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13 December 2011

## **S U M M O N S**

**MEETING:** Policy and Organisation Board (Extraordinary)  
**DATE:** 21 December 2011  
**TIME:** 5.00pm  
**PLACE:** Committee Room 1, Town Hall, Gosport  
**Democratic Services contact:** Lisa Young

LINDA EDWARDS  
BOROUGH SOLICITOR

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### **MEMBERS OF THE BOARD**

The Mayor (Councillor Carter CR)(ex-officio)  
Councillor Hook (Chairman)  
Councillor Burgess (Vice-Chairman)

Councillor Beavis	Councillor Langdon
Councillor Chegwyn	Councillor Philpott
Councillor Mrs Forder	Councillor Smith
Councillor Lane	Councillor Wright

### **FIRE PRECAUTIONS**

(To be read from the Chair if members of the public are present)

**In the event of the fire alarm sounding, please leave the room immediately. Proceed downstairs by way of the main stairs or as directed by GBC staff, follow any of the emergency exit signs. People with disability or mobility issues please identify yourself to GBC staff who will assist in your evacuation of the building.**

**IMPORTANT NOTICE:**

- If you are in a wheelchair or have difficulty in walking and require access to the Committee Room on the First Floor of the Town Hall for this meeting, assistance can be provided by Town Hall staff on request

If you require any of the services detailed above please ring the Direct Line for the Democratic Services Officer listed on the Summons (first page).

**NOTE:**

- i. Councillors are requested to note that, if any Councillor who is not a Member of the Board wishes to speak at the Board meeting, then the Borough Solicitor is required to receive not less than 24 hours prior notice in writing or electronically and such notice shall indicate the agenda item or items on which the member wishes to speak.
- ii. Please note that mobile phones should be switched off for the duration of the meeting.

**AGENDA**

**PART A ITEMS**

RECOMMENDED  
MINUTE FORMAT

1. APOLOGIES FOR NON-ATTENDANCE

2. DECLARATIONS OF INTEREST

*All Members present are required to declare, at this point in the meeting or as soon as possible thereafter, any personal or personal and prejudicial interest in any item(s) being considered at this meeting.*

3. DEPUTATIONS – STANDING ORDER 3.5

*(NOTE: The Board is required to receive a deputation(s) on a matter which is before the meeting of the Board provided that notice of the intended deputation and its object shall have been received by the Borough Solicitor by 12 noon on Monday, 19 December 2011. The total time for deputations in favour and against a proposal shall not exceed 10 minutes).*

4. PUBLIC QUESTIONS – STANDING ORDER 3.6

*(NOTE: The Board is required to allow a total of 15 minutes for questions from members of the public on matters within the terms of reference of the Board provided that notice of such Question(s) shall have been submitted to the Borough Solicitor by 12 noon on Monday, 19 December 2011).*

5. ANY OTHER ITEMS

Which the Chairman determines should be considered, by reason of special circumstances, as a matter of urgency.

6. EXCLUSION OF PUBLIC

To consider the following motion:

That in relation to the following item the public be excluded from the meeting, as it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during this item there would be disclosure to them of exempt information within Paragraphs 1 and 3 of Part 1 of Schedule 12A to the Local Government Act 1972, and further that in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information, for the reasons set out in the report.

Policy and Organisation Board (Extraordinary)  
21 December 2011

**PART B ITEM**  
FOLLOWING THE EXCLUSION OF THE PRESS AND PUBLIC

Item No.	Item	Paragraphs no. 1 & 3 of Part I of Schedule 12A of the Act	
7.	STAFF CHANGES	Paragraphs 1 and 3 <b>Reason:</b> The report identifies specific individuals and information regarding their personal financial affairs rather than the Council overall financial affairs. The public interest in the Council's overall affairs can be met in other ways without releasing such personal information and therefore the public interest in maintaining the privacy of personal information outweighs the public interest in the Councils financial affairs.	PART II Contact Officer: Kathy Inch Ext: 5224

## AGENDA ITEM NO. 5

<b>Board/Committee:</b>	POLICY AND ORGANISATION BOARD
<b>Date of Meeting:</b>	21 DECEMBER 2011
<b>Title:</b>	CERTIFICATE UNDER LOCAL GOVERNMENT (CONTRACTS) ACT 1997 RELATING TO GOSPORT LEISURE CONTRACT
<b>Author:</b>	BOROUGH SOLICITOR
<b>Status:</b>	FOR DECISION

### **Purpose**

To seek authority for the Chief Executive('Ian George Lycett') to certify a contract for the provision and maintenance of Leisure Facilities and related services at Holbrook Recreation Centre (the Contract) under the Local Government (Contracts) Act 1997 and to provide a certificate in respect of the Contract to DC Projects (Gosport) Limited; and

The Chief Executive to be indemnified against any personal liability in respect of him giving such a certificate.

### **Recommendation**

The Board authorises and agrees that the

1. Chief Executive can issue on behalf of the Council a certificate under the Local Government Contract Act 1997 to D C Projects (Gosport) Limited in respect of the Contract; and

2 (a) the Chief Executive will be fully indemnified by the Council in the event of any claim against him arising from the provision of any certificate he may issue: and

2 (b) that the Council enters into an indemnity agreement with the Chief Executive on terms advised by the Council's external lawyers as outlined in Appendix A

### **1 Background**

1.1 In the early 1990s there developed some legal uncertainty around the extent of a local authority's powers to enter into certain major types of contract, including PFI transactions and other long term contracts. In particular this was perceived as inhibiting financial institutions from entering into commercial relationships with local authorities because of the risk that the contract would subsequently be found to be unlawful and void. To address this, the 1997 act was passed in order to provide reassurance to those entering major contracts with local

authorities.

- 1.2 A key feature of the 1997 Act is that designated officers of a local authority can be asked to certify that the Authority has the power to enter into the contract. Once issued the certificate cannot be challenged in private law proceedings which might be brought by a party to the contract.
- 1.3 The 1997 Act does not prevent challenges by way of Judicial Review but in such cases the Court has the power to determine that a certified contract should continue to have effect despite the fact that it was improperly entered into, taking into account the effect on the provision of services to the public and the likely financial consequences for the Authority of invalidity.
- 1.4 The certification requirements are set out in Section 3 of the 1997 Act and in the Local Government (Contracts) Regulations 1997. In essence the certificate must:-
  - (a) include details of the period for which the contract operates;
  - (b) describe the purpose of the contract;
  - (c) contain a statement that the contract that is (i) for the provision of services and is intended to operate for at least 5 years (the Contract is for an initial period of 15 years with an option to extend) or (ii) a PFI contract with a financier who has made a loan to another party in connection with that contract;
  - (d) state that the local authority has the power to enter into the contract and specify the relevant statutory provision(s) conferring the power; and
  - (e) state that the Council has complied/will comply with the Regulations.
- 1.5 The certificate must be given within 6 weeks of the Council entering into the Contract (the intention in this case is that the certificate be entered contemporaneously with the Contract) and may be given by a Chief Officer or Deputy Chief Officer (as defined in the Local Government and Housing Act 1989). All parties to the Contract must consent to the certificate being given. The certificate only needs to be signed by one officer.

## **2 Report**

- 2.1 Gosport Borough Council (the "Council") has agreed to provide a certificate under the Local Government (Contracts) Act 1997 (the "1997 Act") in order to certify the vires of the Council to enter into the Contract for the provision and maintenance of Leisure Facilities and related services at Holbrook Recreation Centre Gosport (the "Contract").
- 2.2 The Chief Executive has agreed to sign this certificate on the basis

that he will be indemnified against any personal liability.

- 2.3 In relation to the Contract, the requirement for a certificate under the 1997 Act had been accepted by the Council before the Preferred Bidder stage of the procurement and has also agreed to provide it on financial close.

### **3 Risk Assessment**

- 3.1 There are no financial implications to the proposed decision.

### **4 Conclusion**

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- 4.1 Financial close is scheduled for mid January 2012, before the next meeting of the Board, and as the Council has already agreed to provide the certificate on financial close the Board is requested to agree the recommendations set out above.
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<b>Financial Services comments:</b>	Contained in the report
<b>Legal Services comments:</b>	Contained in the report
<b>Service Improvement Plan implications:</b>	
<b>Corporate Plan:</b>	
<b>Risk Assessment:</b>	Contained in the report
<b>Background papers:</b>	
<b>Appendices/Enclosures:</b>	
Appendix 'A'	Summary of Key Principles of Indemnity
<b>Report author/ Lead Officer:</b>	Linda Edwards

Summary of Key Principles of Indemnity

- The purpose of the indemnity is to protect the officer signing the certificate from any personal liability or loss which he may incur as signatory to the Local Government (Contracts) Act Certificate (the "Certificate"), issued pursuant to the Leisure Centre Contract.
- Under the Deed the Council agrees to indemnify the officer, his personal representatives, estates and effects, from and against all actions, costs, proceedings, accounts, claims, demands or other matters relating directly or indirectly to him signing the Certificate including the costs of legal advisors. This means that the Council would reimburse the officer (or directly pay) for any such costs incurred, and would take all action required to ensure that the officer is not put at any disadvantage as a result of signing the Certificate (this could include the Council bringing or defending court actions in the officer's name or taking such other action as he may require in relation to the Indemnity).
- An exception to the above obligation is where any amount incurred results from fraud, dishonesty or the commission and subsequent conviction of a criminal offence on the officer's part. The Indemnity would not apply in such circumstances.
- In order to claim under the Indemnity the officer must notify the Council of the claim and the circumstances as soon as reasonably possible, and must (if requested) allow the Council to take conduct of the matter. The Council, in turn, are obliged to notify the officer of any claims they become aware of.
- The Council's successors will also be bound by the Indemnity, which is to run in perpetuity (without end).