

COUNCIL 22. 3. 2012

10. ARC INNOVATION LIMITED – DEED OF NOVATION

General Manager responsible:	General Manager City Environment
Officer responsible:	Asset and Network Planning Unit Manager
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PURPOSE OF REPORT

1. To seek approval from the Council for a delegation to the Corporate Support Unit Manager to grant Lessor's Consent to Arc Innovations Limited (Arc Innovations) and Meridian Energy Limited (Meridian) to enter a Deed of Novation of Licence Sites for Telecommunication purposes.

EXECUTIVE SUMMARY

2. Arc Innovations Limited has approached the Council with a desire to enter a Deed of Novation between Meridian and Arc Innovations due to recent business restructuring.
3. Christchurch City Council entered a protocol agreement to Licence Sites for Telecommunications purposes with Arc Innovations in 2007. At the time of the agreement, Arc Innovations was trading as a standalone business entity. In 2009 Arc Innovations was amalgamated into, and became a business unit of, Meridian Energy Limited.
4. Meridian now intends to separate the business unit Arc Innovations back into a wholly owned subsidiary called Arc Innovations Limited. Hence, Meridian wishes to novate Arc Innovation's contractual relationships over to the new subsidiary.
5. The Protocol Agreement provides for a Deed of Assignment. However, an assignment does not relieve Meridian of their liabilities. In addition for business purposes it is important for Arc Innovations to be a standalone entity and in the same position as existed under the original protocol agreement. It has therefore been agreed that the arrangement is best recorded by way of a Deed of Novation.

FINANCIAL IMPLICATIONS

6. There is no financial implication for the Council with this transaction. Arc Innovations will cover any Council costs arising out of, or in relation to, the negotiation and completion of the Deed of Novation.

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

7. Not applicable.

LEGAL CONSIDERATIONS

8. Scott Holdaway from Buddle Findlay was engaged by the Council to provide legal advice on Arc Innovation's request and any benefits/implications between assignment and novation to the Council.
9. A novation would have the effect of relieving Meridian of liability under the protocol agreement and licences, which would be assumed by the lesser subsidiary (Arc Innovations). In contrast, an assignment would not usually relieve Meridian of their liabilities. While a novation may effectively be a return to the situation when the licences were entered into, it would still be appropriate to expect Arc Innovations to warrant that its financial position is no worse than prior to amalgamation.

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

10. Yes, as above.

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ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

11. Not applicable.

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

12. Not applicable.

ALIGNMENT WITH STRATEGIES

13. Not applicable.

Do the recommendations align with the Council's strategies?

14. Not applicable.

CONSULTATION FULFILMENT

15. Not applicable.

STAFF RECOMMENDATION

That the Corporate Support Unit Manager be delegated authority to enter into a Deed of Novation with Arc Innovations Limited and Meridian Energy Limited, subject to Arc Innovations warranting that its financial position is no worse than when it entered into the original Protocol Agreement with the Council in 2007 and that it covers the Council's cost associated with this.