

Cheshire East Council

Cabinet

Date of Meeting:	13 th June 2017
Report of:	Peter Bates, Chief Operating Officer
Subject/Title:	Ansa Proposed Joint Venture Company
Portfolio Holder:	Cllr Paul Bates, Finance and Communities Cllr Don Stockton, Regeneration

1. Report Summary

- 1.1. Ansa Environmental Services Limited (Ansa), a company owned by Cheshire East Council and Cheshire East Residents First Limited (CERF), was formally launched on 1st April 2014 with the objective of delivering benefits to the residents of Cheshire East whilst at the same time looking for new income generating opportunities that would help sustain the company in future years.
- 1.2. Since its establishment, it has delivered significant benefits for Cheshire East Council (CEC) and has attracted attention, both regionally and nationally from other Local Authorities wanting to pursue alternative approaches to service delivery.
- 1.3. In line with the Ansa business model the company has been exploring opportunities for expansion. The joint management team (also referred to as the Alliance) of two neighbouring authorities; High Peak Borough Council (HP) and Staffordshire Moorlands District Council (SM) approached Ansa and following a number of engagement events and options appraisal all parties have concluded that a Joint Venture (JV) Trading Company created in partnership with Ansa would be the preferred approach to future service delivery of waste services. The JV would be appointed through an operating agreement with a minimum term of ten years.
- 1.4 Cheshire East Council is committed to supporting the growth and success of all of its ASDVs (Alternative Service Delivery Vehicles), but each new opportunity will be robustly considered by CEC to ensure that any expansion does not have a negative impact on the excellent service and value for money delivered to Cheshire East residents.
- 1.5. A high level business case has been shared with the Council, proposing that the JV would be established to deliver environmental frontline

operational activities covering: waste collection; street cleansing; parks/ grounds maintenance and fleet management. The delivery of the services by the JV would replicate the Ansa operational model.

- 1.6. The development of the JV would be on an incremental basis and broken down into two discrete phases. Phase 1 will cover the establishment of the JV and the delivery of waste collection activities only within High Peak (53 frontline employees). The proposed commencement date is 7th August 2017. Phase 2 is proposed to commence in August 2018 and includes the expansion of waste services to Staffordshire Moorlands and all other combined environmental services for both High Peak and Staffordshire Moorlands, namely:
 - Fleet maintenance
 - Street Cleansing
 - Grounds maintenance
 - Parks etc.
- 1.7. The geographical operating area of the new JV sits beyond the eastern boundary of Cheshire East and therefore will have no impact upon the services delivered to Cheshire East residents. All works undertaken by the JV will be done-so through facilities available within High Peak and Staffordshire Moorlands and will not impact upon services provided by Ansa to the residents of Cheshire East.
- 1.8. Once established, it is believed that the new Joint Venture will make a significant contribution towards realising the objectives of the Council's ASDV change programme, enabling new income streams to be created, efficiencies to be secured through shared overhead costs without any compromise to the high standard of services already provided by Ansa to the residents of Cheshire East.
- 1.9. The purpose of the report is to secure Cabinet support for Ansa to establish a JV trading company with High Peak and Staffordshire Moorlands and then provide services on a two phased approach, subject to satisfactory due diligence for each of the two phases by CEC.
- 1.10. CEC's Section 151 Officer and the Director of Legal Services will be responsible for the determination of "satisfactory due diligence" and will undertake challenge and review of supporting evidence. The overarching principle will be that the proposed JV will be required to deliver a positive commercial and financial benefit to CEC.
- 1.11. Note that by committing to "Phase 1" activities with the JV contracting with High Peak this does not mean an automatic commitment for the JV to continue to phase 2.
- 1.12. A further Cabinet report will outline the details of phase 2 activities and seek the support and approval of Cabinet prior to any further expansion of the JV's activities.

2. Recommendation

2.1. Cabinet is recommended to:

- 2.1.1. Endorse in principle the business expansion opportunity being pursued by Ansa to form a JV Trading Company (JVCo) with High Peak and Staffordshire Moorlands.
- 2.1.2. Note that the detailed business case will be subject to the necessary due diligence which will be carried out by an external provider prior to the commencement of phase 1.
- 2.1.3. Note that preparatory and set-up costs will be funded initially by use of the CERF Reserve (as approved by CERF Board on 15 May 2017) and that such costs are to be “paid back” on a commercial basis over the duration of the respective contracts.
- 2.1.4. Note that the CERF’s Shareholders’ Agreement requires CEC’s approval to form the JVCo.
- 2.1.5. Note that, in the event of deciding not to proceed with either or both contracts, arrangements are being put in place to ensure that financial contributions are made in respect of abortive costs – by High Peak, Staffordshire Moorlands, and Ansa – with any residual abortive costs not covered by contributions from High Peak and Staffordshire Moorlands to be covered by Ansa.
- 2.1.6. To authorise the Portfolio Holder for Finance (Cllr Paul Bates) in consultation with the Section 151 Officer and the Director of Legal Services to finalise the financial, legal and technical details of the JVCo;
- 2.1.7. Upon the satisfactory completion of the above finalisation of detail, and subject to due diligence having been undertaken by all parties; delegate the final decision to establish the JVCo to the Portfolio Holder for Finance (Cllr Paul Bates).
- 2.1.8. Note that Cabinet will receive a further report in December 2017 associated with potential phase 2 development which will be supported by a further business case and related due diligence work.

3. Other Options Considered

- 3.1. Ansa Environmental Services Limited has been trading for three years. Since launching, Ansa has delivered improved services and increased the levels of user satisfaction (currently running around 90% on waste collection activities), whilst at the same time delivering significant reductions in service costs. All of which have benefited the residents of

Cheshire East, achieving many of the objectives identified when establishing the company.

- 3.2. Within the original business case for establishing Ansa, it was always envisaged that in addition to the above and to sustain the company over the longer term, it would be necessary to establish new income streams.
- 3.3. An opportunity has developed with two neighbouring authorities to develop a company that will be able to utilise the “Teckal” exemption in conjunction with Ansa to serve their needs. Annually, consolidated financial statements will be prepared by Ansa that will track carefully, the collective income secured by Ansa through JVCo to ensure that CEC is still able to rely on the Teckal exemption to contract with Ansa without competition.
- 3.4. Other expansion options have been considered and even the option not to expand but the opportunity will assist CEC in achieving its objectives of securing long-term benefits from its ASDV change programme. The current opportunity with neighbouring authorities offers additional benefits associated with proximity to Ansa’s current operational base. It is anticipated that these additional benefits will result in the potential for further efficiency savings to be achieved over the life cycle of the JV arrangement.

4. Reasons for Recommendation

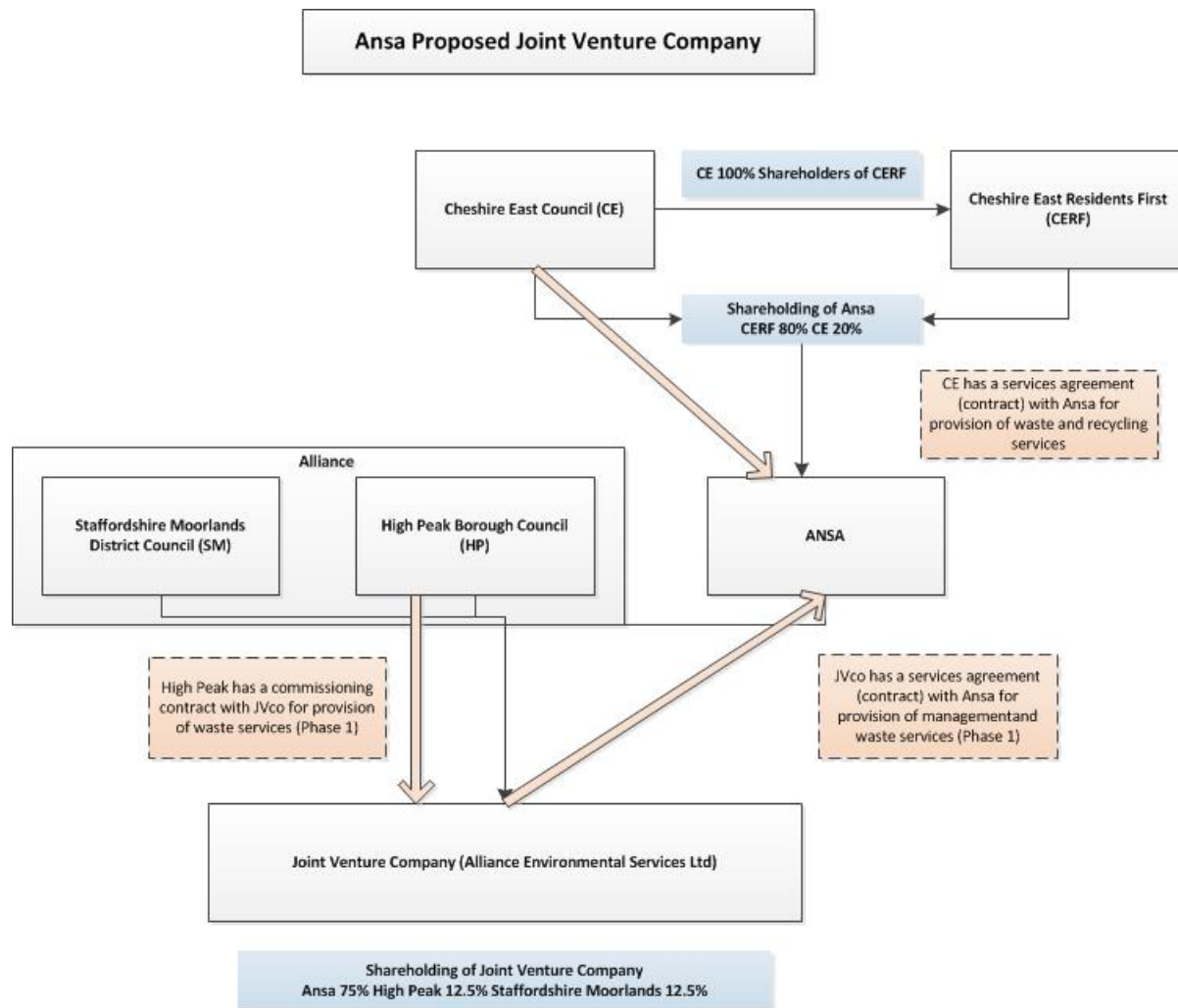
- 4.1. The pursuit of creating a new Joint Venture Trading Company with other public sector bodies is consistent with CEC’s objectives associated with its ASDV change programme.
- 4.2. Since the creation of Ansa, objective evidence has been provided, demonstrating the success of the environmental services company since its transition from in-house service provision to an wholly owned company model of service delivery.
- 4.3. Prior to the formation of Ansa, detailed work had been undertaken on a variety of alternative service delivery options including that of retaining the service in-house. From this work it was concluded that in-house retention would not deliver the desired benefits with the greatest potential for improvement being secured from creating a wholly owned company. This work formed the basis of the ambitious savings plan adopted and subsequently delivered by Ansa and used to benchmark the success achieved against the other options considered.
- 4.4. Furthermore, the pace of change and benefits realised since the formation of Ansa have been rapid by comparison of pursuing alternative outsourced arrangements with third party suppliers.
- 4.5. In-keeping with CECs desire to promote the strong service delivery model developed within Cheshire East and the desire to secure further benefits that result in a reduction in delivery costs for the services utilised by

Cheshire East residents, there is now an opportunity to take the next steps in the Ansa development journey.

5. Background/Chronology

- 5.1. In February 2016, High Peak and Staffordshire Moorlands developed three potential options for the future delivery of the Council's waste collection and street cleansing services. The options were:
 - Perform services in-house
 - Contract out services (externalisation)
 - Expand collaborative working through a company that would be exempt from the Public Contract Regulations.
- 5.2. The three potential service delivery options were developed and were considered further with engagement events conducted with Ansa to gain a better understanding of the benefits realised by CEC since the formation of Ansa in 2014. The most significant work involved the development of a proposal for a JV partnership between the two Councils and Ansa. The proposed JV would be in the form of a company owned by the three parties. The company would then be appointed to carry out environmental services in line with the range of services currently provided by Ansa on behalf of High Peak and Staffordshire Moorlands. The JVCo would be established to comply with "Teckal" rules, which provide for certain exemptions from public procurement legislation.
- 5.3. Further work was undertaken to evaluate the options with the following objectives agreed as the basis for the evaluation:
 - Achieving cost savings
 - Making service improvements and maintaining quality
 - Ensuring that the workforce are treated fairly
- 5.4. The options appraisal was undertaken by High Peak and Staffordshire Moorlands which included identification of the inherent advantages and disadvantages associated with each of the options along with a high-level evaluation against the agreed objectives. The conclusion from this initial appraisal was that the JV partnership was the strongest option. It has the potential to provide the highest level of efficiency savings and at the same time providing the additional capacity for both Councils to ensure that their objectives around performance improvement and staffing are met. It would also have the benefit of shorter implementation timescales.
- 5.5. On this basis, High Peak and Staffordshire Moorlands agreed to adopt the development of a JV partnership with Ansa as the preferred option.
- 5.6. The structure of the proposed Joint Venture is presented in Diagram 1. This diagram shows the relationship and proposed contractual arrangements between CEC, CERF, Ansa, High Peak and Staffordshire Moorlands.

Diagram 1: Phase 1



5.7. The proposed timeline for all activities within phases 1 and 2 are described as follows:

Phase 1 – March to June 2017	
Development of Phase 1 1 st March – 13 th June 2017	Full due diligence on HP Waste collection activities (Phase 1). Contract preparation including: <ul style="list-style-type: none"> • Shareholder Agreement • Articles of Association • Commissioning Contract from JVCo

	<ul style="list-style-type: none"> • Service contract between JVCo and Ansa
June 2017	CEC Cabinet/CERF to delegate the approval to create the JVCo to the Portfolio Holder for Finance
June to July 2017	Contract Award and Mobilisation of Waste Collection contract for HP.
Phase 1 - High Peak Waste Collection commences - 07/08/2017	
Phase 2 - August 2017 – August 2018	
Development of Phase 2 (August 2017 to December 2017)	<p>Full due diligence period on SM waste collection service and all other combined environmental services for each Council. These will include:</p> <ul style="list-style-type: none"> Fleet maintenance Street Cleansing Grounds maintenance Parks etc.
December 2017	CEC Cabinet and CERF to approve the progression to commence Phase 2, commencing between April and August 2018 (actual start date to be agreed once approval to progress is secured).
January 2018 to August 2018	Mobilisation of all agreed services for both HP and SM.
All Phase 2 Activities Commence – August 2018	

5.8. Considerable work has been undertaken so far and subject to CEC and CERF decision making process and approval, it is anticipated that High Peak waste collection would commence as described above on the 7 August 2017.

5.9. Throughout this process, regular progress updates have been provided to Ansa Directors and the Shareholder Board (CERF).

6. Wards Affected and Local Ward Members

- 6.1. The geographical operating area of the new JV sits beyond the eastern boundary of Cheshire East and therefore will have no impact upon any Wards or Ward Members of Cheshire East. All works undertaken by the JV will be done through facilities available within High Peak and Staffordshire Moorlands and will not impact upon services provided by Ansa to the residents of Cheshire East.

7. Implications of Recommendation

7.1. Policy Implications

- 7.1.1. The formation of the new JV as a stand alone entity is not within the geographical footprint of Cheshire East and as such has no direct impact on Cheshire East Council policy.

7.2. Legal Implications

- 7.2.1. Any JV by any ASDV or CERF requires Cabinet approval.
- 7.2.2. The creation of the JV and externalisation of the services from High Peak and Staffordshire Moorlands will be subject to The Public Contracts Regulations 2015 (PCR's).
- 7.2.3. However, Regulation 12 of the PCR's allows a third party contract with a "Teckal" compliant company not to be treated as a public service contract i.e. it can be treated as exempt from the PCR's.
- 7.2.4. For the exemption to apply the company needs to pass the "Control and Function Test". The requirements of which are as follows:
- The local authority needs to exercise decisive influence over strategic objectives and significant decisions;
 - Over 80% of the activities need to be undertaken / performed for the controlling public bodies;
 - The company cannot include any private sector ownership;
 - The primary purpose of the company is not commercially oriented i.e. it is mainly delivering public services
- 7.2.5. The JVCo will be structured to ensure that the "Control and Function Test" requirements are maintained by reserving specific decisions for agreement by all 3 shareholders. Ansa will receive services from the JVCo (albeit not on the scale of High Peak and Staffordshire Moorlands) to satisfy the activities requirement. Ansa will have to be mindful that should the "Control and Function Test" be challenged, Ansa will remain responsible for service delivery.

7.2.6. The Agreement between High Peak and the JVCo is a tripartite agreement with Ansa guaranteeing the performance of the services by the JVCo. Ansa is the principle obligor of the 3 parties forming the JVCo and will be primarily liable for the contracts performance over the 10 year contract term.

7.2.7. ANSA, High Peak and Staffordshire Moorlands can contract with each other to create a JV and award a service contract to ANSA without breaching the PCR's. However, the service contract between ANSA and the JV could impact on CEC's ability to remain within the Teckal exemption. In the event that the services provided to the JVCo, along with other services provided to entities other than CEC, exceed 20% of Ansa's total activities CEC will not be able to rely on Regulation 12(4) of the PCR's and directly award contracts to Ansa. This will be addressed as part of Ansa's reporting obligations under its operating agreement with the Council.

7.2.8. There will be a TUPE transfer of staff currently providing the services to High Peak and Staffordshire Moorlands as a result of the service contract.

7.2.9. In order to avoid illegal state aid Ansa must ensure that services provided to the JVCo are on a full cost recovery, inclusive of appropriate overheads, basis to ensure that the company does not receive a "competitive advantage".

7.2.10. The current Shareholders Agreement between CEC, CERF and Ansa will require amendment to ensure that no phase 2 activities are undertaken without the prior authorisation of CEC and CERF and amendments to the operating agreement between the council and Ansa may be required as a result of Ansa undertaking activities for the Joint Venture.

7.2.11. It is proposed that if for any reason phase 1 works fail to progress, the set-up costs will be borne in the following proportions:

- ANSA – 50%; and
- Staffordshire Moorlands and High Peak together – 50%.

7.2.12. For the avoidance of doubt, if the JV does not proceed then the set-up costs incurred to the date the parties agree not to proceed will be borne in proportions above. Any set-up costs in excess of £150 000 will be borne by ANSA.

7.3. Financial Implications

7.3.1. The business case prepared by Ansa will need to consider the full financial implications in respect of this proposal, including identifying

associated risks, and how risks and opportunities will be appropriately managed in the development of a commercial contract between Ansa, High Peak and Staffordshire Moorlands Councils.

- 7.3.2. It is clear that there are two distinct phases proposed - phase 1: waste collection services in High Peak (August 2017); and phase 2: waste collection services in Staffordshire Moorlands and potential other environmental services across both areas (by August 2018).
- 7.3.3. Consequently, it may be seen that in the development of the business case for Ansa – and in respect of necessary due diligence - these two phases should be recognised; and specifically, that committing to “Phase 1” activities in a contract with High Peak will not automatically commit the company to continue to “Phase 2”.
- 7.3.4. External professional advice will be procured, to carry out the necessary due diligence, and provide the levels of commercial experience and assurance necessary. Respecting the two phases, it is planned that they will be commissioned for a two-stage project; i.e.:
- Stage 1: finalise business case and due diligence for phase 1, and provide advice to Ansa on its business case development for phase two;
 - Stage 2: review/ finalise business case and due diligence on phase two
- 7.3.5. There will be preparatory and set-up costs involved in creating the JV, principally: financial systems build, including arrangements for payroll and transactional functionality; external legal advice; business case due diligence; internal professional corporate services support (legal and finance); bank account set up; statutory registrations etc. It is proposed that any preparatory and set-up costs are funded initially by use of the CERF Reserve; but that these are paid back on a commercial basis over the duration of the respective contracts. CERF Board has approved spend of up to £230,000, in this regard.
- 7.3.6. In the event of deciding not to proceed with either or both contracts (as relating to phase 1 and phase 2), it is noted that arrangements are being put in place to ensure that financial contributions are made in respect of abortive costs – by High Peak, Staffordshire Moorlands, and Ansa – in line with normal practices and with respect to the reasons for not proceeding. In this scenario and to the extent that there are any residual abortive costs not covered by contributions from High Peak and Staffordshire Moorlands, it is recommended that these are covered by Ansa.
- 7.3.7. To inform the “go/ no go” decision, the full business cases and supporting due diligence for both phase 1 and phase 2 will need to demonstrate the financial benefits for the Joint Venture Company and for Ansa, and also cover the financial relationship with CERF and the

Council, including sharing in financial gains, and the position/ actions in the event of any financial losses or failure of the JV.

7.3.8. The combined turnover of all related operations across High Peak and Staffordshire Moorlands is in excess of £7m per annum, with the waste collection service costs associated with Phase 1 (High Peak) being in the order of £2m per annum. A viable and acceptable business case for Cheshire East will be one that demonstrates positive financial returns for Ansa, CERF and the Council. In practice the costs of delivering services and realising financial savings for respective parties will be reflected in annual management fees and a rolling three-year service business plan. The contract with High Peak (for phase 1) and with both Staffordshire Moorlands and High Peak (for phase 2) will be commercially sound, including being clear on risk sharing arrangements and responsibilities for cost variations (e.g. changes in demand/ service levels). The contracts will also need to specify what will happen in the event of losses/ failure of the JV, for various reasons; how adverse implications may be managed or mitigated (e.g. guarantees in place; insurance arrangements); and how any residual losses will be shared between the parties.

7.3.9. Prior to commencement of phase 1 activities, full management fee schedule will be finalised and agreed with all parties.

7.4. Equality Implications

7.4.1. All of the geographical operating area of the new JV sits beyond the eastern boundary of Cheshire East and therefore will have no Equality implications for the Residents of Cheshire East.

7.4.2. For any service changes considered by the JV associated with services provided to the residents of High Peak and Staffordshire Moorlands full Equality Impact Assessments will be undertaken by the respective Councils

7.4.3. All employees transferring into the JV from the in-cumbent contractor (Veolia) or High Peak will do so under TUPE Regulations. These regulations preserve employees' terms and conditions when a business or undertaking is transferred to a new employer. In the longer-term and no sooner than the determination of phase 2 activities, consideration may be given to future harmonisation opportunities.

7.5. Rural Community Implications

7.5.1. The geographical operating area of the new JV sits beyond the eastern boundary of Cheshire East and therefore will have no impact upon the rural community of Cheshire East. All works undertaken by the JV will be done-so through facilities available within High Peak and Staffordshire Moorlands and will not impact upon services provided by Ansa to the residents of Cheshire East.

7.6. Human Resources Implications

7.6.1. The creation of the JV Trading Company and the award of contracts from HP and SM to the company for the delivery of services will result in the transfer of employees from their existing employer (Veolia) to the new company. Any transfers will be conducted in accordance with the TUPE process. Phase 1 activities (High Peak waste collection operations only) consist of 53 employees of which, over 90% are associated with front line activities. They will be transferred from their existing employer (Veolia) to the new company on 7th August 2017. Around 50% of the employees transferring within phase 1 are first-generation Local Government employees and as such are eligible for admitted body status in the Local Government pension Scheme managed by High Peak.

7.6.2. All human resource requirements associated with the transfer will be conducted by Ansa Environmental Services Limited.

7.6.3. Trade Unions associated with Ansa have been briefed.

7.7. Public Health Implications

7.7.1. The formation of the new JV as a stand alone entity is not within the geographical footprint of Cheshire East and as such has no direct impact on the public health of residents in Cheshire East.

7.8. Implications for Children and Young People

7.8.1. The formation of the new JV as a stand alone entity is not within the geographical footprint of Cheshire East and as such has no direct impact on the children and young people of Cheshire East.

7.9. Other Implications (Please Specify)

7.9.1. For the avoidance of doubt, the formation of the JV trading Company with High Peak and Staffordshire Moorlands will be a “stand-alone” legal entity operated specifically for the service needs of High Peak and Staffordshire Moorlands.

7.9.2. Although the service delivery model will closely align with that already operated by Ansa, other than a sharing of management capacity and other specialist services such as procurement and fleet management expertise the JV company will be self contained, utilising facilities and resources available within the boundaries of High Peak and Staffordshire Moorlands. All associated running costs including vehicle provision, disposal costs, procurement costs of replacement bins and other consumables will be contained within the JV Trading Company.

7.9.3. The operations conducted by Ansa, including the use of the new facilities being provided for Ansa within Middlesbrough to conduct its operations on behalf of CEC will not be affected by the proposed arrangement.

8. Risk Management

- 8.1. The project board have identified 11 strategic risks for Phase 1 activities. Each risk has a mitigation plan in place and will be closely monitored.
- 8.2. All phase 1 activities are time critical with the commencement date coinciding with the termination of the existing outsourced waste collection contract currently operated by Veolia, Any time delay could prove very disruptive and potentially costly for High peak in terms of negotiating a suitable short term extension with the incumbent provider or sourcing alternative arrangements.

9. Access to Information/Bibliography

- 9.1. For access to any further information contact the report author as listed below.

10. Contact Information

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