

## 8. UPPER RICCARTON LIBRARY CAFÉ LEASE



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| <b>General Manager responsible:</b> | General Manager, Community Services Group, DDI 941-8607 |
| <b>Officer responsible:</b>         | Unit Manager, Libraries & Information                   |
| <b>Author:</b>                      | Lewis Burn, Property Consultant                         |

### PURPOSE OF REPORT

1. The purpose of this report is to seek the Riccarton/Wigram Community Boards' recommendation to the Council that it authorises a delegation to the Corporate Support Manager to:
  - (a) Accept a surrender of the existing lease of the Upper Riccarton Library Café to Coffee Tree Company Limited.
  - (b) To conclude negotiations and enter into a new lease of the Café premises with Xin Ding Yi Limited.

### EXECUTIVE SUMMARY

2. Situated at 73 Main South Road adjacent the Riccarton High School is the Upper Riccarton Community and School Library. Within the building is a café premises comprising approximately 64 metre squared that was established at the time the building was constructed 2005. The lease of the café was entered into pursuant to a Request for Proposal dated October 2004 and is for an eight year term that will finally expire 31 January 2014.
3. The present tenant Coffee Tree Company Limited acquired the lease from the original tenant (Red Coffee Limited) by assignment in May 2006. The tenant has had the café business on the market for some time and sought an extension of the term to facilitate a sale ahead of the lease expiring in January 2014. The tenant advised that he had been approached by various prospective purchasers and strong interest has been shown in the business. Extensive discussions have been held between staff and Mr Walpole Chen the sole shareholder of the tenant Company, on the process staff are duty bound to follow when dealing with the granting of a further term of a commercial lease on the expiry of a lease. To assist the tenant with a sale of the business (and to satisfy Council's requirement to be open, transparent and public in its dealings with commercial leases), it was agreed without prejudice to Council approval that provided the tenant undertook a marketing and sales process in a reasonably public manner a new lease to the preferred applicant could be considered.
4. Through his solicitor the tenant advised that efforts began on 15 February 2012 to market the Red Café business which was advertised on Trade Me through to April 2012 with some 13 responses. This resulted in a conditional agreement for sale and purchase being signed subject to the proposed purchaser being able to enter into a satisfactory new lease arrangement with the Council. This agreement is due to become unconditional on 15 November 2012 with settlement a month later.
5. The proposed purchaser is Xin Ding Yi Limited a registered company incorporated 14 March 2006 at Christchurch. The sole director is Yaling Wang who apparently is very familiar with this business. A commercial credit check of the Company has been made and no information of any significance has arisen to question the applicant credibility.
6. At the time of writing this report, so as to meet the applicant's expected timetable for settlement, discussions had commenced with the view to agreeing on the terms and conditions of a new tenancy. Further detail (including a rental valuation assessment pending) and negotiation will be required before a position can be reached to enable a lease to be signed and staff are requesting that a delegation be given to the Corporate Support Manager to allow this process to be brought to a conclusion and if appropriate a lease signed subject to the prior surrender of the lease to the present operator. The prospective tenant has requested a nine year lease (three plus three plus three) and has come forward with information including good references that supports their business experience, solvency and character to be a Council tenant.

## **FINANCIAL IMPLICATIONS**

7. The Council in this situation has not had to meet the costs of an open market advertising campaign. A rental will continue to be derived from these premises and lease costs will be limited to internal staff time.

### **Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?**

8. Yes.

## **LEGAL CONSIDERATIONS**

9. The land on which the Library building is sited is owned by the Crown (Ministry of Education) the Council's agreement with the Ministry for its occupation acknowledges and provides for a café business to be operated in the building. The Café premises lease is in fact a sublease (the Council's lease runs until 2056) and the Ministry of Education as head landlord will need to consent to the new lease when terms and conditions are finalised.
10. The surrender of the lease to Coffee Tree Company Limited is to be completed subject to fulfilment of each party's obligations under that lease prior to the new lease taking effect.
11. The Council's procurement policy September 2012 taken in the context of procuring services includes as part of its objectives, ensuring open and effective competition. Section 14 of the Local Government Act among other matters states that a local authority should "*conduct its business in an open, transparent, and democratically accountable manner*". The new lease proposed has been through an open market process which is discussed at paragraphs 3 and 4. This process has not been a broad marketing campaign that Council would normally follow when selecting a tenant through a Request For Proposals (RFP) see paragraph 22. Staff consider however that given the unusual situation that developed with closure of the café for a year for Council's operational needs after the February 2011 earthquake and that the business opportunity has been made public on Trade Me as detailed in paragraph 4, it would be reasonable to accept that the marketing of this tenancy has been sufficient.
12. The Board does not have the delegated power from Council to accept a surrender of a lease or approve the grant of a new lease for the carrying out of a trade or business. The Board does however have a recommendatory power to Council as the decision maker in this case.

### **Have you considered the legal implications of the issue under consideration?**

13. Yes as above.

## **ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

14. Not applicable.

### **Do the recommendations of this report support a level of service or project in the 2009-19 LTCCP?**

15. Yes.

## **ALIGNMENT WITH STRATEGIES**

16. Not applicable.

### **Do the recommendations align with the Council's strategies?**

17. Not applicable.

## **CONSULTATION FULFILMENT**

18. As discussed in paragraphs 3 and 4 should the Council accept that the marketing process the current tenant has carried out is sufficient to meet with Council's requirements to be competitive open and transparent then no other statutory consultation is required.

## **STAFF RECOMMENDATION**

It is recommended that the Riccarton/Wigram Community Board recommend to Council that the Corporate Support Manager be delegated authority to conclude negotiations on terms and conditions acceptable to her to:

- (a) Accept a surrender of the present lease of the Red Café premises in the Upper Riccarton Library building.
- (b) Subject to reaching agreement on the lease surrender and obtaining the consent of the Ministry of Education, contemporaneously enter into a new tenancy with Xin Ding Yi Limited for a term up to a maximum of 9 years.

## **BACKGROUND (THE ISSUES)**

19. In May 2005 the Council entered an Agreement to lease with Red Coffee Limited as part of a new joint venture library between the Council and Riccarton High School situated at 73 Main South Road. This lease was entered into following an open tender process and was for a term commencing 1 February 2006 with a final expiry date of 31 January 2014. The current tenant (Walpole Wenping Chen and Ms Lan Qiu trading as Coffee Tree Company) acquired the sub lease agreement by assignment soon after with Mr Chen presently the sole director.
20. Following the February 2011 earthquake and a period of closure of the café Mr Chen approached staff with a request for a new lease when the current lease expires in January 2014. Mr Chen was advised of the Council's procurement requirements and practice of going to open market tender to determine a new tenant and that only in exceptional circumstances would the Council depart from this practice and deal unilaterally with an incumbent tenant. Staff considered that no case existed not to put this lease up for public competition. The option of the tenant following this process was explored and this led to agreement without prejudice to Council approval for a marketing campaign to be conducted by Mr Chen with a selected purchaser to be referred to Council to negotiate the terms of a new lease.
21. The prospective purchaser and tenant Yaling Wang owned and operated a café business trading as Just Food on Hereford Street for about 5 years this business closing as a result of the February 2011 earthquake. Yaling has been employed by Coffee Tree Company Limited as a shop assistant since January 2012 and for the past year also as a restaurant attendant at Craythorne Public House. The shareholders of the Company (three) intend to advance funds to enable the company to purchase the café as a going concern and operate the business. Bank statements have been sighted. The Company does not intend to make any changes to the fit-out at this stage but do intend to replace the tables and chairs. For the time being Yaling is to operate the business herself with the employment of Rome Luo who is an experienced and award winning barista. The intention is to operate the café Monday to Friday 9am to 5.00pm and on Saturdays which presently does not happen. Depending on viability and business the applicant company may also extend the operation to Sundays.
22. As discussed in paragraph 11 the marketing campaign carried out by the vendor is not what Council would normally follow when going the market. This may include some or all of the following steps:
  - To list with a business agent as well as online websites such as Trade Me
  - Placing appropriate property signage
  - At least two insertions in the Christchurch Press business for sale columns
  - Placing in commercial property magazines
23. While staff are recommending that the process, that has been followed by the vendor in this situation is sufficient to proceed with negotiation for a new lease, it has been made clear to the parties the decision is with the Council to determine if the marketing process largely satisfies its requirement that this has been open public and transparent.
24. The grant of a new sub lease is subject to the current tenancy being surrendered on terms and conditions acceptable to both parties prior to its commencement as well as the consent of the Ministry of Education as head landlord.
25. The Qualitative report for the building based on the Detailed Engineering Evaluation (DEE) has assessed the post 2004 structure at 73% of NBS. The land is zoned TC2 with little evidence of liquefaction or settlement. There is a need to under take floor repairs which will require an intrusive investigation which probably will necessitate closing the building for a while during a school holiday break in 2013. The parties have been made aware of this.
26. The building asset owner is supportive of the prospective tenant.

## **THE OBJECTIVES**

27. To reach agreement with the prospective tenant so that a tenancy of the café premises continues.

## **THE OPTIONS**

- Option 1.** To leave the status quo and at expiry of the lease in January 2014 go through Council's normal process to determine a new tenancy by RFP.
- Option 2.** To require the existing operator and vendor to remarket the Café through a broader marketing campaign.
- Option 3.** To continue with negotiations to conclude a tenancy with the prospective tenant submitted.

## **THE PREFERRED OPTION**

- Option 3** Is the preferred option and is being recommended. Option 1 would be contrary to a good faith agreement staff had with the existing operator while this option and option 2 would not necessarily result in a more worthy tenant. The preferred option will ultimately likely be the most commercial benefit to Council.