

Officer Directorship of Digital City (UK) Limited

Cabinet

Date: 31st March 2010

Author: Leader of the Council, Cabinet Member of Finance and Benefits and the Chief Executive

Purpose

To set out the position relating to the Group Director Business Transformation's involvement in the Wi-Fi Project.

To explain the circumstances around him becoming a Director of Digital City (UK) Ltd. and his subsequent resignation from that position on the 11th March 2010.

To enable members to consider its effect on the decision making process.

Recommendation

That Members note the following:

- The chronology and details behind the decision making process to date (Appendix 1).
- The circumstances under which the Group Director, Business Transformation was registered, without his knowledge, as a Director of Digital City (UK) Limited and his supporting Personal Statement contained in Appendix 2.
- That the Loan Agreement that underpins the WI-FI agreement was developed and actioned under the delegated authority of the Director of Finance and the Director of Law and Democratic Services.
- That the authority to make available the second phase of the loan was granted to the Director of Finance subject to the Chief Executive, in consultation with the Leader of the Council and the Cabinet Member for Finance and Benefits, being satisfied that the assessment of the forward business plan highlighted no critical risks.
- That the Chief Executive has received the initial findings of the investigation, details of which are set out in paragraph 6.2, and is confident that the findings support the body of this report.

Based on this evidence, the Cabinet is asked to confirm that this issue has had no effect on the decision making process overall nor on the decision made by Cabinet on the 10th March 2010 to release the second phase of the loan to Digital City (UK) Limited.

1. Reasons

- 1.1. At its meeting on 15th March 2010, the Scrutiny Committee referred back to Cabinet its decision to release the second phase of the loan to Digital City (UK) Limited and resolved that Cabinet "consider whether the information that has since come to light about a directorship of Digital City (UK) Ltd, would have made a difference to the decision made last Wednesday."

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2 Detail

Background

2.1 The Council agreed to provide a loan of up to £450k to Digital City (UK) Limited on commercial terms (set out within a loan agreement) in return for an equity stake in the company and a seat on the company's board. The Financial Plan for Digital City (UK) Limited shows the loan being repaid within 2 years of operation. To date £150,000 of the £450,000 loan has been released to Digital City (UK) Limited. The Council's overall objectives in making this loan are covered in the Cabinet Member Briefing note of the 20th October 2009.

3 The decision making process to date

3.1 This is set out in detail in Appendix 1: Chronology and decision making process.

3.2 A summary of key dates is shown below:

January 2009 first project discussions with Rikki Hunt and officers.

25th June 2009: Rikki Hunt presented an outline proposal to the Leader and various members of the Cabinet; Consequently the Leader instructed officers to do some more detailed work in order for a funding proposition to be considered.

July 2009: First Financial plan and written outline business case received from Rikki Hunt.

July to early October 2009: The Group Director, Business Transformation together with the Council's Director of Finance and Director of Law and Democratic Services worked on clarifying business case assumptions and the on finalising formal contract documentation.

October 2009: The Leader and Lead Member were consulted on the governance options for moving forward. The Leader's view was that this should be progressed using the Lead Member Briefing note in the interest of speed and to protect commercial confidentiality.

October 20th 2009: The Cabinet Member Briefing Note was written by three officers (Director of Finance, Director of Law and Democratic Services and the Group Director, Business Transformation), signed by the Leader and Cabinet Member for Finance and Benefits and agreed.

3.3 Since the briefing note was published, issues relating to the WI-FI project have been scrutinised at the following public meetings:

- Scrutiny Committee, Monday, 14 December 2009
- Scrutiny Committee, Monday, 11 January 2010

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- Health Overview and Scrutiny Committee, Wednesday, 3 February 2010
- Cabinet, Wednesday, 10 March 2010
- Scrutiny Committee, Monday, 15 March 2009

4 Officer Directorship of Digital City (UK) Limited Background

4.1 After the Cabinet meeting of March 10th 2010, it became apparent that Hitesh Patel, Group Director, Business Transformation was registered as a Director of Digital City (UK) Limited in September 2009. This was prior to the Lead Member Briefing note being agreed on the 20th October 2009. This issue was raised as part of Scrutiny committee briefing on Monday and resulted in the referral to Cabinet that is captured as part of the purpose of this report.

4.2 Given that Mr Patel was a registered Director of Digital City (UK) Limited before the 20th October 2009 and that this was not known to cabinet, did this effect the decision making process and would this knowledge have had any effect on the decisions taken at the Cabinet meeting on the 10th March?

4.3 Personal Statement

- Mr Patel has provided a detailed personal statement, Appendix 2 that states that he was unaware of this registration and Digital City (UK) Ltd have since apologised for this error.
- He states that he has never acted in any personal capacity, that he has always acted to protect the interests of the Council and acted within the remit of the briefing note which says;

“For an interim period, no longer than the first three months of operation, the Group Director, Business Transformation will represent Swindon Borough Council (SBC) at meetings of the Board of Digital City UK Limited, pending a decision on permanent Council representation on the Board being made via full Council.”

4.4 He goes on to confirm that:

“I have never had any correspondence from Digital City (UK) Limited stating that I had been made a Director of the Company. I can also confirm that I have never received any remuneration or other consideration from Digital City (UK) Limited of any kind with respect to this Directorship. I have participated (with other Swindon Borough Council colleagues) in regular project and progress meetings with Digital City (UK) Limited, however, there have been no formal Board Meetings held by the shareholders of Digital City (UK) Limited.”

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4.5 Regarding Mr Patel's profile on a professional networking site he accepts that:

"This was an error on my part, it was a poor choice of words, potentially misleading and I apologise for this. I should have used the words as set out in the briefing note; "representing Swindon Borough Council (SBC) at meetings of the Board of Digital City UK Limited".

5 Delegated authority exercised by the Group Director, Business Transformation

5.1 The Group Director, Business Transformation was one of three officers who worked on the Cabinet Member Briefing Note issued on the 20th October 2009 this has already been stated earlier in this report.

5.2 In respect to the recommendations made in the Cabinet Member Briefing note the delegated powers that have been exercised so far by the Group Director, Business Transformation have been those related to granting the use of office space, previously empty since 2005, to Digital City (UK) Limited within Council premises. This was done by the Group Director, Business Transformation in consultation with the Head of Property. The rationale for this is covered in the Group Director's personal statement.

5.3 Two Council-owned premises have been used to house Wi-Fi transmitters for the implementation in Highworth. License to install and operate this equipment was progressed within the delegated authority of the Head of Property.

5.4 The following key decisions were made under the delegated authority of the Director of Finance and/or the Director of Law and Democratic Services and not the Group Director, Business Transformation:

- The Loan Agreement for £450,000 that underpins the WI-FI agreement was developed and actioned under the delegated powers of the Director of Finance and the Director of Law and Democratic Services.
- Authority to make available the second phase of the loan was granted to the Director of Finance subject to the Chief Executive, in consultation with the Leader of the Council and the Cabinet Member for Finance and Benefits, being satisfied that the assessment of the forward business plan highlighted no critical risks

6 Investigation

6.1 Following the information that came to light after the Cabinet Meeting of the 10th March, the Chief Executive instructed the Deputy Chief Executive to investigate this matter.

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6.2 The scope of the investigation was:

- To investigate the circumstances in which Hitesh Patel formally became a director of Digital City (UK) Limited;
- Whether he, or anyone else, was aware that this had happened;
- Why he named himself as a Director of Digital City (UK) Limited on his professional network website;
- Whether he deliberately misled Cabinet on 10 March, by not revealing that he was already formally a Director.

6.3 The Chief Executive has received the initial findings of the investigation and is confident that the findings support the body of this report and Cabinet can be confident in the veracity of the information above. It is the Chief Executive's intention to share this report with the Leaders of the Political Party groups on a confidential basis prior to the Cabinet meeting.

Alternative Options

There are no alternatives to this review, given that The Scrutiny Committee on the 14th March 2010 referred its decision of the 10th March 2010 back to Cabinet on the basis of new information that have come to light.

Risk Management

Financial and Procurement Implications

The overall Financial and Procurement implications associated with the WI-FI project are identified as part of another Cabinet agenda item for the 31st March 2010 - Loan Advance to Digital City (UK) Limited.

Within that report it states that:

The key risk in delaying further funding is that Digital City (UK) Limited will not be in a position to progress full Borough coverage, meaning that the project is likely to stall and the original loan amount of £150k will be in jeopardy. Until such time as the full network is in place the ability of Digital City (UK) Limited to deliver public and private sector sales is significantly diminished.

Legal / Human Rights Implications

Legal and Human Rights considerations have been taken fully into account in compiling this report. It is considered that the recommendations of this report are compatible with convention rights.

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Links to Corporate Plans and Policies (in particular to Swindon 2010 Promises)

The success of Digital City UK (Limited) and the Council's shareholding within this company will assist the Council's Medium Term Resourcing Plan.

Consultees

The Director of Finance (Section 151 Officer) and Director of Law and Democratic Services (Monitoring Officer) are consulted in respect of all reports.

The Leader of the Council and the Cabinet Member for Finance and Benefits, as signatories to the Briefing Note from October 2009 etailing the proposed agreement with Digital City.

Background Papers and Appendices

Appendix 1: Chronology and decision making process

Appendix 2: Personal Statement from Group Director, Business Transformation

Appendix 3: Investigation Findings – to follow.

Key Decision / Decision in Forward Plan

This is not a key decision and has not been included in the Cabinet Forward Plan for April 2010.

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Appendix. 1: Chronology and decision making process

19th January 2009: First meeting between Rikki Hunt the instigator of the initiative and members of aQovia a technology company and officers including the Chief Executive and the Group Director, Business Transformation. Business model and technology concepts of the project were presented.

25th June 2009: Rikki Hunt presented an outline proposal to the Leader and various members of the Cabinet; this consisted of the business idea, the level of investment that was being sought and the potential level of return if the Council chose to invest. The presentation was viewed positively by the Leader and Cabinet members present as being an attractive opportunity that was in line with Council aims and aspirations. Consequently the Leader instructed officers to do some more detailed work in order for a funding proposition to be considered.

3rd July 2009: Financial plan and a few days later a written outline business case received from Rikki Hunt.

July to October

17th July 2009: The Group Director, Business Transformation together with the Council's Director of Finance and Director of Law and Democratic Services met with Rikki Hunt to test the business case assumptions and understand the rationale for the proposed commercial structure of the proposition. This meeting was followed up with additional exchanges (telephone, email and meetings) with Rikki Hunt to seek further clarifications.

From September to October three officers (Group Director of Business Transformation, Director of Finance, and Director of Law and Democratic Services) then worked on finalising formal contract documentation. The Director of Finance and the Director of Law and Democratic Services took the lead on developing the Loan Agreement.

The Leader of the Council and various Cabinet Members were involved in the deliberations about whether or not to proceed with the project.

A tendering process was not entered into given that the Council did not set out to purchase any goods, services or relevant work. This was a loan made on commercial terms based on an assessment of the potential return and associated risk. The Director of Law and Democratic Services advised at this time that there isn't a relevant contract under European law.

The Leader and Lead Member were consulted on the governance options for moving forward and whether it should be progressed using Officers delegated powers or whether it be via Cabinet Report or Cabinet Member Decision Note. The Leader's view was that this should be progressed using the Lead Member Briefing note in the interest of speed and to protect commercial confidentiality.

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The result was the production of a Cabinet Member Briefing Note formally consulting the Leader and the Lead Member for Finance and Benefits in relation to the proposed action

The Cabinet Member Briefing Note was signed on the 15th October 2009 by the Leader and on the 20th October 2009 by the Lead Member. The relevant Officers then proceeded to exercise their delegated powers in accordance with the recommendations in the briefing note.

Since the briefing note was published issues relating to the WI-FI project have been scrutinised at the following public meetings:

SCRUTINY COMMITTEE, MONDAY, 14 DECEMBER 2009

Resolved – That this Committee is satisfied that due process has been followed by the Council in reaching the decision to enter into a partnership agreement with Digital City (UK) Limited for the purposes of establishing a Wi-Fi network across the Borough of Swindon.

SCRUTINY COMMITTEE, MONDAY, 11 JANUARY 2010

Agenda item: Leader of the Council - Progress Report and Question and Answer Session

Significant discussion on the Wi-Fi project including member and public questions. Details available in the public minutes of the meeting.

Resolved – That Councillor Bluh, and his Cabinet colleagues, be thanked for attending the meeting, for the comprehensive report on progress to date in relation to the Council's plans and priorities for 2009/10, and for their full and open responses to Members' questions.

HEALTH OVERVIEW AND SCRUTINY COMMITTEE, WEDNESDAY, 3 FEBRUARY 2010

Resolved – That, based upon the current scientific evidence before it, and given assurances from Digital City, this Committee confirms that it wishes to raise no objections to the Borough wide Wi Fi proposal on the grounds of health.

CABINET, WEDNESDAY, 10 MARCH 2010

The Leader of the Council, the Cabinet Member for Finance and Benefits, the Director of Finance and the Director of Law and Democratic Services submitted a joint report concerning the release of the second phase of a Council loan to Digital City (UK) Limited, based on the progress made to date of the project, and subject to a number of conditions.

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SCRUTINY COMMITTEE, MONDAY, 15 MARCH 2009

Agenda item 5: Consideration of Cabinet Decisions; Loan Advance to Digital City (UK) Limited.

Resolved – That the Scrutiny committee refer the decision back to cabinet for it to consider whether the information that has since come to light about a Directorship of Digital City (UK) Limited would have made a difference to the decision made last Wednesday.

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Appendix 2: Personal Statement to members regarding Directorship at Digital City (UK) Limited

Summary

As members of the Council I know you need a full, honest and thorough explanation for what has happened with regard to Swindon's WiFi project and my and Digital City's actions.

There have been two errors made here – one is mine (poor wording on my professional networking website) and the other is with Digital City (their acknowledged mistake in pressing ahead to register my appointment to their Board, when my role was only to temporarily represent SBC until full Council made a permanent appointment). Let me immediately apologise without reservation for my mistake and allow Digital City's apology to speak for itself later in this text.

The relevant chronology of what happened here is detailed below and the remedial actions that Digital City and I have taken are also included.

I hope that, once you have reviewed these details, you will be reassured that the Council's reputation and credibility remain intact and that these mistakes were genuine human errors that have now been corrected and will not recur. I am of course on hand to answer any questions you may have or to clarify any other areas.

1. Timeline – Summary

19th January 2009: First meeting between SBC officers and Rikki Hunt the instigator of the initiative and members of aQovia a technology company.

25th June 2009: Rikki Hunt presented proposal to the Leader and various members of the Cabinet. Consequently officers asked to do more detailed work in order for a funding proposition to be considered.

July – August 2009: Clarification meetings between officers and Rikki Hunt.

September to October 2009: three officers (Group Director of Business Transformation, Director of Finance, and Director of Law and Democratic Services) worked on finalising formal contract documentation. The Leader of the Council and various Cabinet Members were involved in the deliberations about whether or not to proceed with the project.

2. Directorship and Role

In early September 2009 - when various documents and agreements were being discussed and revised in order to arrive at an final agreement, I was asked by Rikki Hunt to pre-sign, but not date, an application to become a Director of a 'shelf'

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company titled 'DM56 Limited'. This was at a time when a number of documents were being reviewed and worked on simultaneously between officers and with Rikki Hunt. At the time both sides were trying to ensure that if the decision to go ahead was made that all the essential operating arrangements were in place on 'day one' and that there was no delay in actually starting to implement the project. As part of this drive to be ready and operational on 'day one', I agreed to pre-sign the registration for 'DM56 Limited' in case it was needed for some operating eventuality that we collectively had not foreseen. My understanding was that this was a contingency measure, to be invoked, in consultation with the Council, if required to speed up the setup arrangements for Digital City (UK) Limited.

I signed this document in good faith on the terms described above - and in an email to the Director of Law and Democratic Services and the Director of Finance on the 11th September 2009 I confirmed that I had done so.

In this email I highlighted the need for the Council to go through a formal process to appoint a Director of Digital City (UK) Limited. At this stage and up until the evening of the Cabinet Meeting on the 10th March, I did not know that this form had been sent off on my behalf and have since had a written apology from Digital City sent on the 12th March 2010:

Hitesh,

I can confirm that I have today (on line) removed you as a director of Digital City (UK) Ltd. I would like to formally apologise for my error in sending the forms off prematurely, I hope I have not caused you any embarrassment.

Rikki Hunt

CEO Digital City (UK) Ltd

I can confirm that I have never had any correspondence from Digital City (UK) Limited stating that I had been made a Director of the Company. I can also confirm that I have never received any remuneration or other consideration from Digital City (UK) Limited of any kind with respect to this Directorship. I have participated (with other Swindon Borough Council colleagues) in regular project and progress meetings with Digital City (UK) limited, however, there have been no formal Board Meetings held with the shareholders of Digital City (UK) limited. The first Board meeting of Digital City (UK) Limited is scheduled for the 13th April 2010.

My understanding of my role in this project is set out informally in my words in the 11th September 2009 email (where I say that I had "told Rikki Hunt I would be the SBC Lead" on this Project) and formally in the October Briefing note authored by the Director of Law and Democratic Services and the Director of Finance and me. In this report it states that "For an interim period, no longer than the first three months of operation, the Group Director, Business Transformation will represent Swindon Borough Council (SBC) at meetings of the Board of Digital City UK Limited, pending a decision on permanent Council representation on the Board being made via full Council."

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From this briefing I understood that I would represent the Councils' interests in discussions and progress reviews with Board members of Digital City and that should a formal Board meeting be required for decision making before a permanent Council representative had been confirmed by full Council, that I would represent Swindon Borough Council and the interests of the Council at such a meeting, albeit not as a Board Member.

3. Delegated authority and potential conflict of interest

The decision to enter into the loan to Digital City (UK) Limited was made by the Director of Finance and the Director of Law and Democratic Services and I was not party to this decision.

In respect to this project, the delegated powers that I have exercised have been those related to the granting of office space to Digital City (UK) Limited within Council premises. The question as to why this was done was raised via a public question at Scrutiny. The public response at the time justified this decision based on the following facts: 10th floor of the David Murray John building has no disabled access therefore not suitable for Council use, no commercial interest in this space since June 2004 despite being marketed and on-going business rates liability now transferred from the Council to Digital City (UK) Limited.

The Lead Member Briefing note also proposes that I use my delegated authority in consultation with other officers and ward members as appropriate to grant Digital City (UK) Limited licenses to install equipment necessary to create the Wi-Fi network at suitable Council owned premises across the Borough. This decision falls within the day to day dealings of property led by and within the authority of the Head of Property. For the network implementation in Highworth, two buildings owned by the Council have been used to house Wi-Fi transmitters. License to install and operate this equipment was progressed within the delegated authority of the Head of Property.

4. Cabinet Meeting 10th March

At the Cabinet meeting of the 10th March, when the issue of my role with Digital City was brought up by Councillor Greenhalgh, I thought that as the question was about me personally and one of governance, it was reasonable that the Director of Law and Democratic Services should respond to it. My recollection of this response was that it confirmed that my role on the Digital City Board was as a representative of the Council and in no other capacity and that a formal appointment to the Board had not yet been made by full Council. At the time this was said, it coincided exactly with my understanding of the role and I saw no need to make any corrections. After the Cabinet meeting I asked Councillor Greenhalgh what had prompted the question and he said that there were comments about me on a local website saying that I had been a Director of Digital City (UK) Limited since

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September 2009 i.e. before the Cabinet Member Briefing note was signed in October 2009.

This naturally alarmed me and the next morning I checked this information. This was the first time I had seen a confirmation of my being formally registered as a Director of Digital City (UK) limited. Obviously that day, 11th March, I resigned with immediate effect. On the 12th March I had confirmation of this from Digital City (UK) Limited and a note of apology from Rikki Hunt stating the document had been sent off by him in error.

5. Professional Networking site

In December 2009 I updated my professional networking profile on the web to extend the profile of the project by including a copy of the original press statement that had gone out in November. At that time I entered my role as 'Main Board Director'. My intention was only to convey to my external network that the level of my contribution on the project was with Digital City Board members. I accept that this was an error on my part, it was a poor choice of words, potentially misleading and I apologise for this. I should have used the words as set out in the briefing note: "representing Swindon Borough Council (SBC) at meetings of the Board of Digital City UK Limited". After the issue of Directorship was raised at Cabinet on the 10th March, I formally resigned on the 11th March. It was only at that weekend on the 14th March when I reviewed some messages from my network that I reviewed my entry regarding Digital City (UK) Limited and realised that it was not appropriate and given the discussion at Cabinet earlier in the week, it could be misleading. I edited the entry, on this date, to say 'SBC observer on the Board of Digital City' in order to be absolutely clear

Finally, I have advised Cabinet and members on a number of projects and issues over the past four years, some on my own and some (as in the WiFi project) in partnership with other colleagues. I have always done this with the best interests of the Council in mind. My day-to-day actions and behavior continue to be driven by the principle of 'making things better for Swindon'

Hitesh Patel, 22nd March 2010

Group Director, Business Transformation, Swindon Borough Council