

## Loan Advance to Digital City (UK) Limited

Cabinet

Date: 31st March 2010

**Author: Leader of the Council, Cabinet Member for Finance and Benefits, Chief Executive, and the Directors of Finance and Law and Democratic Services**

### Purpose

Scrutiny Committee has referred back to Cabinet its decision to release the second phase of the loan to Digital City (UK) Limited based on progress to date, subject to agreeing a variation on Highworth progress measures and completing the planned risk assessment of the revised 'Forward Business Plan' with Digital City (UK) Limited to ensure that this now reflects commercial, technical and marketing learning from Highworth. In reviewing this matter, Cabinet is also asked to consider its ongoing approach to maximising the opportunity offered by the Wi Fi project while minimising the Council's risk exposure.

### Recommendation

1. That Cabinet confirms its decision to authorise the:
  - Variation to two out of the Nineteen Highworth progress measures that formed part of the terms of the October 2009 agreement as set out in paragraphs 4.3.2 and 4.3.5 of the report, the deletion of measures 3 and 4 as set out in paragraphs 4.3.7 and 4.3.8 of the report, and the addition of a new requirement that limits the level of drawdown initially available as set out in paragraph 4.3.9 of the report.
  - Group Director, Business Transformation, the Director of Finance and the Director of Law and Democratic Services to undertake the planned risk assessment of Digital City (UK) Limited's revised forward business plan as set out in para. 4.5.
  - Chief Executive, in consultation with the Leader of the Council and the Cabinet Member for Finance and Benefits, subject to being satisfied that the completed assessment of the forward business plan has highlighted no critical risks, to authorise the Director of Finance to make available the second phase of the loan to Digital City (UK) Limited based on the progress to date, whilst noting that £50,000 of the final loan be withheld pending 100 private sales being achieved.
2. That Cabinet further authorises the Chief Executive and other officers as appropriate to continue to explore all available options to maximise the Wi Fi opportunity while minimising risk as set out in para 5.5.

### 1. Reasons

- 1.1. At its meeting on 15<sup>th</sup> March, the Scrutiny Committee considered the Cabinet's decision to release the second phase of the loan to Digital City (UK) Limited and resolved, "That the decision be referred back to the Cabinet to consider whether the information that has since come

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to light about a directorship of Digital City (UK) Ltd would have made a difference to the decision made last Wednesday".

- 1.2. A previous report sets out the position relating to the Group Director Business Transformation's involvement in the WiFi Project. It explains the circumstances around him becoming a Director of Digital City (UK) Ltd and his subsequent resignation from that position. Cabinet is, therefore, able to consider whether this situation had any impact on the decision making process.

## 2. Detail

- 2.1. The Council in October 2009 entered into a loan agreement with Digital City (UK) Limited, underpinned by a Shareholders' Agreement with aQovia UK Limited and Avidity Consulting Limited. The purpose of the loan was to part fund the development and installation of a Wi-Fi network across the Borough providing broadband access and other Wi-Fi related services to Swindon residents, public sector organisations and businesses.
- 2.2. The loan to Digital City (UK) Limited was for a maximum sum of £450,000 to fund a portion of the costs of development and installation of the Wi Fi network. The sum available for initial drawdown was limited to £150,000 until a pilot of the scheme was operational in the Highworth area and all parties had assessed its success and ongoing operational and commercial potential.
- 2.3. The initial Highworth installation phase is complete and there is now a real business imperative to build on this momentum, to continue rolling out the Wi-Fi network across Swindon and to enable income generation that comes with wider coverage.
- 2.4. By limiting initial coverage to Highworth some constraints were placed on the original Digital City (UK) Limited business plan. The plan was originally based on rolling out the network across the Borough, installing in multiple areas at the same time and without pausing to review the outcomes of the first phase. Applications providers have been reluctant to commit to investing in developing solutions on the basis of a limited roll-out only. Public and private sector customers and sponsors have expressed considerable interest but have rightly pointed out that they cannot make commitments on the basis of a 'pilot'. This learning has led us to seek practical and commercially pragmatic variations to four of the Highworth progress measures.
- 2.5. Whilst fifteen out of the original nineteen Highworth progress measures have been considered to have been met, four have not been fully met to date. One of the four (Highworth installation) is

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substantially met whilst the other three could not have been practically achieved in the timescales for reasons outlined in 2.4. These four measures, however, do not represent a significant enough risk to justify placing constraints on generating revenue by slowing down the roll-out of the Wi-Fi network across the rest of Swindon. All four measures are still expected to be achieved, however, variations are requested on the timing and scale of these. In order to facilitate the drawdown of the next phase of the loan a variation is required to the original Loan agreement which is not within officer delegated powers.

- 2.6. It is therefore considered to be absolutely critical and in the best interests of the Council that a clear commitment to the rest of the rollout is signalled by the release of the next phase of the loan as soon as possible.
- 2.7. Since the report on this matter was originally considered by Cabinet on 10<sup>th</sup> March, it has become apparent that at least 2 parties are showing an active interest in investing in Digital City (UK) Limited, recognising the added value of the business that has accrued from the “proof of concept” demonstration in Highworth. As a current shareholder and funder of the company, the Council needs to consider its response to this demonstration of interest.
- 2.8. There has been substantial progress on this project despite installation delays due to snow in December and January and other complexities such as the condition of suitable lamp posts and the need to obtain consent from private owners or Trusts for installations on buildings not owned by the Council. An open presentation to Members on the progress of this project was advertised in the Members Bulletin and delivered on the 18<sup>th</sup> February 2010 by Digital City (UK) Limited.

### **3. Decision Making Process**

- 3.1. Discussions on the Wi-Fi project started on the 19th January 2009 when the Chief Executive and other officers attended a meeting in Bracknell at the offices of Cable and Wireless with Rikki Hunt and aQovia. At this meeting the overall concept of the project and the need for the funding of the project were presented. Later, on the 25th June 2009, Rikki Hunt presented an outline proposal to the Leader and some members of the Cabinet consisting of the business idea, the level of investment that was being sought and the potential level of return if the Council chose to invest. This was favorably received by the members present as being an attractive opportunity that was in line with Council aims and aspirations.

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- 3.2. Consequently, officers were asked to do some more detailed work in order for a funding proposition to be considered. In early July 2009 a financial plan and a written outline business case were received from Rikki Hunt. The Group Director Business Transformation met, together with the Council's Director of Finance and Director of Law and Democratic Services, with Rikki Hunt on 17th July to test the business case assumptions and understand the rationale for the proposed commercial structure of the proposition. This meeting was followed up with informal communications with Rikki Hunt to seek further clarifications.
- 3.3. During September and October three officers (Group Director of Business Transformation, Director of Finance, and Director of Law and Democratic Services) worked on the documentation setting out the terms for the Loan Agreement. The Leader and various Lead Members were consulted on the whether or not to proceed with the project as well as 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. 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 Leader and Lead Members supported the proposed action. The Briefing Note was signed on the 15th October 2009 by the Leader and 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.
- 3.4. A previous report on the Agenda sets out the position in relation to the Group Director's Directorship of Digital City (UK) Limited and Members are asked to determine whether knowledge of that would have had any effect on the decisions taken at the Cabinet's meeting on 10<sup>th</sup> March.

## **4. Review of Drawdown Arrangements**

- 4.1. For the sake of completeness, the review of the drawdown arrangements is also set out in this report.
- 4.2. The criteria set out in the Highworth Assessment (Appendix 1) were grouped under the following three major outcomes, which had 19 overall measures associated with them-
  - Robust, operational and scaleable Wi-Fi network in place, providing a service for the whole of Highworth;

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- Successful and targeted PR campaign delivered locally and nationally; and
- Effective Sales and Marketing activities and plans in place to deliver short and medium term revenue streams.

4.3. These outcomes have been reviewed and have been considered to be substantially met, however, there are 4 measures that the Cabinet are requested to agree to vary in order for the assessment to be deemed complete and for the drawdown of the next phase of the loan to be enabled.

4.3.1. Measure 1: Originally stated: "Highworth network installed, working and accessible."

4.3.2. **Proposed variation:** Highworth network installed, working and accessible to 90% of households and a commitment made that the two remaining router installations that enable consistent coverage for the outstanding 10% of Highworth will be completed within a week of planning consent being granted.

4.3.3. Reason: Coverage is available across Highworth, however, the strength of the signal needs to be improved in some specific areas, in order to do this, two additional sites have been identified at which extra routers need to be installed and these are awaiting planning consent.

4.3.4. Measure 2: Originally stated: "Private sector sponsorship or commitment to future funding, to the value of at least £20,000, secured by end of Quarter 1."

4.3.5. **Proposed Variation:** Expressions of interest received from the private and or public sector for investment once a Borough wide network is available.

4.3.6. Reason: Private sector view is that unless there is commitment to turn the Highworth pilot into a full scale Swindon network there isn't a compelling reason for them to invest. Having learnt from this feedback, it is clear that the £20,000 measure this is a longer term measure, not a short term measure as originally envisaged.

4.3.7. Measure 3: Originally stated: "Sold – at least 100 private use packages by the end of Quarter 1."

4.3.8. Measure 4: Originally stated: "Sold - at least 25 business packages by the end of Quarter 1."

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4.3.9. **Proposed Variation:** Deletion of measures 3 and 4 and the addition of a new requirement that £50,000 of the final loan be withheld until sales of at least 100 private use packages, has been achieved.

4.3.10. Reason: The delay in having a fully operational 'back-office' customer care and billing operation has hindered opportunities to sell. Partly this was due to the funding constraints around the scope of the initial phase, which allowed for only a limited amount of functionality to be developed. The [www.getsignal.co.uk](http://www.getsignal.co.uk) site is, however, now able to sell service subscriptions and the varied measure is a reasonable short term test which was the original intention. Leafleting to Highworth households was completed on Sunday the 28<sup>th</sup> of February and as of Monday the 2<sup>nd</sup> March 5 packages were sold.

4.4. The sales performance of Digital City (UK) Limited against plan will continue to be monitored on a quarterly basis and this is the appropriate control around medium to long term commercial viability.

4.5. Finally there is an existing measure that does not need to be varied, but is a condition of the next phase of the loan being agreed, namely that the Cabinet authorise a risk assessment of the forward Business Plan be completed and agreed by all shareholders by end of Quarter 1. The review would be undertaken by the Group Director, Business Transformation, the Director of Finance and the Director of Law and Democratic Services.

## 5. Risk Assessment

5.1. To assist Members in progressing this matter if that is their wish, work has commenced on the Risk Assessment following the Cabinet meeting on 10<sup>th</sup> March 2010. This has focused on risks to delivery of the Council's stated outcomes from the Wi Fi project, which have been to make free internet access available throughout the Borough and to benefit from a future income stream from a profit sharing arrangement with Digital City (UK) Limited. A more immediate objective is to have the loan to Digital City (UK) Limited repaid within 2 years, to ensure this exposure is short lived.

5.2. Responses to a small number of detailed questions raised by officers are awaited from Digital City (UK) Limited, however a view is emerging and is summarised in the table at Appendix 2. (A more detailed paper has been produced for consideration by Members but would need to be discussed as a Private and Confidential matter because the information is commercially sensitive.) This summarises

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the relative risk to achievement of the Council's objectives that would be anticipated from pursuing three possible courses of action, informed by a detailed analysis of the following issues:

- Sales income
  - Costs (capex and ongoing)
  - Cashflows
  - Opportunities outside Swindon
  - Reputation
- 5.3. The Risk Assessment indicates a clear preference to support further drawdown, subject to the conditions detailed in this report. An additional factor has, however, been introduced into the risk assessment process by the confirmation since the previous Cabinet meeting that additional investment opportunities are now available to Digital City (UK) Limited.
- 5.4. The Council understands that the company has been approached by potential investors who have been attracted by the opportunity that has been created in part as a result of the Council's involvement and have indicated a willingness to consider investing in the project themselves.
- 5.5. The emerging conclusion of the Risk Assessment is therefore that the potential benefits of releasing the remainder of the loan from the Council far outweigh the risks of refusing this request. This recognises that the Council's involvement and provision of a loan has added significant value to the original proposition, to the extent that it is now attracting private investors. In this context, it is appropriate to consider at this stage whether the value the Council can continue to bring to the company would henceforth be better structured through a different level of involvement, which would still ensure that its objectives are met. It is therefore recommended that the Chief Executive, supported by other officers as appropriate, be authorised to investigate all options available to maximise the opportunity offered by Wi Fi while minimising the Council's risk exposure.

## 6. Alternative Options

- The Cabinet can choose to release no further funding until all the terms of the original Highworth Assessment and Drawdown Plan have been complied with. This is not recommended, the risks in lost revenue and in fact the project viability by not rolling out to the rest of the Borough outweigh any benefits from the four measures that are recommended for variation.
- The Cabinet can release some further funding in recognition of the progress that has been made in a number of areas.

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- The Cabinet can release the full amount to allow the development of the Borough wide network.

## Risk Management

### *Financial and Procurement Implications*

The Council has sought to manage its risk exposure in a number of ways:

- Through ownership of Digital City (UK) Limited's assets, to be purchased at an estimated cost of around £250k, remaining with the Council until the loan is repaid;
- Through the level of loan available to Digital City (UK) Limited being limited to one third of the full amount pending sign off of a pilot in Highworth;
- Through an incentive measure whereby Avidity Consulting has an option to increase its shareholding for a consideration of £1 provided that the loan is repaid within 2 years from the date of first drawdown, leaving the Council with a 35% share.

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.

### *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 detailing the proposed agreement with Digital City.

## Background Papers and Appendices

Appendix 1 – Highworth Assessment and Drawdown Plan Commentary

Appendix 2 – Draft Summary Risk Assessment

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## **Key Decision / Decision in Forward Plan**

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

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## Appendix 1

### Highworth Assessment and Drawdown Plan Commentary

#### Highworth Assessment and Drawdown Plan

The SBC loan to Digital City (UK) Limited will be phased with clear outcomes and measures being agreed for each phase. Successful delivery of these outcomes will allow the next phase of the loan to be drawn down. For Quarter 1 (the first three months following the first drawdown of the loan from Swindon Borough Council) the following outcomes have been agreed:

#### **Outcome 1: Robust, operational and scaleable Wi-Fi network in place, providing a service for the whole of Highworth**

Measures:

- Overall Swindon Network design (logical and physical) completed by 30 November 2009.
- Highworth network installed, working and accessible by 30 November 2009, whilst ensuring that Planning requirements e.g. Highworth Conservation Area have been met.
- Web site operational: robust, secure, scaleable, easy to use and accessible by 30 November 2009.
- Network Operations Management: on-going approach and cost projections in place by the end of Quarter 1.
- Customer Support – by the end of Quarter 1 to have a clear plan on how this is going to be delivered to match expected volumes over the 24 months following the end of Quarter 1.
- Risk Assessment for remaining Swindon network roll-out plan based on Highworth learning completed and agreed by all shareholders by end of Quarter 1.

#### **Outcome 2: Successful and targeted PR campaign delivered locally and nationally**

Measures:

- Successful Public Relations (PR). Local launch, maximising all available channels to the Council by 30 November 2009.
- Trade Press launch completed by 30 November 2009.
- One national PR event planned and delivered by 30 November 2009.
- Government and Local Government PR (including local public sector partners) campaigned planned and early messages delivered by end of Quarter 1.
- Councillors particularly from Highworth briefed about the scheme and are broadly supportive by 31 October 2009.

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- Risk Assessment of Forward PR plan completed and agreed by all shareholders by end of Quarter 1.

## **Outcome 3: Effective Sales and Marketing activities and plans in place to deliver short and medium term revenue streams**

Measures:

- Pilot projects proposals developed by end of Quarter 1.
- Proposition for CCTV developed and a 'live test' has been conducted as a proof of concept by end of Quarter 1.
- Public sector partners in Swindon approached with compelling commercial proposition and at least one expression of interest secured by end of Quarter 1.
- Private sector sponsorship or commitment to future funding, to the value of at least £20,000, secured by end of Quarter 1.
- Sold - at least 100 private use packages by the end of Quarter 1.
- Sold - at least 25 business packages by the end of Quarter 1.
- Risk Assessment of forward Business Plan completed and agreed by all shareholders by end of Quarter 1.

Where new or additional opportunities arise during Quarter 1, the parties (Digital City (UK) Limited and Swindon Borough Council) may agree to re-prioritise or change the measures related to Outcome 3.

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### Draft Summary Risk Assessment

### Appendix 2

Option	Objective			Summary Risks	
	Swindon Wi Fi Access	Future Revenue Stream	Quick Loan Repayment	Short Term	Medium Term
1. Refuse Further Loan Advance with no alternative in place	Reputation	Wider Opportunities Income Costs	Cashflows	Red	Red
2. Approve Further Loan Advance	Reputation	Wider Opportunities Income Costs	Cashflows	Green / Amber	Amber
3. Approve further loan advance, explore options to maximise return / minimise risk	Reputation	Wider Opportunities Income Costs	Cashflows	Green / Amber	Green / Amber

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