

# Swindon Borough Council

# FINAL

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**Final report on concerns raised at Audit Committee regarding Wi-Fi**

**Ref: IA inv / 09-10 / 11**

9<sup>th</sup> April 2010

Prepared by:

**Swindon Internal Audit Services**

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Nick Hobbs  
Head of Internal Audit  
01793 463940  
[nhobbs@swindon.gov.uk](mailto:nhobbs@swindon.gov.uk)

## Contents

<b>Paragraph Number</b>	<b>Paragraph Contents</b>
-------------------------	---------------------------

<b>1</b>	<b>Introduction</b>
----------	---------------------

- |     |  |
|-----|--|
| 1.1 | Background to the investigation          |
| 1.2 | Concerns raised                          |
| 1.3 | Terms of reference for the investigation |
| 1.4 | Purpose of the report                    |
| 1.5 | Summary of conclusions                   |
| 1.6 | Statements / documents relied on         |
| 1.7 | Disclaimer                               |

<b>2</b>	<b>Approach</b>
----------	-----------------

<b>3</b>	<b>Findings</b>
----------	-----------------

- |     |  |
|-----|--|
| 3.1 | Arrangements regarding the security of the Council's investment including assessment of creditworthiness of Digital City (UK) Ltd. |
| 3.2 | Whether the Council has complied with its own Treasury Management Policy and the best practice set out by CIPFA.                   |
| 3.3 | What profit-sharing arrangements are in place?   |
| 3.4 | Whether EU Directives have been breached in particular Article 87.   |
| 3.5 | Whether value for money can be demonstrated.   |
| 3.6 | What, if any, lessons can be learned for the future?   |

<b>4</b>	<b>Opinion</b>
----------	----------------

- |     |                 |
|-----|-----------------|
| 4.1 | Overall opinion |
|-----|-----------------|

## Appendices

- |   |  |
|---|--|
| 1 | Terms of reference for investigation                               |
| 2 | List of main documents relied upon                                 |
| 3 | Officers Interviewed   |
| 4 | Knowledge, experience, qualifications/training of author of report |

# **1 Introduction**

## **1.1 Background to the investigation**

1.1.1 Swindon Borough Council entered into a loan agreement with Digital City (UK) Limited. The loan was to be used to enable the company to fund the development and installation of a Wi-Fi network across the Borough, providing broadband access and other related services to Swindon residents, public sector organisations and businesses.

1.1.2 Councillor Des Moffatt (Member for Western and Vice-Chair of the Council's Audit Committee) requested that Councillor Michael Dickinson (Member for Freshbrook and Grange Park and Chair of Audit Committee) authorise an investigation by Internal Audit on the arrangement between the parties. The decision on whether to authorise was deferred until after Full Council and then discussed at Audit Committee.

## **1.2 Concerns raised**

1.2.1 The request by Councillor Moffatt was discussed at Audit Committee on 14<sup>th</sup> January 2010. Audit Committee asked that the Head of Internal Audit examine the areas of concern raised (see 1.2 below) and put a scope together to be agreed by the Chair of the Audit Committee.

- (a) Should the Lead Member decision note process have been followed rather than the Cabinet Member Briefing Note process actually used?
- (b) Should it have been subjected to VFM through PAG?
- (c) What research was undertaken to evaluate the security of any loans made and guarantees sought?
- (d) Has CIPFA recommendations relating to Treasury Management been breached relating to credit ratings for making investments?
- (e) Have EU directives regarding fair competition been broken in conferring to Digital City (UK) Ltd access to publicly owned street furniture and ICT infrastructure not offered to competitors?
- (f) What is the defined method of profit share?
- (g) What lessons can be learned for the future?

1.2.2 It was noted that some of the above areas may have already been covered by the work of the Scrutiny Committee in agreeing that due process had been followed and the Committee requested that the Head of Internal Audit seek advice from the Council's Director of Law and Democratic Services regarding what could be covered by the audit review.

### 1.3 Terms of reference for the Investigation

- 1.3.1 As requested by Audit Committee the Head of Internal Audit drafted terms of reference for the audit investigation. The Director of Law and Democratic Services was consulted on the content prior to their issue to both the Chair and Vice-Chair of the Audit Committee (Councillors Michael Dickinson and Des Moffatt) for approval.
- 1.3.2 Confirmation was received from Councillor Dickinson that he was happy with the scope of the audit. A response was not received from Councillor Moffatt.
- 1.3.3 A copy of the agreed terms of reference is set out in Appendix 1. The objectives included in the terms of reference are as follows:
- The arrangements regarding the security of the Council's investment including assessment of credit worthiness of Digital City (UK) Ltd.
  - Whether the Council has complied with its own Treasury management policy and the best practice set out by CIPFA.
  - What profit-sharing arrangements are in place?
  - Whether EU directives have been breached in particular Article 87.
  - Whether value for money can be demonstrated.
  - What, if any, lessons can be learned for the future?
- 1.3.4 Since the commencement of the investigation a number of further concerns have been raised in two letters and an e-mail addressed to the Council's External Auditors. The External Auditor (Martin Robinson – District Auditor) has confirmed to the Chief Executive that there is nothing contained in the correspondence that requires investigation by him at this stage.
- 1.3.5 At the meeting on 15<sup>th</sup> March 2010, the Council's Scrutiny Committee raised concerns regarding the possible conflict in interests of the Group Director: Business Transformation who was listed as a Director of Digital (UK) Ltd and the author of the Cabinet report requesting release of the second phase of the loan. The Chief Executive has appointed the Council's Deputy Chief Executive, Celia Carrington, to undertake an investigation of this potential conflict in interest.
- 1.3.6 ***The internal audit investigation has not covered the additional areas of concern mentioned in the correspondence to the External Auditor, or the issues raised at Scrutiny. It has focussed solely on the issues raised in paragraph 1.3.3 above.***

### 1.4 Purpose of the report

- 1.4.1 The purpose of this report is to provide details of the areas covered in the investigation, to present my findings from the investigation and to provide an opinion on these.

## 1.5 Summary of conclusions

- 1.5.1 From the evidence obtained and the explanations received during the course of my investigation, I would summarise my conclusions as:
- 1.5.2 **Security of the loan** – Digital City (UK) Limited was a start up company that therefore had no trading history. The loan was recommended on the basis of the business case presented to officers. This was a risk-based decision. The Council's External Auditors have praised the Council in the past for allowing developing a risk culture that enables innovative projects. Risks to the Council were mitigated by the staged release of the loan. The loan agreement also gives the assets of the company as security. The value would not only be the fixed assets but the actual provision of a Wi-Fi network. (See paragraph 3.1 for further details).
- 1.5.3 **Compliance with the Council's Treasury Management Policy** – the Council's Treasury Management Policy was amended at Cabinet on 23<sup>rd</sup> July 2008. Cabinet resolved that (in respect of joint venture arrangements) the Director of Finance and the Director of Law and Democratic Services, in consultation with the Cabinet Member for Resources, to invest in such schemes provided that the overall terms of arrangement are suitably advantageous for the Council. The loan to Digital City (UK) Limited falls within this approval. (See paragraph 3.2 for further details).
- 1.5.4 **Profit-sharing arrangements** – these are set out in the Shareholders' Agreement. The dividend policy within this agreement states that 'dividends shall be agreed by all shareholders and paid on a quarterly basis. The current shareholdings are as follows: Swindon Borough Council own 40% of the issued share capital; Avidity Consulting Limited own 25% and aQovia own 35%. (See paragraph 3.3 for further details).
- 1.5.5 **Compliance with EU Directive: Article 87** – Article 87 prohibits specific kinds of aids that might be given by EU Member States that distorts or threatens to distort competition. By awarding the loan at market rate the Council has not breached this particular article. (See paragraph 3.4 for further details).
- 1.5.6 **Value for money** – the loan was awarded at the top end of the market rate (as indicated by The Royal Bank of Scotland) i.e. 3%, and can therefore be shown as offering value for money. Also when compared with investment rates at that time (to invest for a year the rate was only 1.20% at the time of the loan agreement), the 3% demonstrates value for money. In addition, the Council acquired a shareholding in the company as part of the return on the loan. It is too early in the process to determine what the level of returns, as a shareholder, will be over the longer term. (See paragraph 3.5 for further details).
- 1.5.7 **Lessons to be learnt** - Backbench and opposition Councillors in addition to members of the public and Members of Parliament have raised a number of concerns regarding the process adopted for making a loan to Digital City (UK) Ltd. Backbench and opposition Councillors did not become fully aware of the project until the end of the process. Decisions made during the process, such as deciding to progress via the Cabinet Member Briefing Note were selected, in part, due to the view that things needed to be progressed quickly. This restricted the openness of the decision making process although the route selected complied with due process. Options on how to augment the Council's processes for managing the transition of innovative commercial

projects with private sector partners from inception to the approval and implementation of a project should be explored. The Corporate Governance Review Working Group have tasked the Director of Law and Democratic Services with producing a report regarding this. (See paragraph 3.1 for further details).

## **1.6 Statements / Documents relied upon**

1.6.1 I attach at Appendix 2 the officers interviewed during the course of my review and those that supplied additional information. I also attach at Appendix 3 a list of the main documents I have examined and relied upon for this investigation.

## **1.7 Disclaimer**

1.7.1 This investigation focussed on the areas agreed in the terms of reference for the investigation (see paragraph 1.3.3 above) only. It did not include a full internal audit of all Council systems mentioned in the areas of concern nor did it include a full review of the adequacy, or robustness, of the documents listed in Appendix 3. Any recommendations relating to Council policy and procedure generally which arise from the findings of this review will be addressed in a separate internal audit report.

1.7.2 This report is based on the evidence obtained, documentation provided and explanations received from officers interviewed.

## **2 Approach**

2.1.1 An initial examination of relevant documentation was undertaken.

2.1.2 Interviews were then arranged with relevant officers to cover the concerns raised by Audit Committee. Relevant supporting documentation was then obtained to substantiate explanations received.

2.1.3 A report was then drafted and checked for factual accuracy by the Director of Law and Democratic Services, the Director of Finance, and the Chief Executive.

2.1.4 The draft report was then issued to Councillor Michael Dickinson (Chair of Audit Committee) to ensure that he was satisfied that it covered all areas included in the scope of the review.

2.1.5 The final report was then issued to members of the Council's Audit Committee.

### 3 Findings

#### 3.1 Arrangements regarding the security of the Council's investment including assessment of creditworthiness of Digital City (UK) Ltd.

##### (a) Security

3.1.1 The security, in the event of a default by the borrower in the repayment of the loan, is set out in the Loan Agreement between Swindon Borough Council and Digital City (UK) Limited, dated 21<sup>st</sup> October 2009.

3.1.2 The Loan Agreement sets out when an 'event of default' occurs:

*The Loan Agreement states that 'In the event that the loan shall be declared immediately due and payable as stated above, the Borrower will reimburse the Lender for all losses and expenses incurred by the Lender as a consequence of the Event of Default and shall forthwith transfer the ownership of all Assets to the Lender. The certificate of the Lender as to the amount of such losses and expenses shall, in the absence of manifest error, be conclusive.'*

3.1.3 At the time of the initial loan Digital City, as a start up company, had limited fixed assets. However, work had been carried out prior to the loan being awarded and the 'concept' of providing Wi-Fi access would have some value.

3.1.4 The decision to recommend entering in to the Loan Agreement was therefore based on the Business Case and supporting documentation presented. The financial plan showed the full loan being repaid within two years. The Council would be entitled to 40% of the profits until the loan was repaid, after which the Council's profit share would reduce to 35%. Beyond year two the projected net profit is about £700,000 per year. This figure did not include any projections from exporting the business models to other Councils.

3.1.5 The loan to Digital City (UK) was for a maximum of £450,000. The sum made available initially was limited to £150,000 until a pilot scheme was operational in Highworth, other criteria had been met, and that all parties had assessed its success and ongoing commercial potential. This arrangement, set out in the Loan Agreement, had therefore reduced the Council's exposure to risk. Further security for the loan was obtained through the agreed shareholding of the Council in Digital City (UK).

3.1.6 All loans are subject to some level of risk and the level of risk, based on the business case, was considered of a level to allow a recommendation to be made to progress with the scheme.

3.1.7 The Council's External Auditor had, in their Audit Commission Annual Audit Letter: 2008-09 included within their Use of Resources findings and conclusions, a statement that risk management '*is embedded and a risk culture enables innovative projects.*'

3.1.8 The External Auditor also stated in their report on Use of Information (2009) that the Council '*understands the importance that information and data can have in improving services and it is also not afraid to lead in terms of technical innovation. This is*

*evidenced in the first public/private partnership to install free Wi-Fi across an entire borough, a first in the country.'*

3.1.9 It is understood that the value of fixed assets will exceed the value of the loan. It is also understood that at least two other companies have shown as interest in investing in the scheme. Therefore, in the event of any default in the loan repayment there are potential investors to whom then Council could explore alternative options with in exploring how best to maximise the opportunity of Wi-Fi whilst still looking to minimise the risk.

**(b) Creditworthiness of Digital City**

3.1.10 Digital City (UK) Limited was incorporated on 14<sup>th</sup> August 2009. The company's registered office is Fourth Floor David Murray John Tower, Swindon. The registered number is 6990831.

3.1.11 It therefore did not have a trading history at the time the Loan Agreement was entered in to.

3.1.12 A credit assessment was carried out with 'Creditsafe' on 24<sup>th</sup> September 2009. This report stated that, for a newly incorporated company, it was rated as moderate risk. The report also gave the company a score of 48 that equates to it being 'credit worthy' but put a suggested top credit limit of £500.

3.1.13 aQovia UK Limited was incorporated on 13<sup>th</sup> March 2009. The company's registered office (as per the Companies House website) is 11-13 Pollen Street, London. The company registration number is 06846037 and this agrees to that stated on the Shareholders' Agreement and the Memorandum of Understanding and Heads of Agreement document.

3.1.14 It also did not have a trading history at the time the Loan Agreement was entered in to.

3.1.15 A credit assessment was carried out with 'Creditsafe' on 18<sup>th</sup> September 2009. This report stated that, for a newly incorporated company, it was rated as 'caution – high risk'. The report also gave the company a score of 19 that equates to 'caution – credit at your discretion'.

3.1.16 It is understood that since the commencement of the Wi-Fi project Digital City (UK) Limited have been successful in obtaining a bank loan in the own right.

3.1.17 Information provided at the Council's Scrutiny Committee on 8<sup>th</sup> April 2010 showed that the 35% shareholding allocated to aQovia (UK) Ltd (as per the Shareholders' Agreement) is in fact registered with aQovia Limited, who, it is understood, are an Isle of Man registered company.

3.1.18 Assurances were given at that meeting that the solicitors for Digital City (UK) Ltd had misfiled the share allocation and that this would be corrected. The shareholding should be with aQovia (UK) Ltd and not aQovia Limited.

3.1.19 As stated above all loans are subject to some level of risk and the level of risk, based on the business case, was considered of a level to allow a recommendation to be

made to progress with the scheme. To reduce the risk further, additional security was gained through the Council's shareholding in Digital City (UK) Ltd (see 3.1(a) above).

### **3.2 Whether the Council has complied with its own Treasury Management Policy and the best practice set out by CIPFA.**

3.2.1 The report on Budget Management 2008/09 and Medium Term Resourcing Plan Update presented to Cabinet at its meeting on 23<sup>rd</sup> July 2008 included a section on the Council's Treasury Management Strategy. Within the section on the Strategy there is reference to loans to third parties.

3.2.2 The relevant sections of the report (paragraphs 2.6.6 and 2.6.7) state the following:

2.6.6 *The Council's normal attitude to lending, as detailed in 2.5.7 is very risk averse. Wider powers to invest in third parties do, however, exist in the Local Government Act 2003 (Chapter 26 section 12), which defines the power to invest as:*

- (a) *for any purpose relevant to its functions under any enactment*
- (b) *for the prudent management of its financial affairs.*

2.6.7 *In order to pursue its regeneration objectives, the Council is planning to enter into a series of joint venture arrangements with private sector partners. There may be circumstances in which it is advantageous in financial and risk terms for the Council to consider acting as banker for a scheme, subject to the terms and exposure being acceptable. In this context, it is proposed that the annual investment strategy is amended to permit the Directors of Finance and Law and Democratic Services, in consultation with the Cabinet member for resources, to invest in such schemes provided that the overall terms of the arrangement are suitably advantageous for the Council, subject to the Soft Loan accounting requirements contained in the 2007 Statement of Recommended Practice.*

3.2.3 The minutes of the meeting, relating to the above, state that:

*Minute 28: Council be recommended to approve the proposed change to the Annual Investment Strategy, as detailed in paragraph 2.6.7 of the joint report (in respect of joint venture arrangements, to permit the Director of Finance and the Director of Law and Democratic Services, in consultation with the Cabinet Member for Resources, to invest in such schemes provided that the overall terms of the arrangement are suitably advantageous for the Council, subject to the Soft Loan Accounting requirements contained in the 2007 Statement of Recommended Practice.*

3.2.4 At the Council meeting on 13<sup>th</sup> November 2008 Councillor Roderick Bluh moved and Councillor Fionuala Foley seconded that: *Minute 28(5) of the Cabinet (Budget Management 2008/09 and Medium Term Resourcing Plan Update) be confirmed and adopted. The Motion was put to the vote and declared carried.*

3.2.5 Both the Director of Law and Democratic Services and Director of Finance have given assurances that this minute provides them with the delegated powers to enter in to the Loan Agreement (in consultation with the Cabinet Member for Resources). The formal consultation with the Cabinet Member and also the Leader of the Council was

undertaken by means of the Cabinet Member Briefing Note. They endorsed the exercise of the delegated power on the Cabinet Member Briefing Note.

- 3.2.6 Scrutiny Committee on 14<sup>th</sup> December 2009 also resolved that *'due process had 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.'* Councillors Derique Montaut and Des Moffatt voted against.
- 3.2.7 From the information provided I would agree that the Council's Treasury Management policy has been followed.

### **3.3 What profit-sharing arrangements are in place?**

3.3.1 The profit sharing arrangements, as part of the loan agreement, are set out in the Shareholders' Agreement between Avidity Consulting Limited, Swindon Borough Council and aQovia UK Limited, dated 21<sup>st</sup> October 2009.

3.3.2 The respective shareholdings are:

- Avidity own 25% of the issued share capital in the Company;
- Swindon Borough Council own 40% of the issued share capital in the Company; and
- aQovia own 35% of the issued share capital in the Company;

3.3.3 Avidity have an option expiring on 31 October 2011, or two years from the date of first draw-down of the loan from the Council, to purchase additional shares for a consideration of £1 such that the issued share capital of the Company shall be set out below:

- Avidity own 30% of the issued share capital in the Company;
- Swindon Borough Council own 35% of the issued share capital in the Company; and
- aQovia own 35% of the issued share capital in the Company;

3.3.4 The dividend policy, within the Shareholders' Agreement states that 'dividends shall be agreed by all shareholders and paid on a quarterly basis.

### **3.4 Whether EU Directives have been breached in particular Article 87.**

3.4.1 Article 87 prohibits specific kinds of aids that might be given by EU member states to enterprises, and gives powers to the European Commission to clear some such aids as 'compatible with the common market'.

3.4.2 Article 87(1) sets out a general prohibition as follows:

*Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition, by favouring certain undertakings or the production of certain goods shall,*

*insofar as it affects trade between Member States, be incompatible with the common market.*

- 3.4.3 An e-mail from Stuart McKellar to Rikki Hunt (Chief Executive Officer: Digital City (UK) Ltd) dated 10/9/09 stated that *'We are not in a position to either give an artificially low rate loan or waive a fee as we are only able to provide the loan on commercial terms or we run into State Aid territory.'*
- 3.4.4 The loan agreement states that: *'The principal amount of the Loan outstanding shall carry interest at rate of Three per cent (3%) per annum above the 1 Month Libor rate (as published by the British Bankers Association) calculated as a monthly average, and will be applied to the outstanding principal balance on a daily basis.'*
- 3.4.5 By charging a commercial rate the Council did not distort or threaten to distort competition by favouring certain undertakings. Both the Director of Finance and the Director of Law and Democratic Services have confirmed this view.

### **3.5 Whether value for money can be demonstrated.**

- 3.5.1 The Council are charging a rate of three per cent per annum above the one month Libor rate. Prior to entering the loan agreement The Royal Bank of Scotland provided indicative rates of between two and one half percent and three per cent for a similar loan. This is confirmed in an e-mail from a Mr C Elias (Senior Manager, Commercial Banking) dated 14<sup>th</sup> August 2009.
- 3.5.2 The fact that the Council are charging at the higher end of this range would indicate that the rate is offering value for money.
- 3.5.3 If this rate is compared to the rates offered for investing Council funds this also shows that the rate is providing value for money i.e.

<b>Period of Investment</b>	<b>October 2009 rate</b>	<b>Current Rate (April 2010)</b>
Month	0.45%	0.45%
Three month	0.55%	0.50%
Six month	0.75%	0.75%
Year	1.20%	1.25%
Two-Year	1.79%	1.58%

- 3.5.4 As far as considering whether the anticipated returns, as a shareholder, will come to fruition i.e. revenue from sales to paying users, businesses etc. and the possible roll out on the concept to other local authorities it is too early in the process to judge.

### **3.6 What, if any, lessons can be learned for the future?**

- 3.6.1 Backbench and opposition Councillors in addition to members of the public and Members of Parliament have raised a number of concerns regarding the process

adopted for making a loan to Digital City (UK) Ltd. Backbench and opposition Councillors did not become fully aware of the project until the end of the process.

- 3.6.2 Decisions made by Members during the process, such as deciding to progress via the Cabinet Member Briefing Note were influenced, in part, by the view that things needed to be progressed quickly. However, although this could be considered a valid reason, it did have the effect of restricting the openness of the decision making process. The route selected complied with due process, as confirmed by the Director of Law and Democratic Services, who had though, recommended reporting to Cabinet.
- 3.6.3 In the Corporate Governance Review Working Group the Leader of the Council stated that 'He wished to seek to identify ways in which commercially sensitive projects with private sector partners could be dealt with, particularly in the early stages, in a transparent and open way, but equally in a way that would protect commercial sensitivity and not hamper often complex negotiations'.
- 3.6.4 There is an increased prospect of further engagement with the private sector to deliver new or improved services. The Council's willingness to look at innovative ideas has been praised by the Audit Commission. However, given the adverse publicity regarding this process it may deter officers making innovative recommendations that may ultimately benefit the Council.
- 3.6.5 It was resolved at the above meeting that *'the Director of Law and Democratic Services submit a report to a future meeting on the issues highlighted and suggest options to augment the Council's processes for managing the transition of innovative commercial projects with private sector partners from inception to the approval and implementation of a project.'* I would endorse this resolution.

## **4 Opinion**

### **4.1 Overall Opinion**

- 4.1.1 Having conducted an investigation, obtained evidence in respect of concerns raised, spoken to relevant Officers, it is my opinion that Officers have acted with integrity and in the best interests of the Council. The decision to make the loan to Digital City (UK) Limited was risk-based. The Council has attempted to reduce the potential risk by staging the release of payments on the basis of achieved targets.
- 4.1.2 It is my opinion that the Council has complied with its Treasury Management Policy and has not breached Article 87 (EU Directive).
- 4.1.3 Value for money can be demonstrated in that the rate charged on the loan is at market rate and exceeds current investment rates.
- 4.1.4 There is a need to consider the options on how best backbench and opposition Councillors can be made aware of initiatives such as this without compromising commercial sensitivity

## INTERNAL AUDIT ASSIGNMENT - TERMS OF REFERENCE

<b>Assignment:</b>	Wi-Fi
<b>Audit contact:</b>	Head of Internal Audit: Nick Hobbs
<b>Departmental Contacts:</b>	Group Director: Business Transformation: Hitesh Patel Director of Finance: Stuart McKellar Director of Law and Democratic Services: Stephen Taylor
<b>Timescale:</b>	The review will take place in March 2010.

**Subject Area and Background*****Taken from Cabinet Briefing Note dated 12<sup>th</sup> October 2009:***

That in accordance with Cabinet minute 28 of 23 July 2008, approved by Council on 13 November 2008, the Directors of Finance and Law and Democratic Services will make the necessary arrangements for the Council to provide a loan of up to £450k to Digital City (UK) Limited on commercial terms as detailed in the loan agreement and in return for an equity stake in the company and a seat on the company's board.

In addition, the Group Director Business Transformation entered, on behalf of Swindon Borough Council, in to a joint venture partnership underpinned by a Shareholders' Agreement with aQovia UK Limited and Avidity Consulting Limited to form Digital City (UK) Limited, to deliver a Wi-Fi network across the Borough providing broadband access and other Wi-Fi related services to Swindon residents, public sector organisations and other businesses.

This will include the granting of access to accommodation in DMJ tower, at no consideration, for a period of twelve months and, in consultation with other officers and Ward members as appropriate, will grant Digital City (UK) Limited licenses to install equipment necessary to create the Wi-Fi network.

***Background***

In October 2009, the Council entered into a loan arrangement on commercial terms with Digital City (UK) Limited. Security for the loan was underpinned by a Shareholders' Agreement with aQovia UK Limited and Avidity Consulting Limited. The loan was to be used to enable the company to 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.

The loan was for a maximum of £450,000. The initial sum available to drawdown was limited to an agreed sum of £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. Digital City (UK) Limited have since requested that the balance of £300,000 be made available on the basis that the overwhelming majority of the conditions around the Highworth pilot have now been fulfilled.

***Scrutiny Committee (14<sup>th</sup> December 2009):***

The Chair of the Scrutiny Committee requested that the Scrutiny Committee examine the decision made under the Council's scheme of delegation to provide a loan to Digital City (UK) Limited for the purpose of establishing a Wi-Fi network across the Borough of Swindon.

The minutes for the above meeting state 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.

**Health Overview Committee (3<sup>rd</sup> February 2010):**

The minutes of the above meeting state:

The Committee considered (a) a report of the Director of Law and Democratic Services setting out issues relating to potential public health consequences of Borough-wide Wi-Fi coverage to be implemented in 2010, (b) issues raised during the Committee's Public Question Time and answers provided, (c) a presentation by Dr. Jenny Harries (Director of Public Health) and Dr. Bruce Bolam on the health implications of a proposed Borough wide Swindon Wi-Fi system, including the latest advice on emissions from national and international Authorities, (d) Information and evidence, including internet links to additional information against the progression of a Borough wide Wi-Fi system, submitted by Dr. Alex Parfitt, Martine Steinhardt and Rachel Bridden which had been forwarded to Committee Members prior to the meeting, (e) questions from Councillors Bob Wright and Steve Wakefield regarding health issues pertaining to a Borough wide Wi-Fi system, (f) questions to and answers from Mr. Rikki Hunt (Digital City), and (g) answers to questions from Committee Members relating to the presentation and evidence submitted to the meeting.

The Chair advised Members that it was up to Members to determine the weight they gave to information and evidence provided by all those groups and individuals submitting it when reaching their decision on this issue. Members might also take into account the questions raised by Members of the Public under Public Question Time and Councillors during the presentation of evidence in the same way.

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.

**Request from Councillor Des Moffatt (Vice-Chair of the Council's Audit Committee):**

Councillor Des Moffatt requested that Councillor Michael Dickinson authorise an investigation by Internal Audit on the arrangement between the parties. The decision on whether to authorise was deferred to after Full Council and then discussed at Audit Committee.

**Audit Committee:**

Councillor Des Moffatt request for Internal Audit to examine various aspects of the Wi-Fi process was discussed at Audit Committee. Audit Committee raised the following issues:

- a) Should the Lead Member decision note process have been followed rather than the Cabinet Member Briefing Note process actually used?
- b) Should it have been subjected to VFM through PAG?
- c) What research was undertaken to evaluate the security of any loans made and guarantees sought?
- d) Have CIPFA recommendations relating to Treasury Management been breached relating to credit ratings for making investments?
- e) Have EU directives regarding fair competition been broken in conferring to Digital City (UK) Ltd access to publicly owned street furniture and ICT infrastructure not offered to competitors?
- f) What is the defined method of profit share?
- g) What lessons can be learned for the future?

Audit Committee asked that the Head of Internal Audit examine the above areas and put a scope together to be agreed by the Chair of the Audit Committee. It was noted that some of the above areas may have already been covered by the work of the Scrutiny Committee in agreeing that due process had been followed and the Committee requested that the Head of Internal Audit seek advice from the Council's Director of Law and Democratic Services regarding what can and can't be covered by the audit review.

**Risk Evaluation:****Key risks to achievement of management objectives**

- a) Non-compliance with legislation and/or Council Policies.
- b) Appropriate safeguards are not in place regarding the Council's investment with Digital City (UK) Ltd.
- c) Value for money cannot be demonstrated.

**Agreed Objectives and Scope:****Assignment Objectives:**

To establish:

- a) the arrangements regarding the security of the Council's investment including assessment of credit worthiness of Digital City (UK) Ltd.
- b) whether the Council has complied with its own Treasury Management policy and the best practice set out by CIPFA.
- c) what profit-sharing arrangements are in place.
- d) whether EU directives have been breached in particular Article 87.
- e) whether value for money can be demonstrated.
- f) what, if any, lessons can be learned for the future.

The review will not examine whether due process has been followed as this has already been examined by the Scrutiny Committee who confirmed that it had.

**Responsibilities and reporting:****Departmental Management Responsibilities:**

The responsibility for the system of internal control, management of risk, safeguarding assets, prevention and detection of fraud and compliance with legislation rests with management.

**Internal Audit Responsibilities:**

The responsibility of Internal Audit is to review systems and procedures in place with a view to providing reasonable assurance to management that the internal control and risk management arrangements are adequate and working as intended. Our examination should not be relied upon to identify all material misstatements, fraud, errors or instances of non-compliance with law or regulations that may exist.

**Reporting:**

Where our work identifies control weaknesses, we will report these to management in a formal Audit Report. Prior to issue of our report, all findings will be fully discussed with relevant managers. The purpose of these discussions is to ensure that the audit report accurately reflects the adequacy of the control framework and provides a practical and agreed action plan for improvements where necessary. The audit report, including an executive summary and the detailed action plan with recommendations will be provided to the Corporate Risk and Performance Manager who should ensure that where recommendations are agreed they are implemented within the agreed timescales. The final report will also be copied to the Director of Policy, Performance and Communication, the Director of Finance, and the Group Director, Business Transformation.

**Quality Assurance:**

Internal Audit routinely issues quality assurance questionnaires with final audit reports to help ensure that the standard of audit work continually improves. Management are asked to provide feedback on completion of the audit by completion and return of the questionnaires.

### Statements taken during the course of the investigation

Interviews were conducted with the following officers:

Officer	Job Title
Stuart McKellar	Director of Finance and Section 151 Officer
Stephen Taylor	Director: Law and Democratic Services; and Monitoring Officer
Hitesh Patel	Group Director: Business Transformation
Gavin Jones	Chief Executive

Information was also obtained from the following:

Officer	Job Title
John Spence	Capital Accountant
Margaret Rivers	PA to Group Director: Business Transformation
Ian Willcox	Committee and Member Services Manager
Darren Stevens	Deputy Head of Finance (Corporate)
Keir Garnham	Treasury Assistant
Rikki Hunt	Chief Executive Officer: Digital City (UK) Ltd

**List of main documents relied upon:**

- ⇒ Cabinet report: Budget Management 2008/09 and Medium Term Resourcing Plan Update – 23rd July 2008
- ⇒ Cabinet Member Briefing Note: Provision of a Loan to Digital City (UK) Limited for the purpose of establishing a Wi-Fi network across the borough of Swindon – 12th October 2009
- ⇒ Scrutiny Committee: Agenda and minutes – 14th December 2009
- ⇒ Full Council meeting: Agenda and minutes – 14th January 2010
- ⇒ Health Overview and Scrutiny Committee: Agenda and minutes – 3rd February 2010
- ⇒ Leader's Advisory Group: Summary notes – 11th February 2010
- ⇒ Corporate Governance Review Working Group; Agenda and minutes – 23rd February 2010
- ⇒ Cabinet report: Loan Advance to Digital City (UK) Limited – 10th March 2010
- ⇒ Cabinet: Agenda and minutes – 10th March 2010
- ⇒ Cabinet report: Loan advance to Digital City (UK) Limited – 31st March 2010
- ⇒ Cabinet report: Officer Directorship of Digital City (UK) Limited – 31st March 2010
  
- ⇒ The Council's Treasury Management Strategy, Prudential Indicators 2010/11 and annual investment strategy 2010/11.
- ⇒ 2007 Statement of Recommended Practices – Soft Loan Accounting Requirements
- ⇒ EU Directives – Article 87 (summary)
- ⇒ The Chartered Institute of Public Finance and Accountancy: The Prudential Code for Capital Finance in Local Authorities – 2009
- ⇒ Audit Commission: Annual Audit Letter – Swindon Borough Council audit 2008-09
- ⇒ Creditsafe reports on Digital City (UK) Ltd and aQovia UK Limited
- ⇒ CIPFA Code of Practice on Local Authority Accounting in the UK: A Statement of Recommended Practice – guidance notes for practitioners: 2009/10 accounts
  
- ⇒ National Wi-Fi Business Case: 20th July 2009
- ⇒ Memorandum of Understanding and Heads of Agreement – between Digital City UK Limited, aQovia and Swindon Borough Council
- ⇒ Shareholders' Agreement – between Digital City UK Limited, aQovia and Swindon Borough Council
- ⇒ Memorandum of Understanding - - between Digital City UK Limited and Swindon Borough Council
- ⇒ Highworth Assessment and Draw-down Plan
- ⇒ Loan Agreement between Swindon Borough Council and Digital City (UK) Ltd
- ⇒ Minutes of Progress/Monitoring meetings held between Digital City and SBC

**Knowledge, experience and qualifications of author of the report:**

Nick Hobbs is Head of Internal Audit at Swindon Borough Council. He has been in post since December 2004, having acted up to that role for a period of almost two years prior to this due to the long-term absence of the then Chief Internal Auditor. Prior to this he was employed as the Audit Manager at Swindon Borough Council for two years.

He has worked in local government internal audit for over twenty-five years. He is a Fellow of the Chartered Association of Certified Accountants (FCCA) and has passed the Member of the Institute of Internal Auditors (MIIA) examinations. He has received training in, and carried out, a number of investigations during his employment as an internal auditor.