

Annual Report to Growers by the Responsible Entity 2011-2012

Australian Forest Project 2005

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

25 May 2012

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1 EXECUTIVE SUMMARY

This is the 2011-2012 Annual Report to Grower-Investors in the Australian Forest Project 2005 Managed Investment Scheme (“The Scheme”) by its Responsible Entity, FEA Plantations Limited (“FEAP”). This Report should be read in conjunction with the Deed Administrators’ Annual Report to Growers dated 9 December 2011.

The purpose of this Report is to provide Growers with:

- ▲ An update on the current restructuring proposal being negotiated for your Scheme. If implemented, restructuring will resolve all of the current legal issues;
- ▲ A report on the action being undertaken by the Administrators to protect the interests of Growers and the potential impact of the Receivers’ actions on behalf of the Banks;
- ▲ An update on the financial position of the Scheme; and
- ▲ Information about how the Deed Administrators of FEAP are carrying out your Scheme;

2 PROPOSED RESTRUCTURE OF YOUR SCHEME

In recent months an indicative, non-binding restructuring proposal has been received from a large Australian Financial Institution. This proposal has been extensively negotiated by the Administrators and the current terms have been approved by the FEAP Committee of Inspection. The restructuring provides Growers with a positive outcome.

The Financial Institution is a credible counterparty with a strong balance sheet, experience and the capability in retail and agricultural funds management to implement their proposal.

While the final terms of the non-binding restructuring proposal are confidential and yet to be finalised, in broad terms it involves a restructure of your Scheme which result in a realisation of the Scheme Assets for the benefit of Growers. The Administrators believe the indicative terms proposed are reasonable and in the interests of Growers. Importantly Growers will maintain their interest in the trees until harvest.

The proponent is well advanced in carrying out due diligence on the estate and its restructuring proposal. The terms of the restructuring proposal are confidential pending further discussions with the Secured Creditors that should allow in-principle agreement to be put to Growers for their consideration. The restructuring proposal depends on the proponent reaching agreement with the Secured Creditors.

We anticipate that due diligence and negotiation of the final terms may take several more months to complete. As soon as final terms are available, we will call meetings of the creditors and Growers of FEAP, including members of your Scheme, to consider approving the proposal.

Pending consideration of the restructuring proposal by creditors and Growers, the Deed Administrators of FEAP have sought to preserve as much of your Scheme as possible to allow for consideration of means for its restructuring. The Deed Administrators are unable to fully carry on the Scheme as

originally established due to the nature of their appointment, but are ensuring that as much value is preserved as possible pending a final resolution of the commercial and legal issues affecting it.

We will keep you informed of further progress as discussions continue to advance.

3 DISCUSSIONS WITH BANKS AND RECEIVERS

As outlined in the last Annual Report, there have been a number of rounds of discussions with the Banks and Receivers in an attempt to reach a negotiated settlement. These discussions have been separate to the restructuring proposal outlined above.

The discussions with the Banks/Receivers contemplated a sale of FEA Group assets, including trees planted by FEAP on internally owned land, and the distribution of the sale proceeds in accordance with a formula agreed between the Banks, Growers and FEAP unsecured creditors. Trees on external land would be harvested with timber sale proceeds distributed to Growers.

So far no agreement has been reached. The Banks/Receivers insist they are entitled to apply the sale proceeds from the trees to the repayment of their debt before any distribution is made to Growers. The discussions have been suspended while the restructuring proposal is being finalised.

The restructuring proposal, if implemented, will provide a better return to your Scheme than what has been offered by the Banks/Receivers to date.

4 CURRENT LEGAL PROCEEDINGS

We refer Growers to Sections 8 and 9 of the 2010-2011 Annual Growers Report, which summarised the efforts being undertaken by the Administrators to protect the interests of the Scheme and Growers. This Report can be accessed by clicking the link below:

<http://www.briferrier.com.au/downloads/ForestEnterprisesAustraliaGroupofCompanies/Australian-Forest-Project-2005-Report-2011.pdf>

The legal proceedings initiated by the Receivers relate only to internal land and not the trees planted on external land where rent continues to be payable.

Since last year's Annual Report the Administrators have continued their investigations into the leasing arrangements between the Schemes, FEAP, FEA and Tasmanian Plantation Pty Limited ("TasPlan"). These investigations support the ability of Growers to contend that the 2000 Head Lease (under which the Rent due for the entire period of the lease has been paid) applies and continues to be the operative leasing arrangements. On this basis, the Receivers are not entitled to terminate internal leases relevant to your Scheme. This proposition is supported by legal advice received by us in support of your Scheme's contentions.

Contrary to assertions made on behalf of your Scheme, the Receivers contend FEAP has to pay rent to FEA on the basis of a so called 2003 Master Lease, purportedly signed in 2003. Our investigations indicate the document was drafted and signed in July 2009. The Receivers further contend that a document titled the 2009 Deed of Variation, which was prepared with lawyers employed by the Banks in late December 2009, significantly increases the rent due under the purported 2003 lease.

The Administrators have now filed their Defence and Cross-claims in the proceedings. In summary, the Administrators contend:

- ▶ All internal land is covered by the 2000 Head Lease and the Forest Rights Deeds registered on the land titles. All rental obligations from FEAP to FEA have been satisfied under this lease, and the Schemes are entitled to occupy the land until harvest.
- ▶ The 2003 Master Lease relied upon by the Receivers was drafted and executed in 2009 and is therefore invalid.
- ▶ The 2009 Deed of Variation is void as the document provided no benefit to the Schemes, and therefore its execution was in contravention of the Corporations Act and immediately made FEAP insolvent, being unable to fulfil its duties as the Responsible Entity of the Schemes.
- ▶ Historically, FEA overcharged FEAP for management fees. This overcharging was in the tens of millions of dollars. This money should have been held by FEAP for the benefit of Growers. The Administrators contend that FEA must account to FEAP and the Schemes for the overcharges.
- ▶ That your Scheme is entitled to Relief Against Forfeiture. That is, should the Court assess any rent as owing by your Scheme, the Scheme be able to act independently of other Schemes to pay rent due and continue to operate until harvest.

As a result of the Defence and Cross-claim filed by the Administrators, the Receivers have advised that they will “substantially amend” their application to terminate the leases. This is a significant step by the Receivers who have so far relied on the 2003 Master Lease to deny Growers the right to their trees. Additionally, despite numerous requests, the Receivers have not yet presented any evidence supporting their case.

The Administrators have advised the Receivers that should they be intent on pursuing this action to completion, it would be in the interests of all parties for the land and trees be sold now, with the proceeds put into trust with the Court pending determination as to the basis of its distribution. Should the Court rule in favour of the Administrators, Growers would be entitled to the realised value of the trees. The Receivers have declined this proposal.

Whilst the Administrators are pursuing a legally supported case on behalf of the Schemes, we can only continue to do so if Growers continue making their voluntary contributions to the Schemes to fund the case.

5 SCHEME FINANCIAL PERFORMANCE

Annexure ‘A’ is a Summary of Receipts and Payments in respect of your Scheme for the period of Administration to 30 April 2012.

6 GROWER CONTRIBUTIONS

In December 2011 Growers were invoiced for voluntary contributions for the period 1 November 2011 to 30 June 2011 to cover the legal and administration costs of the current legal proceedings. Many Growers have now made these payments.

We are not issuing new invoices to Growers at this time.

If the Financial Institution seeking to restructure the Schemes is successful in being able to implement a restructure proposal, the Financial Institution will provide a priority return to those Growers who have made voluntary contributions.

We urge all Growers to pay their voluntary contributions to support the financial viability of their Scheme and to enable the Administrators to pursue the legal case on behalf of the Schemes and the Growers.

7 GROWERS CORRESPONDENCE

Should the negotiations with the Financial Institution continue as planned, we will be reporting to Growers in the coming months, and convening meetings of creditors, including Growers, to consider approval of this restructuring.

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

| FEAP 2005 Scheme Receipts and Payments For the period 14 April 2010 to 30 April 2012 | |
|---|-------------------------------|
| <u>Grower Receipts to 30 April 2012</u> | |
| <u>Grower Receipts Allocated to Scheme Pools</u> | |
| Insurance | 244,437.05 |
| Non Mandatory | 875,599.52 |
| Administration Costs | 42,463.07 |
| Legal Fees | 2,683.65 |
| Other Grower Receipts | 4,532.07 |
| Total Grower Receipts Allocated to Scheme Pools | <u>1,169,715.35</u> |
| <u>Other Receipts</u> | |
| Unallocated Grower Receipts | 81,124.18 |
| Pre-Appointment Debtor | 8,762.92 |
| Bank Interest | 17,878.67 |
| Total Other Receipts | <u>107,765.77</u> |
| Total Receipts | <u>\$ 1,277,481.12</u> |
| <u>Payments Made to 30 April 2012</u> | |
| <u>Payments Allocated to Scheme Pools</u> | |
| Forestry Insurance | 149,845.91 |
| Insurance - Public Liability and Workers Compensation | 5,771.43 |
| Scheme Administrators Remuneration | 174,775.83 |
| Scheme Deed Administrators Remuneration | 409,368.67 |
| Total Payments Allocated to Scheme Pools | <u>739,761.84</u> |
| <u>Other Payments</u> | |
| Disbursements | 40,291.47 |
| Legal Fees | 120,544.29 |
| Other | 20,446.42 |
| Professional Costs | 4,512.22 |
| Payments to FEAP General Fund | 169,721.24 |
| Total Other Payments | <u>355,515.64</u> |
| Total Payments | <u>\$ 1,095,277.48</u> |
| Cash Balance at 30 April 2012 | <u>\$ 182,203.64</u> |