

Confidentiality and Non-Disclosure Arrangement

CABINET

Date: 9th March 2011

From: Chief Executive / Leader of the Council

Parish / Wards Affected: All

Purpose

To consider the Council entering into commercially confidential discussions with a potential investor in order to explore mutual opportunities arising from investment in a high-speed wireless data infrastructure for Swindon.

Recommendation

The Cabinet is requested to: -

- Authorise the Chief Executive to enter into the 'confidentiality and non-disclosure' arrangement outlined in the report, between the Council and a potential investor allowing both parties to confidentially conduct and conclude commercial discussions regarding private sector investment in a high-speed wireless data infrastructure for Swindon.
- Authorise the Leader and the Cabinet Member for Finance, in consultation with the Chief Executive, to enter into confidential commercial discussions with the potential investor and to report back to the Cabinet on the conclusion of these discussions.

1. Reasons

- 1.1 The Council has a shareholding interest in Digital City (UK) Limited (Digital City). Digital City currently requires additional funding to continue with the roll out of the wireless data network it had set out to implement across Swindon. The Council therefore needs to explore options for securing additional investment to ensure that the Council's loan to Digital City is repaid and that the wider benefits of having a high-speed wireless network across Swindon can be realised.

2. Detail

- 2.1. Digital City requires additional funding in order to continue to extend the wireless network beyond Highworth. Currently the Highworth network generates limited revenue from domestic sales and there are no business sales. There is a high level of usage for the free service in Highworth, 600

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unique users per month, however, only 20 paid for packages have been sold.

- 2.2. A potential investor is interested in investing in a high-speed wireless network for Swindon and is seeking to work with the Council on exploring options and approaches for this to happen. This company has the appropriate expertise and track record as well as the financial security to make the level of investment needed. The potential investor is, therefore, requesting that the Council enter into a 'confidentiality and non-disclosure' agreement so that both parties can enter into confidential commercial discussions.
- 2.3. As part of this arrangement, the potential investor is asking the Council to commit to an 'exclusivity' condition, lasting for a period of 60 calendar days whereby the Council agrees that it shall not approach, enter into discussion with or enter into any agreement with a third party in relation to a high speed wireless network for Swindon.
- 2.4. This arrangement does not bind the Council to any financial or operational commitments, other than those of confidentiality and exclusivity set out above.

Alternative Options

- The Cabinet could reject the request to enter into a confidentiality agreement with the potential investor and continue to seek other potential investors.

Risk Management

Financial and Procurement Implications

- This arrangement does not imply any.

Legal / Human Rights Implications

- The legal implications are as referred to in the report. 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)

- None.

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Consultees

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

Background Papers and Appendices

- None.

Key Decision / Decision in Forward Plan

- This is not a Key Decision and is not included in the March 2011 Cabinet Forward Plan.

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