators'), Accredited Insolvency Practitioners, were appointed Joint and Several Liquidators of the Company by order of the High Court, Nelson on 6 September 2018 pursuant to Section 241(2)(c) of the Companies Act 1993 ('the Act') on the application of the Financial Markets Authority ('FMA'). The Liquidators are also the liquidators of other related companies in the Forestlands group ('Forestlands Group').

We understand that prior to liquidation a solvency certificate was signed by the Company's director. We have not seen this but on the face of the draft financial statements the Company appears to be solvent.

This is the Liquidators' fifth report. It covers the period 6 March 2020 to 5 September 2020 ('the Period').

The Liquidators' other reports, and other information relevant to the liquidations of the Forestlands Group companies, can be found on the Calibre Partners website: <https://www.calibrepartners.co.nz/flx-creditor/forestlands-2-20/>.

### 2. Restrictions

This report has been prepared by us in accordance with and solely for the purposes of Section 255(2) of the Companies Act 1993.

In compiling this report, we have relied on the accuracy of all relevant information provided by the Company. We have not independently audited or verified that information and express no opinion on its accuracy, completeness, or reliability.

We do not accept any liability whatsoever from this report.

All information contained in this report is for the confidential use of the parties to which it is provided in accordance with Section 255(2) of the Companies Act 1993 and is not to be disseminated or passed to any other person without prior written authority or in accordance with law.

We reserve the right (but will be under no obligation) to review this report and if we consider it necessary to revise the report in light of any information existing at the date of this report which becomes known to us after that date.

All references to \$ are in NZD.

### 3. Background

This report should be read in conjunction with other Liquidators' reports which can be viewed on the New Zealand Companies Office website at <https://companies-register.companiesoffice.govt.nz/>.

Background to the Liquidators' appointment and the actions taken since appointment are detailed in the Liquidators' previous reports.



## 4. Shareholder confirmation process

The share registers provided to the Liquidators on our appointment were largely out of date and did not contain sufficient information for us to be able to pay a distribution to shareholders. In order to distribute funds to shareholders, we were required to establish an accurate register of the shares held and other details relevant to claims against the Company.

A summary of the actions undertaken to establish an accurate register are detailed in the Liquidators' previous reports.

As at the end of the Period, the status of the confirmation process for this Company is as follows:

	% of shareholders	% of shares
Confirmation process completed	88	89
Missing information	12	11

As we confirmed in our previous report, we will no longer proactively locate or follow up incomplete shareholder information. We will continue to process shareholder information that is forwarded to us and make catch up payments for eligible shareholders.

We believe that the above approach is in the best interests of the shareholder group as a whole and will ensure that we do not incur unnecessary costs.

The confirmation process has been time consuming. We appreciate the patience shown by shareholders as we work toward paying all eligible shareholders their share of the funds available in the liquidation.

## 5. Distributions to shareholders

In the first interim distribution F2 eligible shareholders have been paid \$725 per share. The steps taken to facilitate this distribution to eligible shareholders are summarised in the Liquidators' report dated 3 April 2019.

On 21 August 2020, a second interim distribution was paid to eligible shareholders of \$73. Further information in relation to this distribution can be found on the Calibre Partners' website.

We continue to pay bi-monthly catch-up distributions to shareholders as they complete the confirmation process.

Residual funds are held on trust pending the outcome of the shareholder confirmation process.

## 6. Asset realisations

As advised previously, we agreed a settlement with Rowan Kearns and parties associated with him ('Associated Parties'). The terms of the settlement were confidential, subject to certain specified exclusions. The terms of the settlement agreement required Rowan Kearns and the Associated Parties to meet certain milestones by 30 September 2020. These have not been met.

We now provide further detail on the settlement agreement and our intended course of action below.

### Background

In the first Liquidators' report we advised that there had been transactions between the Forestlands Group and the Associated Parties such as marketing fees, administration fees, director's fees and advances. Many



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of those transactions were permitted but at that time (based on draft financial statements) a balance of \$1.75 million was showing due to the Forestlands Group by Forestlands N.Z Limited (in Liquidation). However, we believed that this required further investigation.

As an outcome of our investigations we found that the balances related to individuals or companies, associated with Rowan Kearns, all of whom had limited or no assets. To recover the amounts owing without a settlement, we would have needed to issue proceedings against these parties but that was likely to incur significant cost and it was unlikely to result in significant (if any) recoveries for the liquidations. Mr Kearns approached us to discuss a settlement and that was the best course of action to follow.

Accordingly, we entered into a Deed of Settlement and Deed of Acknowledgement of Debt dated 25 March 2019 ('the Agreements'). The parties to the Agreements included Rowan Kearns, in his personal capacity, and the Trustees of the Kearns Family Trust ('the Trustees').

Under the terms of the Agreements:

1. Rowan Kearns and the Trustees are to pay \$2.05 million ('the Debt') to the Forestlands Group in full and final settlement;
2. The Trustees granted a second-ranking mortgage over a property in Motueka ('the Property'), to secure the Debt due to the Forestlands Group. There was an existing first mortgage on the property, so the mortgage granted to the Forestlands Group had to rank behind that first mortgage;
3. The Trustees were to sell the Property and settle the Debt from the sales proceeds; and
4. The sale of the Property was to be completed initially by 25 March 2020 and subsequently varied to 30 September 2020.

We agreed the settlement because it was in the best interests of the Forestlands Group and their shareholders. By entering into the Agreements, we:

1. Secured recourse against assets that otherwise we were unable to access without litigation;
2. Obtained security over the Property to secure the Debt; and
3. Avoided the inherent uncertainty and cost that would be associated with pursuing claims through the Courts.

#### **Current position and next steps**

The Trustees are continuing with a process to sell the Property. We are in discussions with them about the process from here.

We withheld sums (that would have otherwise been available for distribution) to ensure that we were able fund additional recovery actions in order to recover the Debt on behalf of shareholders. Accordingly, the cash balance shown in the attached receipts and payments account includes a provision for recovery actions. We will provide a further update on the sales process in the next Liquidators' report or publish a notice via our website should a sale be concluded, or the Debt settled sooner.

## **7. Action taken by the Financial Markets Authority ('FMA')**

On 9 September 2020, the FMA confirmed that it had filed 111 criminal charges against Rowan Kearns in relation to the Forestlands Group, for alleged disclosure and financial record keeping breaches. These charges have been filed at Nelson District Court.

Since appointment, we have worked closely with the FMA and provided information as and when requested to assist with its investigations.



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We are unable to provide any further information to shareholders regarding these charges or any further actions the FMA may take at this time.

Should the FMA provide us with additional information and confirm that we can disclose it to shareholders then this will be included in future reports. Otherwise shareholders should monitor the FMA website for further updates in respect of FMA actions.

## 8. Future distributions

The ability of the Liquidators to distribute a further material distribution to shareholders is reliant on:

1. Realising the remaining assets or taking the required actions discussed above; and/or
2. The current financial position of the Company.

Please note that any future distributions will only be completed if there are sufficient funds and it is cost effective to do so.

## 9. Creditor claims

All known unsecured creditor claims have been reviewed, admitted, and paid by the Liquidators. Further information is available in the Liquidators' previous reports.

## 10. Statement of receipts and payments

A statement of receipts and payments for the Period is attached to this report. As per above, the remaining cash balance includes a provision to fund any additional recovery actions (if required) plus meet the ongoing costs of the liquidation.

## 11. Summary and estimated date of completion of liquidation

The Liquidators are unable to confirm an estimated date when the liquidation will be completed. As detailed above there are a number of milestones to be achieved before the Liquidators will be in a position to retire.

Should you have any queries regarding the liquidation of the Company, please do not hesitate to contact Joseph Zwaans of this office.

Yours faithfully

Neale Jackson  
Joint Liquidator



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## Statement of receipts and payments

### Forestlands (No. 2) Limited (In Liquidation)

Statement of Liquidators' receipts and payments from 6 March 2020 to 5 September 2020

	\$
Opening balance	409,698
<b>Receipts</b>	
Interest received	248
<b>Total receipts</b>	<b>248</b>
<b>Payments</b>	
Accountancy fees	750
Advertising	70
Bank charges	1,576
Investor distributions	78,696
Legal costs	2,588
Liquidators' remuneration	4,652
Postage	25
Printing and stationery	33
Storage	63
Sundry payments	6
<b>Total payments</b>	<b>88,459</b>
<b>Net cashflow</b>	<b>(88,211)</b>
<b>Closing balance</b>	<b>321,487</b>

#### Comprises of:

Bank balance	313,991
GST (payable)/receivable	7,495
<b>Closing Balance</b>	<b>321,487</b>



## Liquidators' remuneration report

	Hourly rate	General Admin		Shareholders		Creditors		Investigations		Reports		FMA/SFO		Tax/IRD related		Total	
		Hours	Charge	Hours	Charge	Hours	Charge	Hours	Charge	Hours	Charge	Hours	Charge	Hours	Charge	Hours	Charge
Partner	\$ 550	0.2	94	0.1	42	-	-	0.3	143	0.0	24	0.0	24	0.0	3	0.6	330
Executive Director, Director, Associate Director	\$ 485	0.3	137	0.5	242	-	-	-	-	0.0	17	-	-	-	-	0.8	396
Manager	\$ 385	0.1	49	1.4	540	-	-	-	-	0.8	296	0.1	21	0.2	88	2.53	995
Executive Analyst	\$ 315	0.3	89	-	-	-	-	-	-	-	-	-	-	-	-	0.3	89
Business Analyst	\$ 190	5.9	1,114	1.0	182	-	-	-	-	1.0	187	-	-	3.1	588	10.9	2,071
Support staff	\$ 90	0.8	71	7.8	701	-	-	-	-	-	-	-	-	-	-	8.6	771
<b>Total</b>		<b>7.5</b>	<b>1,554</b>	<b>10.7</b>	<b>1,707</b>			<b>0.3</b>	<b>143</b>	<b>1.8</b>	<b>524</b>	<b>0.1</b>	<b>45</b>	<b>3.3</b>	<b>679</b>	<b>23.7</b>	<b>4,652</b>

Disbursements: Disclosed in the Statement of receipts and payments account	Cost
Legal costs	2,588
Advertising	70
Postage	64
Record storage	63
<b>Total</b>	<b>2,786</b>

Detail of work completed	
<b>General Administration</b>	General case administration including strategy meetings, attending to shareholder queries, distributions to shareholders and processing of day to day receipts and payments.
<b>Shareholders</b>	Matters related to the shareholder confirmation process.
<b>Creditors</b>	Dealings with unsecured creditors including adjudication and settlement of unsecured claims.
<b>Investigation</b>	Investigation into the conduct of Mr Kearns and Associated Parties and finalising the settlement agreement.
<b>Reports</b>	Compiling statutory reports to creditors and any other reporting requirements.
<b>Tax/IRD related</b>	Income Tax and GST related matters including liaison with advisors and the IRD.