

8. **RED COFFEE LIMITED (UPPER RICCARTON LIBRARY) – ASSIGNMENT OF LEASE TO WALPOLE WENPING CHEN AND MS LAN QIU TRADING AS COFFEE TREE CO LIMITED**

General Manager responsible:	General Manager Community Services, DDI 941-8534
Officer responsible:	Catherine McDonald, Acting Community Support Unit Manager
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PURPOSE OF REPORT

1. The purpose of this report is to seek the Board's recommendation to the Council that it approve the assignment of a Deed of Lease from Red Coffee Limited at the Upper Riccarton Library to Walpole Wenping Chen & Ms Lan Qiu Trading as Coffee Tree Co Limited.

EXECUTIVE SUMMARY

2. The Council is obliged to consent to the assignment as per clause 35 of the Deed of Lease which is covered in the background section of this lease.

FINANCIAL AND LEGAL CONSIDERATIONS

3. The Assignor (Red Coffee Limited) and Walpole Wenping Chen & Ms Lan Qiu (Coffee Tree Co Limited) have fulfilled their contractual obligations with the Council. Therefore consent to the assignment of the lease and agreement to lease cannot be arbitrarily or unreasonably withheld.

BACKGROUND ON RED COFFEE LIMITED (UPPER RICCARTON LIBRARY) – ASSIGNMENT OF LEASE TO WALPOLE WENPING CHEN AND MS LAN QIU TRADING AS COFFEE TREE CO LIMITED

4. In May 2005 the Council (the landlord) entered into an Agreement to Lease with Red Coffee Limited (the tenant) part of the new point venture library between the Council and Riccarton High School.
5. The lease is to be for an area of 64m² being part of the land contained in Certificate of Title 823/17 (Canterbury Registry) and is to be used as premises for a café.
6. The initial term of the lease will be two years, commencing on 1 February 2006 with the final expiry date being 31 January 2014.
7. The tenant has requested the landlord's consent to the assignment of the agreement to lease to Walpole Wenping Chen & Ms Lan Qiu (Coffee Tree Co Limited). Although the agreement to lease itself does not contain assignment provisions, it can be implied that the assignment provisions in the Auckland District Law Society lease apply. These provisions require the landlord to consent to assignment if:
 - (a) The proposed assignee is respectable, responsible and has the financial resources to meet the tenant's commitments under the lease.
 - (b) All rent has been paid and there are no other breaches of the tenant's covenants under the lease at the date of assignment.
 - (c) The assignee enters into a Deed of Covenant in a form acceptable to the Council.
 - (d) Where the assignee is a company, the company's obligations are guaranteed by the principal shareholder of that company, if required by the Council, the directors of the company.
 - (e) The assignee pays the Council's costs and disbursements in respect of the preparation and stamping of any Deed of Covenant of guarantee.
8. The assignor has fulfilled its obligation under the lease to satisfy the assignment conditions above.

9. In summary:
- (a) The assignee Coffee Tree Co Limited is a New Zealand registered company.
 - (b) Its shareholders are Walpole Wenping Chen & Ms Lan Qiu.
 - (c) The capital for the project is being raised in the following way: Personal Loan 30%, Secured Loan 70%.
 - (d) A cash flow forecast for the following year was also provided.

STAFF RECOMMENDATIONS

That the Board recommend to the Council:

- (a) That it agree to the assignment of the Deed of Lease for the café situated at the Upper Riccarton Library from Red Coffee Limited to Coffee Tree Co Limited.
- (b) That the vendor and purchaser meet all costs of the assignment of the lease and agreement as agreed between the parties.