

Responsible Entity's Report to Growers

Australian Forest Project 2003

FEA Plantations Limited
(Subject to Deed of Company Arrangement)
(Receivers appointed)
ACN 055 969 429

19 December 2011

Brian Silvia FCA
Peter Krejci CA
Deed Administrators

BRI Ferrier (NSW) Pty Ltd ABN 97 128 947 848
Level 30, Australia Square, 264 George Street, Sydney NSW 2000
GPO Box 7079, Sydney NSW 2001
Phone (02) 8263 2300
Facsimile (02) 8263 2399
Email: fea@briferriernsw.com.au
Website: www.briferrier.com.au



TABLE OF CONTENTS

| | | |
|-----------|--|-----------|
| 1 | EXECUTIVE SUMMARY | 3 |
| 2 | INTRODUCTION..... | 5 |
| 3 | BACKGROUND TO SCHEME | 5 |
| 4 | SCHEME FINANCIAL PERFORMANCE AND CONTINUED FUNDING | 5 |
| 5 | STATUS OF VARIOUS RESTRUCTURING PROPOSALS..... | 6 |
| | 5.1 Investment Bank Proposal..... | 7 |
| | 5.2 RFM Revised Proposal | 7 |
| | 5.3 Discussions with Banks/Receivers | 7 |
| 6 | GROWER INVOICING..... | 8 |
| 7 | 'BACK UP' FUNDING ARRANGEMENTS FOR SCHEME GROWERS..... | 8 |
| 8 | SUMMARY OF ADMINISTRATORS' EFFORTS IN GROWERS INTERESTS SINCE APPOINTMENT | 9 |
| 9 | CURRENT POSITION OF INTERNAL LEASES | 9 |
| 10 | GROWERS COMMUNICATIONS | 10 |

1 EXECUTIVE SUMMARY

This is the 2010-2011 Annual Report to Grower-Investors in the Australian Forest Project 2003 Managed Investment Scheme (“The Scheme”) by its Responsible Entity, FEA Plantations Limited. This Report should be read in conjunction with the Deed Administrators’ Report to Creditors and Growers dated 16 September 2011.

The purpose of this Report is to provide Growers with:

- An update on the financial position of the Scheme;
- Information relating to the action being taken by the Administrators to protect the interests of Growers and the potential impact of the Receivers’ actions on behalf of the Banks; and
- An explanation of the current round of Grower invoicing.

Your Scheme comprises:

- 798.9 planted hectares (40%) of (“External Land”). This land is leased from landlords who are separate from the Forest Enterprises Australia Ltd (FEA) Group and is not subject to any claims by the Receivers or Banks; and
- 1,192 planted hectares (60%) of (“Internal Land”) leased land. This land is leased from FEA Group companies whose Receivers claim to have taken possession of it. That assertion is the subject of proposed legal proceedings by the Deed Administrators on behalf of Growers.

Important issues to note regarding your Scheme for the year ended 30 June 2011 are:

- The Receivers contend that the leases of Internal Land are in default and have sought to terminate them. This dispute is presently subject to Court proceedings;
- While the initial voluntary funding by Growers had been due to be expended by April 2011, the Administrators have sought to preserve some of the funds contributed to enable the Schemes to defend the actions of the Receivers on behalf of the Growers;
- The Administrators do not have funds sufficient to meet the rent payable on external leases at the current market price for timber and at the high contracted rent. Given the high level of contracted rent, it has not been in the interests of the Growers to continue to pay the external rent; and
- RFM was unable to complete its restructuring plan as originally proposed. It has continued to work on an alternate plan for Growers. There is also another party seeking to put forward a restructuring plan for Growers and Banks.

Our Report to Creditors dated 16 September 2011 outlined the Receivers’ actions seeking to terminate leases within the FEA Group. They say that non-payment of rent in respect of the FEA Schemes 2003 to 2009 and failure to maintain the land occupied by those Schemes constitutes a cross-default of all leases. In this respect the Receivers have relied on a lease called the 2003 Master Lease. This document purported to set out the lease terms between the Schemes and FEAP on the one hand, and other FEA companies on the other. Recent work by the Administrators in defending the legal action

brought by the Receivers has revealed that this lease was executed in July 2009. It should be noted the Group's Banks required the appointment of Investigating Accountants in early July 2009.

In December 2009, FEAP and other FEA Group companies entered into a document called the 2009 Deed of Variation at the request of the Banks' Solicitors. This document sought to significantly increase the rent payable by FEAP to FEA. In our view the requirement to pay the additional rent had no commercial benefit to FEAP or the Schemes, and caused the FEAP to become insolvent if it was not already so.

Financial projections lodged with the Australian Taxation Office by FEA and FEAP in relation to the Public Rulings obtained in respect of the Schemes does not provide any rent payable for internal land. This is consistent with the provisions of the 2000 Lease and many of the internal records of FEA.

To support the operations of the Schemes, FEA and FEAP entered into a number of Management Agreements under which FEA undertook to perform management, forestry establishment, maintenance and harvest and marketing on behalf of FEAP in its capacity as Responsible Entity of the Schemes. Each of these Agreements provided that all the services would be undertaken for nominal consideration. Despite these Agreements, it would appear that FEAP transferred to FEA all Grower contributions as a 'pre-payment'. This has significantly disadvantaged the Schemes as the Schemes were thereby deprived of the financial resources needed to support them.

The combination of the new purported leasing arrangements, the non-performance of the Management Agreement and the prepayment of Grower Funds to FEA have all disadvantaged Growers in the Scheme.

Given the actions by the Receivers, the Administrators have sought to preserve the funds voluntarily contributed by Growers to defend the rights of Growers. If these rights are not defended, the Receivers may be able to take possession of the land and trees and sell them for the benefit of the Banks. We consider it in the interests of Growers for the Administrators to continue to seek to enforce the rights of the Growers, and we therefore propose to continue to use funds on hand for that purpose.

To ensure that your Scheme remains funded we are sending another voluntary invoice request to all Growers in your Scheme. The proceeds will be used to fund legal and administration costs of your Scheme. The invoice has been set at \$17.50 per woodlot. We urge Growers to pay this voluntary amount so that the Administration can continue to work in the interest of Growers.

As many, but not all, Growers have voluntarily contributed to funding the Scheme, it is intended that in any distribution to Growers this voluntary funding be repaid in priority to any distribution to Growers, that is, the amounts contributed will be treated as lent to the Scheme.

At the same time as pursuing the legal actions we have continued negotiations with parties who are seeking to restructure FEA and the Schemes. We have continued to pursue discussions with two parties and expect that at least one of them will be making an offer to the banks to acquire their debt. This would enable the Administrators to restructure the Schemes with the new investors.

We have also held preliminary discussions with the banks regarding an agreed sale of the assets and distribution of funds between Banks and Growers. We will continue to work on an agreed settlement to enable a return to Growers. We report in more detail below.

2 INTRODUCTION

This 2010 – 2011 Annual Report to Grower-Investors in Australian Forest Project 2003 is made by FEA Plantations Limited (Subject to Deed of Company Arrangement) (Receivers Appointed) ('FEAP') - its Responsible Entity. The Scheme is often referred to as the 'FEAP 2003 Scheme'. This Report has been prepared by Brian Silvia and Peter Krejci of BRI Ferrier, the Deed Administrators of FEAP, and is our Second Annual Report and our third specific scheme-related Report to Growers. Our previous reports are available from our website: <http://www.briferrier.com.au> – click on Current Matters, click on Forest Enterprises Australia Group of Companies.

We report on the background to the Scheme; events in the past year; and the effect of the external administration of the Responsible Entity and of related members of the Forest Enterprises Australia Group.

The Scheme has been adversely affected by disagreement on a number of issues between the Deed Administrators and the Receivers, Controllers and Receivers and Managers of related companies, in particular Tasmanian Plantations Pty Limited ('TasPlant') and FEA, partners in the firm Deloitte, concerning the rights and duties of FEAP in respect of land occupied by this and fourteen other Managed Investment Schemes established by the FEA Group. More information about this dispute is set out in this report.

The issues the subject of disagreement have also been the subject of several Decisions by the Federal Court, referred to below.

3 BACKGROUND TO SCHEME

The FEAP 2003 Scheme involves properties of approximately 1,990.9 planted hectares. Of these, properties comprising 1,192 hectares are owned by FEA and TasPlant (the 'Internal Land') and properties comprising 798.9 hectares are leased from external landlords (the 'External Land').

The plantations are in Tasmania and New South Wales and are sub-divided into 4,108 woodlots. This Scheme contemplates that the cost of maintenance and rent is "deferred" until harvest and is then to be calculated as a percentage of the harvest proceeds not the amount actually incurred. This arrangement relied on the financial support of FEA which, with the Receivership of FEA and the cancellation of the Management Agreement by FEA's Receivers, is no longer available. The effect of the Receivers' actions could be to 'default out' the right of the Growers and enable the Receivers to sell the land and trees for the benefit of the Banks.

Whilst Grower-Investors own the trees planted on their woodlots, the Scheme envisages the Responsible Entity harvesting the timber on all the plantations, selling it and subsequently distributing the pooled net proceeds to Growers in proportion to their relative investment.

4 SCHEME FINANCIAL PERFORMANCE AND CONTINUED FUNDING

Annexure 'A' is a Summary of Receipts and Payments in respect of your Scheme for the period of Administration to 30 September 2011. The Receipts are the voluntary contributions made by Growers.

These contributions have been used to fund the legal and administration costs to defend the right of the Growers in the actions brought by the Receivers.

The Receivers have sought to terminate the leases and take possession of the properties, so the Schemes are not obliged to make rental payments to FEA. The funds held by the Administrators are therefore being used to fund the legal cases brought by the Receivers to determine the rights of the Growers.

The proceedings brought by the Receivers seek to enforce the Lessor's rights under the 2003 Master Lease. It has recently been found that this lease was executed in July 2009. This raises questions about the validity and effect of the document, and therefore the rental obligations that apply to your Scheme. Should the 2003 Master Lease be determined to be invalid, the Administrators contend that the 2000 Head Lease applies. The rent under this lease is nominal.

The uncertainty regarding the lease arrangements, funding arrangements, and the present legal actions makes it difficult to estimate the return to Growers. Additionally the restructuring proposals presently under consideration would involve this Scheme receiving part of the sales revenue from selling the land and trees in your Scheme, rather than funding the project until harvest.

As many, but not all, Growers have voluntarily contributed to the funding of the Scheme, it is intended that in any distribution to Growers this voluntary funding be repaid in priority to any distribution to Growers; that is, it be treated as a loan to the Scheme.

It is the voluntary contributions from Growers that have enabled the Scheme to defend the Growers' rights in the legal proceedings with the Receivers. Both the Federal Court actions, now subject to High Court Appeal, and the recent action launched by the Receivers in the Supreme Court of Victoria, are ongoing. The Administrators consider it to be in the interest of the Growers in these Schemes to pursue, an application for relief against forfeiture so Growers receive some compensation for their trees.

To ensure that your Scheme remains funded we are sending a voluntary invoice to all Growers in your Scheme. The proceeds will be used to fund legal and administration costs of your Scheme. The invoicing is set at \$17.50 per woodlot. We urge Growers to pay this voluntary amount so that the Administration can continue to work in the interest of Growers.

The Administrators will continue to apply funds to meet legal costs and administration costs. Should the legal actions be successful, we would anticipate being able to achieve a settlement with the banks or identify an acceptable restructuring proposal, that will provide for a return to the Scheme.

5 STATUS OF VARIOUS RESTRUCTURING PROPOSALS

The Administrators continue to work with two potential investors groups, as well as seeking consensual realisation discussions with the Banks/Receivers. We remain hopeful of concluding a transaction with one of the parties, however significant execution risks continue to exist.

Successful implementation of one of the restructuring proposals will remove risks attaching to the continuing legal proceedings commenced by the Receivers. Each proposal has been structured by its

proponent differently, and could result in different financial outcomes for each Scheme. Furthermore the timing of Grower returns differs.

Detailed below is the current status of each of the restricting proposals:

5.1 INVESTMENT BANK PROPOSAL

A proposal has been received from an Investment Group to acquire the Banks' debts and restructure the various Schemes established by the FEA Group.

For your Scheme this would entail the winding up of the Scheme and the sale of the land and trees. Proceeds from the sale would be split between the Investors and Growers. Under this proposal it is projected Grower returns would be in line with the estimates of the value of the trees. The advantage of this proposal is the removal of risks which exist in relation to the current legal proceedings and realisation of cash for Growers.

The proponent of this proposal is currently discussing it with the Banks. The Banks willingness to sell their debt is required for this restructure proposal to be implemented. Furthermore the proposal is subject to due diligence and valuations before final commitment.

5.2 RFM REVISED PROPOSAL

RFM is presently working with its backers to submit a revised offer for the Schemes to the Banks. The structure of its proposal has not been finalised where its main elements are intended to include acquisition of the Banks' debts and the progressive sale of the FEA- owned Estate.

Under this proposal, the Internal Land occupied by this Scheme would be sold, with a share (to be determined) of the sale proceeds of the land and trees being distributed to Growers.

This proposal could have benefits for Growers depending on the priority return required by the incoming investor. We have advised RFM and their investors we will not recommend any proposal which does not fairly compensate Growers for the sale of the Internal owned trees.

5.3 DISCUSSIONS WITH BANKS/RECEIVERS

Over the last few weeks we have held preliminary discussions with the Banks/Receivers to explore whether an agreement can be reached to sell the land and trees together with a sharing of proceeds between the Banks and Growers. The discussions are at an early stage, however both parties have approached them in good faith. We expect the discussions will continue over the next few weeks and we remain hopeful an outcome can be reached which enhances the interests of all parties.

The discussions with the Banks/Receivers contemplate the sale of FEA Group assets including trees planted on Internal owned land over time intended to maximise the realisable value of the assets. Sale proceeds would be a distributed based on an agreed formula between the Banks, Growers and FEA unsecured creditors. Trees on external land would be harvested with timber sale proceeds distributed to Growers.

The return to Growers under this proposal as currently discussed is linked to the values realised on the sale of individual assets. A well-structured sale, with appropriate safeguards, will help maximise sale prices achieved.

6 GROWER INVOICING

As previously noted in this report, the Administrators are issuing voluntary invoices to Growers in your Scheme.

The Administrators will be applying the funds currently on hand and receipts from the voluntary invoicing to meet the current and ongoing legal costs. This includes holding funds to meet any potential cost order against the Schemes, and to cover the costs of the administration including Schemes expenses and the fees of the Administration.

Should the current actions be successful, and a return be available to Growers, it is intended that priority be given to returning voluntary contributions to those Growers who have supported their Scheme.

7 'BACK UP' FUNDING ARRANGEMENTS FOR SCHEME GROWERS

A minority of Growers in the 1995 to 2002 FEAP schemes, including the FEA Receivers, have not paid contributions due by them. This could mean those Schemes may be unable to fund future Scheme costs and in the process prejudice the investment of all Scheme members.

To ensure these Schemes are fully funded, we are offering Growers in the 2003 to 2009 Schemes the opportunity to provide additional funding which will be 'lent' to the Scheme. This arrangement will only be used to fund any shortfall in Grower contributions; and is repayable in priority to any other Grower distributions.

This 'backup' funding arrangement works as follows:

- Growers contribute additional funding at a rate of \$100 per Grower lot;
- Funds received will be held in DLA Piper's Trust Account on interest bearing deposit pending disbursement;
- Individual Scheme funding shortfalls are to be 'financed' from the general funding pool established and held in the DLA Piper's Trust Account;
- Contributions lent to the Scheme are to be repaid in priority to Growers' distributions together with interest calculated at 20% per annum. Interest received from all sources will be proportionately distributed to funding Growers;
- Repayment of the funding contributions is limited to the assets of the Fund to which money is lent; including the benefits of the sale of timber from External owned Land and the outcome of litigation; and
- Funds held in the DLA Piper Trust Account will be distributed (in time) proportionately to funds advanced by Growers.

This Grower funding arrangement has the benefit of protecting the optimised value of each of the Schemes for Growers benefit as well as providing priority repayment to those 2003 – 2009 Growers who contribute funding to the earlier Schemes. FEAP as the Responsible Entity will fully document the loan agreements to reflect the intentions expressed above.

Those Growers who are prepared to contemplate additional funding should complete Annexure 2 so as to clearly identify your willingness to provide it. The form once completed and returned by you to the Administrators will result in an invoice for such funding being sent to those of you who are prepared to contribute additional funding.

8 SUMMARY OF ADMINISTRATORS' EFFORTS IN GROWERS INTERESTS SINCE APPOINTMENT

Since our appointment 18 months ago we have developed and executed strategies to maximise the return to Growers and other creditors. We have negotiated with landlords, harvesting companies, government offices and potential purchasers of the land and timber.

In addition to our statutory duties of investigation, reporting to creditors and advising at meetings as appropriate, we have also responded to a number of litigation proceedings commenced by the Receivers in the Federal Court in Melbourne with the intention of protecting Growers' interests. Recently, we have filed an Application for Special Leave to Appeal against a decision adverse to Growers' interest to the High Court of Australia. We have also foreshadowed proceedings being commenced to protect Growers interests in the FEA 2003 Scheme against forfeiture of this internal leased land.

In early 2011 we agreed with the Banks to enter into a Forbearance Agreement, under which a potential purchaser, RFM, proposed to recapitalise FEA by repaying the Banks' debt through a capital raising and offering unsecured creditors and Growers an equitable return on their investment. This proposal did not proceed.

Notwithstanding the Forbearance Agreement, the Receivers have, on behalf of the Banks, continued to contest many of our actions as Voluntary Administrators and lately as Deed Administrators.

The Receivers issued default and lease termination notices during August 2011 in respect of all Internal Land, claiming monetary default for non-payment of rent and non-monetary default based on an alleged failure to maintain properties and because of Receivership. These notices, if effective, would enable the Receivers to deprive the interests of Growers in their timber and through FEAP their right to occupy the Internal Land on which some of the Scheme trees are planted. The notices do not affect land leased from landlords other than FEA, that is, 'External Land'. For reasons previously reported to Growers we are advised good grounds exist to reverse the Receivers' actions where they now seek endorsement of them by further Application to the Court.

9 CURRENT POSITION OF INTERNAL LEASES

The Internal Land occupied by the Scheme is purported to be held by FEAP under a lease dated into in 2003. FEAP, at the request of the Banks' lawyers, signed a Deed of Variation in 2009 which varies the rent payable under the 2000 lease. The effect of these changes was to increase the rent said to be due to the landlord by FEAP. We contend the Deed of Variation was, if effective, prejudicial to the interests of the Scheme and to the interests of the Responsible Entity, and is therefore liable to be rescinded by the Court.

Prior to the appointment of any insolvency practitioners to the FEA Group the viability of your Scheme had been 'under-pinned' by:

- ▶ Concessional leasing arrangements between Growers and FEAP for all rent where Growers had no current obligation to pay rent. A range of arguments exists to say that even if rent is due that substantial prepayments of rent have been made (for a variety of reasons).
- ▶ The FEAP/FEA Head Management Agreement for maintenance of the estate under which FEA was obliged to maintain it at a 'peppercorn' cost. The Receivers following their appointment 'terminated' this agreement.
- ▶ FEA's obligation to provide financial assistance to FEAP of up to \$5.5M per month. The Receivers also terminated this obligation.

Additionally it has recently been found that the 2003 'Master Lease' relied upon by the Receivers in seeking Directions from the Court to terminate leases was executed in late July. This casts significant doubt over the validity of this lease and strengthens the case for Growers. We note that the Bank required FEA appoint an investigatin0g accountant on their behalf in early July 2009.

Notwithstanding these issues the Receivers have sought to terminate/forfeit the internal leases. We have foreshadowed to them proceedings seeking 'Relief from Forfeiture', a claim which we can bring to protect Grower-lessees' interests, where we are of the view any purported termination is ineffective. On 30 September 2011 the Receivers filed an Application for Directions in the Supreme Court of Victoria seeing endorsement of their actions. The proceedings follow the Receivers' failure in earlier Applications to the Federal Court of Australia materially seeking the same Directions. Instead of filing separate Proceedings for Relief against Forfeiture, the Deed Administrators intend to file cross-claims in the Receivers' Supreme Court proceedings seeking Relief against Forfeiture and resolution of the Receivers' separate claim to be entitled to invoice Growers for rent on internal land.

10 GROWERS COMMUNICATIONS

Please contact our FEA Grower Assistance Line on 02 8263 2300 if you have any questions relating to this Report.

Yours faithfully
FEA Plantations Ltd



Brian Silvia
Deed Administrator

ANNEXURE A

| 2003 Scheme Receipts and Payments For the period 14 April 2010 to 30 September 2011 | |
|--|-----------------------------|
| <u>Grower Receipts to 30 September 2011</u> | |
| <u>Grower Receipts Allocated to Scheme Pools</u> | |
| Insurance | 54,430.04 |
| External Rent (94 - 02) / Rent (03 - 09) | 134,293.33 |
| Administrators remuneration | 92,573.76 |
| Administrators disbursements | 53,686.08 |
| Forestry maintenance | 24,001.15 |
| Postage administrative | 1,158.36 |
| Other grower receipts | 72.22 |
| Total Grower Receipts Allocated to Scheme Pools | <u>360,214.94</u> |
| <u>Other Receipts</u> | |
| Unallocated grower receipts | 3,300.29 |
| Pre-appointment debtor | 2,061.90 |
| Bank interest | 4,195.72 |
| Total Receipts | <u>\$ 369,772.85</u> |
| <u>Payments Made to 30 September 2011</u> | |
| <u>Payments Allocated to Scheme Pools</u> | |
| Insurance FY2011 | 39,268.06 |
| Insurance public liability (FY12) | 1,338.70 |
| Scheme 2003 to 2009 Administrators Remuneration FY2011 | 86,613.84 |
| Scheme 2003 to 2009 Administrators Remuneration FY2012 | 14,833.52 |
| Total Payments Allocated to Scheme Pools | <u>142,054.12</u> |
| <u>Other Payments</u> | |
| Disbursements | 7,119.09 |
| Legal fees | 17,445.54 |
| Bank charges | 587.86 |
| Professional costs | 129.73 |
| Meeting room | 292.79 |
| Report Printing and Stationary | 1,583.59 |
| Disbursement Reimbursement from Schemes 03-09 to GF | 24,549.83 |
| Custodian fee | 1,787.50 |
| <u>Payments to FEAP General</u> | |
| GST Scheme paid to FEAP | 11,635.55 |
| GST Scheme paid to FEAP - September 2011 | 8,151.00 |
| Total Payments | <u>\$ 215,336.59</u> |
| Cash Balance | <u>\$ 154,436.26</u> |

ANNEXURE B

The Deed Administrator
C/- BRI Ferrier
GPO Box 7079
SYDNEY NSW 2001

FEA Plantations Limited
(Subject to Deed of Company Arrangement)
(Receivers Appointed)

FUNDING COMMITMENT FOR BACK UP GROWERS FUNDING ARRANGMENT

I confirm that I, _____ (Grower Number _____), of _____, Ph: _____, am a Grower in the Australian Forest Project 2003 (the 2003 Scheme). My investment consists of _____ Grower Lots.

I have read the Report to Growers dated 21 November 2011 and I wish to participate in the Bank Up Grower Funding as outlined in Section 7 of that Report.

I understand that the Deed Administrators will utilise this funding in accordance with Section 7 of the Report.

I wish to participate in this Back Up Funding for _____ Growers Lots at \$100 per Grower Lot.

Please provide me with an invoice for the Grower Lots. I will make payment 14 days after receiving this invoice.

Dated this _____ day of _____ 2011.

Signed