

**REPORT BY THE CHAIRPERSON OF THE  
BURWOOD/PEGASUS COMMUNITY BOARD**

**PART A – MATTERS REQUIRING A COUNCIL DECISION**

**1. ASSIGNMENT OF LEASE - WATERFRONT CAFÉ, PIER TERMINUS**

<b>General Manager responsible:</b>	General Manager Community Services, DDI 941-8534
<b>Officer responsible:</b>	Community Support Unit Manager
<b>Author:</b>	Lewis Burn, Property Consultant

**PURPOSE OF REPORT**

1. The purpose of this report is to seek the Council's approval to consent as landlord to the assignment of a Deed of Lease from Waterfront Holdings Limited to Ollivers SDC Limited.

**EXECUTIVE SUMMARY**

2. The Council is obliged to consent to the assignment of the lease subject to fulfilment of the conditions under the assignment clause, refer background section of this report.
3. The current tenant, Waterfront Holdings Limited (Directors, Dr John Cook and Sally Cook), have fulfilled the assignment conditions of the lease (subject only to signing a deed of assignment) and therefore consent to the assignment of the lease cannot be arbitrarily or unreasonably withheld.
4. The prospective purchaser, Ollivers SDC Limited, is the trading entity used by Jason Ian Olliver and Karen Marie Whalley, the sole directors and shareholders, who will become the guarantors on assignment of the lease.

**FINANCIAL AND LEGAL CONSIDERATIONS**

5. The Board does not have delegated authority to give the consent of Council and such a decision needs to be made by the full Council. The Board does however have recommendatory powers to the Council.
6. The lease premises are situated within the Pier Terminus Building, which is sited on land held by Council under the provisions of the Local Government Act 2002. The Pier Terminus Building function has impact on users across the city and is in the category of a metropolitan facility.

**STAFF RECOMMENDATION**

That the Council consent to the assignment of the Deed of Lease for the Waterfront café situated within the Pier Terminus Building from Waterfront Holdings Limited to Ollivers SDC Limited subject to:

- (a) A deed of assignment and guarantee in customary form being signed by the parties.
- (b) That the vendor and purchaser meet all costs of the assignment of the lease as agreed between the parties.

**BOARD RECOMMENDATION**

That the staff recommendation be adopted.

1 Cont'd

**BACKGROUND ON ASSIGNMENT OF LEASE - WATERFRONT CAFÉ, PIER TERMINUS**

7. An agreement for sale and purchase has been entered into between the parties for sale of the café business with settlement and possession to be given on 27 November 2006 subject to Council consent. Clause 36.1 of the lease provides that the Council shall give that consent if certain conditions are satisfied. These conditions in the main provide for the landlord being satisfied as to the proposed assignee's character, financial resources and that there is no breach of lease conditions. A deed of assignment to the satisfaction of the Council is also to be signed between the parties. The information provided to Council has satisfied these conditions. A customary deed of assignment and deed of guarantee is to be executed by the principal shareholders of the assignee company.
8. The prospective new owners, Jason Ian Oliver and Karen Maree Whalley will be purchasing the business outright in the name of their Company, Olivers SDC Limited without initial resort to borrowing and will run the business on the basis of an owner operator with part time staff. A change of name of the Company is being contemplated by the purchaser but this will not be a change in the structure, effective management or control of the company.
9. The current term of the lease is for six years from 17 December 2005 with one further term of six years to finally expire 16 December 2017. The lease rent is reviewable at two yearly intervals with the next review due 17 December 2007. There are no outstanding payments due under the lease.

**OPTIONS**

10. N/A

**PREFERRED OPTION**

11. N/A