



**DYLAN O’SULLIVAN EARTHMOVING LIMITED  
(IN LIQUIDATION)  
 (“Company”)**

Company number: 5864180

New Zealand Business Number: 9429042112310

**Liquidators’ First Report to Creditors and  
Shareholders**



## 1. Introduction

Iain Bruce Shephard and Jessica Jane Kellow, Licensed Insolvency Practitioners of BDO Wellington, (Registration Numbers: IP71 and IP75 respectively) were appointed joint and several liquidators (“Liquidators”) of Dylan O’Sullivan Earthmoving Limited (“Company”) on 12 March 2021 at 9:00am by special resolution of the shareholders in accordance with section 241(2)(a) of the Companies Act 1993 (“the Act”).

In addition to our statutory obligations, we are also bound by the RITANZ Code of Professional Conduct (“Code”) when carrying out all professional work relating to our appointment as Liquidators.

In accordance with section 255 of the Act we report on the Company’s affairs together with our proposals for conducting the liquidation.

Liquidators of insolvent companies are required to be licensed insolvency practitioners. Further details regarding the regulation of insolvency practitioners is available from the Registrar of Companies at: [www.companiesoffice.govt.nz/all-registers/insolvency-practitioners/](http://www.companiesoffice.govt.nz/all-registers/insolvency-practitioners/).

## 2. Restrictions

This report is not intended for general circulation, nor is it to be reproduced or used for any purpose other than that outlined above without our written permission in each specific instance.

We do not assume any responsibility or liability for any losses occasioned to any party as a result of the circulation, publication, reproduction or use of this report contrary to the provisions of this paragraph.

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 the light of any information existing at the date of this report which becomes known to us after that date.

## 3. Company Information

Dylan O’Sullivan Earthmoving Ltd (In Liquidation)		
Date of Incorporation:	14 December 2015	
Registered Office:	InCorp You Limited	
(Prior to liquidation)	76 Fergusson Street	
	Fielding, 4702	
Type of Business:	E321225 Earthmoving Plant and Equipment Hiring with Operator	
Shareholders:	Dylan O’Sullivan	51 Shares
	Aleishia Carline	49 Shares
Directors:	Dylan O’Sullivan	
	Aleishia Carline	
Date of Liquidation:	12 March 2021	



#### 4. Background and Reasons for Liquidation

The Company traded as an earthmoving contractor, operating out of their site in Elsdon, Porirua. The Company employed 13 people at the date of liquidation.

The Company predominately worked for several residential developers in the Wellington region undertaking subdivision section work and landscaping.

The liquidators meet with the directors in February to discuss the solvency of the Company and options that may be available to restructure the business. Following a review, it appeared the Company was burdened by too much historical debt to enable a successful restructure. The historical trading losses have arisen from poor gross profit margins and significant repairs and maintenance costs.

Following professional advice, the shareholders resolved to place the Company into liquidation.

#### 5. Statement of Affairs

Attached at **Appendix 1** is the Statement of Affairs of the Company. This statement has been prepared based upon financial statements of the Company as at 19 February 2021 and as such may be subject to change.

In preparing the statement we have relied on information provided by the directors of the Company. We have not carried out an audit of the information which has been provided, nor have we subjected the information provided to detailed verification procedures. While we believe the statement, based on the information provided to us, reasonably reflects the position of the Company, we cannot be held responsible for inaccuracies in the report arising from deficiencies in the information or explanations given to us.

We are unaware of any current or pending proceedings to which the Company is party.

#### 6. Creditors

##### 6.1. List of creditors

Attached as **Appendix 2** is a full list of the names and addresses of creditors in accordance with section 255(2)(c)(i) of the Act.

##### 6.2. Unsecured creditor claims

We attach as **Appendix 3** our Public Notice which sets 16 April 2021 as the day on or before which the creditors of the Company are to make their claims, and to establish any priority their claims may have under section 312 of the Act or to be excluded from the benefit of any distribution made before the debts are claimed or from objecting to the distribution.

Please complete our Unsecured Creditor's Claim form and return to us at the following address or by fax or email:

The Liquidators  
Dylan O'Sullivan Earthmoving Limited (In Liquidation)  
C/- BDO Wellington  
PO Box 10-340  
Level 1, Chartered Accountants Building  
50 Customhouse Quay  
Wellington

Email: wlg.bri@bdo.co.nz

It is too early to reliably estimate what funds, if any, will be available for preferential and unsecured creditors.

### **6.3. Secured creditors notice**

Creditors claiming a security interest (including retention of title or other claims) in the Company's assets who:

- have not advised the Liquidators of their security interest; or
- have not received correspondence from the Liquidators concerning their security interest,

Should contact the Liquidators immediately and should not file a claim as an unsecured creditor unless they wish to surrender their charge to the Liquidators.

This report constitutes notice under section 305(8) of the Act to any secured creditor receiving it that pursuant to section 305(8) of the Act, you as a secured creditor of the Company are required to (unless you have already advised the Liquidators in writing of such an election or have already received such a notice) elect and notify the Liquidators in writing within 20 working days (by 16 April 2021) after receipt of this notice, which of the following powers they wish to exercise:

- a. Realise the property subject to your charge, if entitled to do so; or
- b. Value the property subject to your charge and claim in the liquidation as an unsecured creditor for the balance due, if any; or
- c. Surrender the charge to the Liquidators for the general benefit of creditors and claim in the liquidation as an unsecured creditor for the whole debt.

Pursuant to section 305(9) of the Act, if a creditor fails to notify the Liquidators in compliance with this notice within 20 working days (by 16 April 2021) they will be taken as having surrendered their charge to the Liquidators for the general benefit of creditors and they may then claim in the liquidation as an unsecured creditor for the whole debt.

### **6.4. Creditors meeting**

In accordance with section 245 of the Act, for the reasons given in the formal notice attached at **Appendix 4**, we have dispensed with the meeting of creditors.

## **7. Proposals for Conducting the Liquidation**

The Company ceased to trade upon the appointment of liquidators. One employee was retained for the week following liquidation to complete payroll, invoicing and other administrative with the remainder of the employees contracts terminated.

The Liquidators engaged Turners Auctions to complete a fleet valuation of the Company's vehicles, plant and equipment which took place on 17 and 18 March 2021. There has been significant interest in the Company's assets and once the valuation has been received we will consider offers. Secured creditors have been contacted for their supporting documentation and assets will be returned as appropriate.

The Liquidators will conduct an investigation of the Company's books and records to further establish if there are any potentially voidable transactions that require investigation, and further

to ensure that the directors have complied with the duties and obligations imposed on them under the Companies Act 1993.

In the event that there are funds available for a distribution, the Liquidators will admit creditor claims and make a distribution.

The Liquidators will then complete a final report and request that the Registrar of Companies remove the Company from the register.

## **8. Estimated Date of Completion**

It is not practical to estimate the date of the completion of the liquidation at this stage. Our subsequent reports to creditors will, when appropriate, advise of an estimated completion date.

## **9. Contact Information**

If you require any further information, please direct enquiries to:

Ryan Kilkolly  
DDI: (+64 4) 472 5812  
Email: first.last@bdo.co.nz

BDO Wellington  
PO Box 10-340  
Level 1, Chartered Accountants Building  
50 Customhouse Quay  
Wellington

Dated this 23<sup>rd</sup> day of March 2021



**JESSICA KELLOW**  
Liquidator

### ***Appendices***

- Appendix 1 - Statement of Affairs of the Company
- Appendix 2 - List of Company Creditors
- Appendix 3 - Public Notice of Appointment
- Appendix 4 - Notice of Liquidators Decision to Dispense with Meetings of Creditors
- Appendix 5 - Interests Statement
- Appendix 6 - Initial Remuneration Notice

## APPENDICES

### Appendix 1 - Statement of Affairs

Dylan O'Sullivan Earthmoving Limited (In Liquidation)			
Statement of Affairs			
	Notes	Initial Report Book value*	Est. Recovery
<b>Assets subject to specific charges</b>			
Motor Vehicles	1	247,961	undisclosed
Less amounts due to PMSI holder	2	(16,133)	unknown
<b>Surplus/(shortfall) for GSA</b>		<b>231,829</b>	<b>unknown</b>
<b>Plant &amp; Equipment</b>			
Plant & Equipment		unknown	undisclosed
Less amounts due to PMSI holder	3	(194,395)	unknown
<b>Surplus/(shortfall) for GSA</b>		<b>unknown</b>	<b>unknown</b>
<b>Assets subject to GSA</b>			
Plant & Equipment	1	1,030,175	undisclosed
Surplus from assets subject to specific charges		unknown	unknown
		<b>unknown</b>	<b>unknown</b>
Less amounts due to GSA	4	1,243,554	unknown
<b>Surplus/(shortfall)</b>		<b>unknown</b>	<b>unknown</b>
<b>Assets available for preferential creditors</b>			
Accounts Receivable		144,657	unknown
		<b>144,657</b>	<b>unknown</b>
<b>Less Preferential Creditors:</b>			
Employees		(36,543)	unknown
IRD		(266,548)	unknown
		<b>(303,091)</b>	<b>unknown</b>
<b>Surplus/(shortfall)</b>		<b>(158,434)</b>	<b>unknown</b>
<b>Less Unsecured creditors:</b>			
ACC		(38,569)	unknown
Employee unsecured claims	5	(26,252)	unknown
Government business loan - Covid19		(33,400)	unknown
IRD unsecured claims		(10,241)	unknown
Other loan		(104,100)	unknown
Shareholder funds introduced		(430,154)	unknown
Trade creditors	6	(486,840)	unknown
		<b>(1,064,734)</b>	<b>unknown</b>
<b>Overall surplus/(shortfall) for Creditors prior to costs of liq.</b>		<b>unknown</b>	<b>unknown</b>

\*Based on financial statements from Xero as at 19 February 2021 and further information acquired since

The above amounts are subject to the costs of liquidation

Notes:

- 1 This is the book value as per the Xero balance sheet. A large portion of the motor vehicles are subject to bank security.
- 2 We are yet to hear from one creditor in respect of two vehicle securities.
- 3 We are yet to receive documentation from several secured creditors in relation to plant and equipment and expect this balance to be significantly higher.
- 4 A significant portion of this debt is also in relation to PMSI securities against vehicles, however the loans were refinanced to one debt.
- 5 This includes the directors' holiday pay, and there are employee notice period claims that haven't been included in this figure.
- 6 This is the book value as per the Xero balance sheet and we expect the claims to be significantly more than this.

## Appendix 2 - List of Company Creditors

Name	Address 1
Accident Compensation Corporation	business@acc.co.nz
Advance Auto Electrical	info@auto-electrician.co.nz
All Traffic Management Services Limited	steph@atmsnz.co.nz
Allways Hire	info@allwayshire.co.nz
ANZ Bank New Zealand Limited	christian.sefesi@anz.com
Beaurepaires Limited	accounts.receivable@beaurepaires.co.nz
BOC Limited	gail.mitchell@boc.com
Bradens Custom Concrete	braden@customconcrete.nz
Brake & Transmission NZ Ltd	accountsreceivable@bntnz.co.nz
Bunnings Limited	creditrecovery@bunnings.com.au
C&M Transport Limited	cmtransportltd@outlook.com
Carters	carters.remittances@carters.co.nz
Charlies Trucks Limited	modusnz@outlook.co.nz
Chorus New Zeland	develop@chorus.co.nz
Coastal Fasteners	porirua@coastalfasteners.co.nz
EF Construction Limited	office@efconstruction.co.nz
Elsdon Motors 2013	elsdonmotors13@gmail.com
Equipment and Transport Leasing Limited	robbie@modtrans.co.nz
Happy Valley Contractors Limited/C & D Landfill	info@canddlandfill.co.nz
Heavy Vehicle Holdings Limited	admin@hvservices.co.nz
Higgins Concrete	wellington@higginsconcrete.co.nz
Horokiwi Quarries Ltd	ross.baker@hql.co.nz
Hynds Pipe Systems Limited	lawrence.watts@hynds.co.nz
Inland Revenue Department	Insolvency.notification@ird.govt.nz
Kenepuru Car Service Centre Limited	russell@kenepurucars.co.nz
kiwi Asset Finance Limited/Kiwibank Limited	vaughan.hewson@kiwibank.co.nz
McFall Fuel Limited	shona.thompson@mcfallfuel.co.nz
Mico New Zealand Limited	niteshni.swami@fbu.com
Navman Wireless New Zealand	nzar@teletracnavman.com
Nees Hardware and Building Supplies Limited T/A Mitre 10 Petone	nicole.murphy@mitre10.co.nz
North City Diesel	office@northcitydiesel.co.nz
NZGT (FP) Trustee Limited (Fleet Partners)	collections@fleetpartners.co.nz
Orcon	collections@email.slingshot.co.nz
Oxford Finance Limited	frank.sapatu@oxf.co.nz
Pirtek (Wellington) ltd	sarah@3rdarmadmin.co.nz
Porirua city council	enquiries@porirua.govt.nz
Porirua Waste	denisegray.poriruwaste@gmail.com
Porter Access Hire Limited	carolyn.cloke@porterce.com
Prospa NZ Limited	info@prospa.co.nz
RAB Contracting Limited	rabcontracting@gmail.com
Rangitikei Machinery & Diesel (2012) Limited	rtd.2004@yahoo.co.nz
RedPepper Print	sales@redpepperprint.co.nz
T&T Landfill	tntlandfills@gmail.com
Toyota Finance New Zealand Limited	vidya.maharaj@tfs.co.nz
TR Group Limited	ppsr@trgroup.co.nz



UDC Finance Limited	caroline.dunan@udc.co.nz
Urban Group	Stephen@urbanhomes.co.nz
Wellington Hydroseeding	visualeyes@extra.co.nz
Wurth New Zealand Limited	orsy@wurth.co.nz
Youngman Richardson & Co Limited	kathym@yrco.co.nz
Zeroguru	<i>Unknown</i>
<b>Employees</b>	
Aleishia Carline	<i>Contact Details Withheld</i>
Arron Smith	<i>Contact Details Withheld</i>
Bill Puha	<i>Contact Details Withheld</i>
Christian Romley	<i>Contact Details Withheld</i>
Daniel Mirko	<i>Contact Details Withheld</i>
Dylan Hayes-Martin	<i>Contact Details Withheld</i>
Dylan O'Sullivan	<i>Contact Details Withheld</i>
James Romley	<i>Contact Details Withheld</i>
Jessica Cassidy	<i>Contact Details Withheld</i>
Jonty Andersen	<i>Contact Details Withheld</i>
Justin Minhinnick	<i>Contact Details Withheld</i>
Mac Eparaima	<i>Contact Details Withheld</i>
Peter Huria	<i>Contact Details Withheld</i>
Peter Winston	<i>Contact Details Withheld</i>
Shane Clark	<i>Contact Details Withheld</i>
Tasi Leota	<i>Contact Details Withheld</i>



### Appendix 3 - Public Notice of Appointment

**DYLAN O’SULLIVAN EARTHMOVING LIMITED (IN LIQUIDATION)  
COMPANY NUMBER: 5864180  
("Company")**

**NOTICE OF APPOINTMENT OF LIQUIDATORS  
AND  
NOTICE TO CREDITORS TO CLAIM**

**Pursuant to Section 255(2)(a) and  
Liquidation Regulation 12 of the Companies Act 1993**

We, Iain Bruce Shephard and Jessica Jane Kellow, Licensed Insolvency Practitioners of BDO Wellington, (Registration Numbers: IP71 and IP75 respectively), were appointed joint and several liquidators of the Company by special resolution of shareholders on 12 March 2021 at 9:00am.

NOTICE is hereby given that as joint and several liquidators of the Company, we fix the 16<sup>th</sup> April 2021, as the day on or before which the creditors of the Company are to make their claims, and to establish any priority their claims may have under section 312 of the Companies Act 1993 or to be excluded from the benefit of any distribution made before the debts are claimed, or as the case may be, from objecting to the distribution.

Creditors and shareholders may direct enquiries during normal business hours to:

Ryan Kilkolly  
BDO Wellington  
PO Box 10-340  
Level 1, Chartered Accountants Building  
50 Customhouse Quay  
Wellington

Telephone 04 472 5812  
Email ryan.kilkolly@bdo.co.nz

DATED this 12<sup>th</sup> day of March 2021.

**IAIN SHEPHARD  
Liquidator**

## Appendix 4 - Notice of Liquidators Decision to Dispense with Meetings of Creditors

DYLAN O'SULLIVAN EARTHMOVING LIMITED (IN LIQUIDATION)  
COMPANY NUMBER: 5864180  
("Company")

### Notice of Liquidators Decision to Dispense with Meetings of Creditors (Pursuant to section 245 Companies Act 1993)

We, Iain Bruce Shephard and Jessica Jane Kellow, Licensed Insolvency Practitioners of BDO Wellington, (Registration Numbers: IP71 and IP75 respectively), were appointed joint and several liquidators of the Company by special resolution of shareholders on 12 March 2021 at 9:00am.

We do not consider that a meeting of creditors should be held because there are no issues we perceive that give rise to the need for a creditors meeting and the cost will likely outweigh any perceived benefits of holding such a meeting.

No meeting of creditors will be called unless we receive notice in writing from a creditor requiring us to hold a meeting of creditors pursuant to section 314 of the Companies Act 1993 within 10 working days of their receipt of this notice. The Liquidators may decline a request by a creditor or a shareholder to call a meeting on the grounds that:

- a. The request is frivolous or vexatious;
- b. The request was not made in good faith;
- c. The costs of calling a meeting could be out of proportion to the value of the Company's assets.

The decision to decline a request may be reviewed by the Court on the application of any creditor, or shareholder

Notices should be forwarded to:

Ryan Kilkolly  
BDO Wellington  
PO Box 10-340  
Level 1, Chartered Accountants Building  
50 Customhouse Quay  
Wellington

By email: ryan.kilkolly@bdo.co.nz

DATED this 23<sup>rd</sup> day of March 2021.



JESSICA KELLOW  
Liquidator

## Appendix 5 - Interests Statement & Declaration of Independence, Relevant Relationships and Indemnities

(Pursuant to section 255A of the Act and the Code)

We declare that:

- we have undertaken a proper assessment of risks to independence in accordance with the law, the Code and applicable professional standards;
- we have determined that the assessment identified no circumstance, relationship, or other fact that creates, or could reasonably be perceived as creating, real or potential risks to independence;
- in all cases, we are not otherwise aware of any impediments to taking the appointment.

### i. Circumstances of Appointment:

We have been appointed by:

- a special resolution of the Company's shareholders pursuant to section 241(2)(a) the Companies Act 1993;
- Several meetings were held with the Company during February to advise on the solvency of the entity.
- no remuneration had been received for these meetings
- these meetings do not result in a conflict of interest because
  - It is recognised that there is a need for practitioners to provide advice on an insolvency process and the options available for the Company. It is not considered that such advice could constitute a conflict; and
  - The nature of the advice was general in nature and concerned the general process of appointing liquidators to the Company.
- the referring entity was the Company's bank.
- no other information or advice was provided to the Company or their advisors.

### ii. Relevant Relationships (excluding Professional Services to the Company)

We declare that:

- neither we, nor a member of our firm, have had any relevant relationships with the Company or known associates in the previous two years;

### iii. Prior Professional Services to the Company

We declare that:

- neither we, nor our firm, have provided prior professional services to the Company or its known associates in the previous two years.

### iv. No Other Relationships to Declare

We declare that:

- There are no other relevant relationships, including business and professional relationships, from the previous two years with the Company, a known associate of the Company (excluding relatives, except where the relative has a business relationship with the Company), a former insolvency practitioner appointed to the Company or any person or entity that has a charge over the whole or substantially whole of the Company's property that should be disclosed.

## Indemnities and Upfront Payments

We declare that:

- no indemnities or upfront payments have been received

DATED this 23<sup>rd</sup> day of March 2021

A handwritten signature in black ink, appearing to read 'I. Shephard'.

**IAIN BRUCE SHEPHARD**  
**Liquidator**  
Licensed Insolvency Practitioner  
Registration Number: IP71

A handwritten signature in blue ink, appearing to read 'J. Kellow'.

**JESSICA JANE KELLOW**  
**Liquidator**  
Licensed Insolvency Practitioner  
Registration Number: IP75



## Appendix 6 – Initial Remuneration Notice

**DYLAN O’SULLIVAN EARTHMOVING LIMITED (IN LIQUIDATION)**  
**COMPANY NUMBER: 5864180**  
**(“the Company”)**

The purpose of this Remuneration Notice is to provide you with information about how our remuneration for undertaking the liquidation will be set.

### Remuneration Methods

There are four basic methods that can be used to calculate the remuneration charged by an Insolvency Practitioner. These are:

**a) Time Based Hourly Rates**

This is the most common method of charging. The total fee charged is based on the hourly rate charged for each person who carried out the work multiplied by the number of hours spent by each person on each of the tasks performed.

**b) Fixed Fee**

The total fee charged is normally quoted at the commencement of the liquidation and is the total cost for the liquidation.

**c) Percentage**

The total fee charged is based on a percentage of a particular variable, such as the gross proceeds of assets realisations.

**d) Success or Contingency Fees**

The practitioner’s fee is structured to be contingent on a particular outcome being achieved.

### Remuneration Method Chosen

Given the nature of this liquidation, remuneration will be calculated on time based hourly rates for the following reasons: -

- It ensures that creditors are only charged for work that is performed. Staff are allocated to duties according to their relevant experience and qualifications;
- We are required to perform a number of tasks which do not relate directly to the realisations of assets. For example reporting to the Registrar of Companies, responding to creditor enquiries and distributing funds in accordance with the Companies Act 1993;
- Work often requires staff with different levels of experience as such different hourly rates reflect the expertise of our staff; and
- We are unable to estimate with certainty the total amount of fees necessary to complete all tasks required in the liquidation.



## Charge out Rates

Fees are charged on an hourly basis at the following rates and staffing levels:

Staffing Level	Hourly Rate (Excl GST) (\$)	General Experience
Liquidator	395 - 495	Licensed Insolvency Practitioners with a vast range of industry knowledge and experience. Significant experience in complex insolvency engagements. Leads assignments with overall responsibility for strategy and implementation.
Manager	325 - 395	RITANZ member with at least five years of insolvency experience. Well-developed technical and commercial skills and is responsible for small insolvency assignments.
Assistant Manager	295 - 325	RITANZ member and insolvency specialist with up to four years' experience. Assists planning and control of small to medium jobs.
Senior Analyst	245 - 295	RITANZ member and insolvency specialist with up to three years' experience. Degree qualified and undertakes work stream tasks subject to supervision.
Analyst	165 - 245	RITANZ member and insolvency specialist with one to three years of insolvency experience. Depending on the complexity of the administration, required to either control or assist with day to day fieldwork.
Support Staff	130 - 145	Skilled in administration and process management, specifically experienced working with insolvency related files.

*Note: Rates charged by BDO are subject to change.*

## Disbursements

Disbursements are those out of pocket expenses incurred during the course of an appointment. They are recovered from available funds and are broadly grouped into three types:

- a) Costs paid from the Appointment's bank account directly to third parties not associated with the Practitioner or their firm; or
- b) Costs paid by the Practitioner to third parties not associated with the Practitioner or their firm and later claimed back from the Appointment; or
- c) Costs claimed by the Practitioner for non-professional services provided by the Firm (e.g. phone calls, photocopying & printing, stationery, data room hosting) and/or outlays incurred by their staff in the proper conduct of the Appointment.