

Cheshire East Council

CABINET MEMBER FOR FINANCE AND COMMUNITIES

Date of Meeting: 4 August 2017

Report of: Director of Finance and Procurement (S151 Officer)

Subject/Title: ANSA Proposed JV Company – Due Diligence

Portfolio Holder: Cllr Paul Bates, Finance and Communities

1. Report Summary

- 1.1 On 13 June 2017 Cabinet considered a report on a possible opportunity being pursued by Ansa to form a JV Trading Company (JVCO) with High Peak Borough Council (HP) and Staffordshire Moorlands District Council (SM).
- 1.2 The development of the JV would be on an incremental basis and broken down into two discrete phases: Phase 1 covering the establishment of the JV and the delivery of waste collection activities within High Peak only with a commencement date of 7th August 2017; and phase 2 including the expansion of waste services to Staffordshire Moorlands and all other combined environmental services for both High Peak and Staffordshire Moorlands with commencement in August 2018.
- 1.3 Cabinet made the following recommendations:
 - Endorse in principle the business expansion opportunity being pursued by Ansa to form a JV Trading Company (JVCo) with High Peak and Staffordshire Moorlands.
 - 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.
 - 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.
 - Note that the CERF’s Shareholders’ Agreement requires CEC’s approval to form the JVCo.
 - 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.

- 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;
 - 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).
 - 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.
- 1.4 The financial, legal and technical details of the JV have now been finalised and due diligence completed for phase 1. This includes independent review and validation of the proposed business case and key contractual terms which has concluded that the proposed arrangement is commercially sound and there are no obvious material issues, inappropriate assumptions or clear material gaps that might give rise to significant risks of a financial, operational or reputational nature. Accordingly it is now proposed that the Council should proceed to establish the JV company.

2. Recommendation

2.1. The Portfolio Holder is recommended to:

- 2.1.1. Note the finalisation of financial legal and technical details of the JVCo and completion of detailed due diligence.
- 2.1.2. Note that the due diligence has concluded that the proposed arrangement is commercially sound, will deliver financial benefits to Ansa, CERF and the Council and has not identified any significant issues that would stand in the way of proceeding to establish the JVCo.

3. Other Options Considered

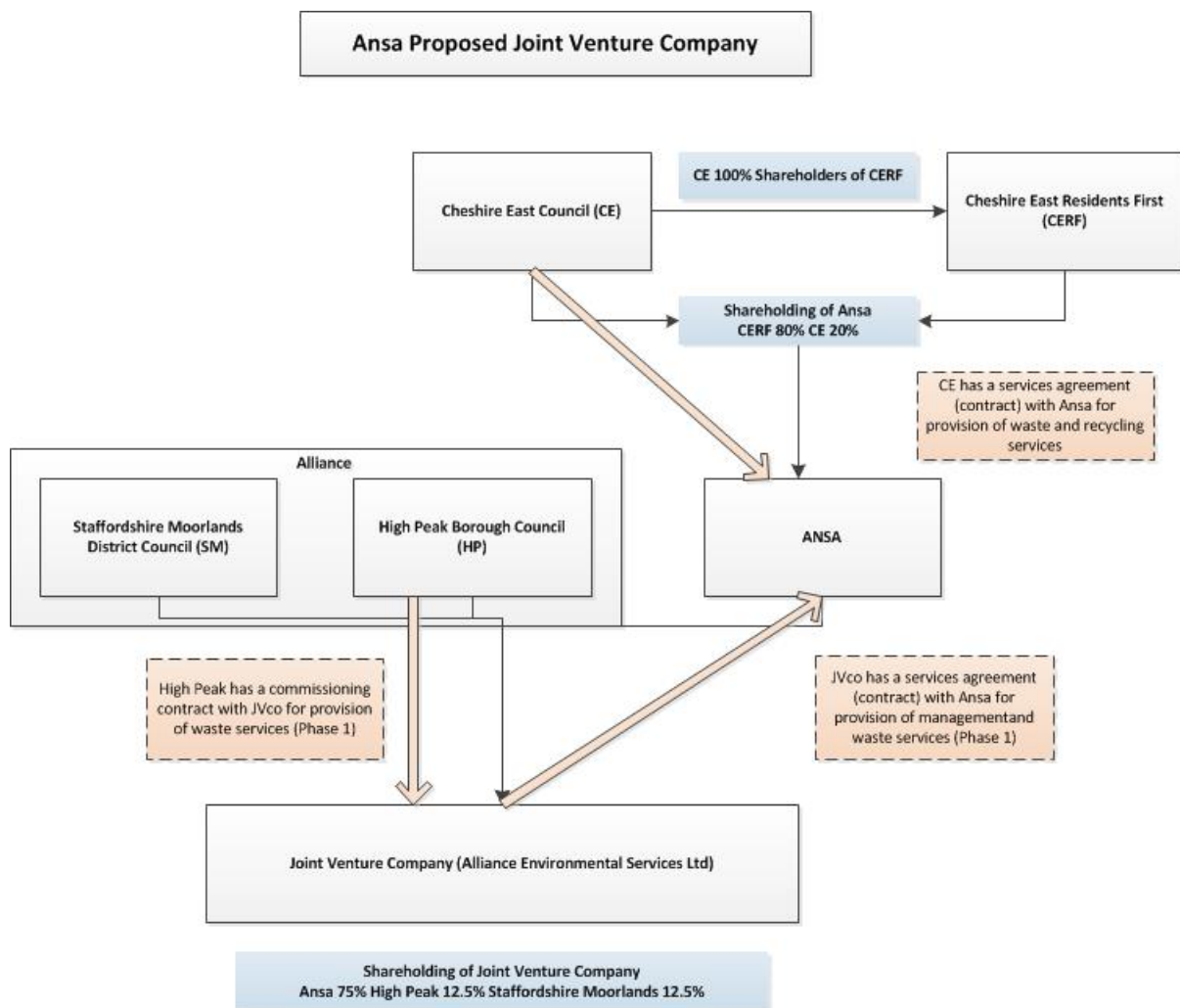
- 3.1 The Portfolio Holder could decide not to authorise the establishment of the JVCo. However, the expected benefits to Ansa and the Council would not be achieved and this would prove highly disruptive and potentially costly for High Peak in terms of putting alternative service delivery arrangements in place at such a late stage. It would be highly damaging to our relationship with two neighbouring Councils that are key strategic partners in delivering the sub-regional regeneration agenda and result in significant reputational damage to Cheshire East Council.

4. Reasons for Recommendations

- 4.1 Following the Cabinet decision in June 2017 detailed work has taken place to finalise the legal, financial and technical details of the JVCo. Detailed due diligence has been completed and has concluded that overall the JVCo will deliver benefits for Ansa, CERF and the Council and that the overall risk associated with phase 1 of the contractual arrangements is low. Accordingly there is no reason why the Council cannot now proceed to establish the JVCo.

5. Background/Chronology

- 5.1 On 13 June 2017 Cabinet considered a report on a possible opportunity being pursued by Ansa to form a JV Trading Company (JVCO) with High Peak Borough Council (HP) and Staffordshire Moorlands District Council (SM)
- 5.2 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 with a commencement date of 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.
- 5.3 Cabinet made the following recommendations:
- Endorse in principle the business expansion opportunity being pursued by Ansa to form a JV Trading Company (JVCo) with High Peak and Staffordshire Moorlands.
 - 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.
 - 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.
 - Note that the CERF’s Shareholders’ Agreement requires CEC’s approval to form the JVCo.
 - 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.
 - 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;
 - 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).
 - 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.
- 5.4 ANSA had been in negotiations with HP and SM to establish JVCO to provide waste services to HP and SM. The JVCO Shareholders’ Agreement proposes shareholdings are 75% ANSA, 12.5% HP and 12.5% SM. It is intended that JVCO will deliver services to HP (Phase 1) and will not automatically commit to deliver services to SM (Phase 2).



- 5.5 HP currently outsources their services to Veolia and that contract is due to come to an end in August 2017. It is envisaged that the JVCO will provide waste services to HP from 7th August 2017 under a service operating agreement. ANSA will provide management services to JVCO under a management services agreement. ANSA has indicated that it will also be receiving services from the JVCO as set out in the Services Operating Agreement.
- 5.6 Since the Cabinet decision in June 2017 the detailed business case for the JVCo has been subjected to external due diligence and the financial, legal and technical details of the JVCo finalised in consultation with the Portfolio Holder for Finance and Communities. Mobilisation plans for a contract start date of 7th August are at an advanced stage.

6. Wards Affected and Local Ward Members

- 6.1. The geographical operating area of the new JV is beyond the eastern boundary of Cheshire East and therefore will have no impact upon any wards or ward members 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 has no direct impact on Cheshire East Council policy.

7.2. Legal Implications

- 7.2.1 Legal services have reviewed:

- The Services Operating Agreement between HP, Ansa and the JVCO
- The Service Agreement between the JVCO and Ansa
- The Shareholders Agreement and Articles of Association

- 7.2.2 Full legal implications can be found in the cabinet report dated 13th June 2017. The general legal principles have not changed since that and the due diligence has been undertaken with reference to the legislative requirements set out in that report.

- 7.2.3 Legal services have worked with Ansa in the final stages of its negotiations with HP and there have been meetings with the Portfolio Holder and the Council's 151 Officer.

- 7.2.4 As with most ventures there is an element of risk of challenge particularly where new structures are being entered into. Steps have been taken to mitigate those risks. However the parties to the joint venture should be mindful of the risk of challenge particularly with regards to The Public Contracts Regulations 2015 (PCR's) and State Aid. The parties to the JVCO will also have to ensure that any future changes to the agreements are made with full cognisance of possible risks in order to continue to seek mitigate the same.

- 7.2.5 The Council and ANSA will through their existing close working relationship via Ansa's reporting obligations monitor the activities and any development of the joint venture particularly to ensure that they do not impact on the Council's contractual relationship with Ansa to ensure its continued reliance on Regulation 12(4) (Teckal) of the PCR's.

- 7.2.6 The due diligence currently only considers phase 1 of the joint venture with High Peak. The expectation is that by August 2018 the Joint Venture will also be providing services to SM. Further due diligence will be undertaken on phase 2 and Ansa has agreed that its Shareholders' Agreement with Cheshire East Residents First Ltd will be amended to reflect this.

7.3. Financial Implications

- 7.3.1 The business case prepared by ANSA includes a detailed financial model which has been independently reviewed and validated. This demonstrates that the JV arrangement will provide positive financial returns for ANSA, CERF and the Council.
- 7.3.2 The contractual arrangements are sound and risk sharing arrangements, responsibilities for cost variations and dividend policy are clearly set out in the associated legal documents. A full management fee schedule has been finalised and agreed with all parties.

7.4. Equality Implications

- 7.4.1 The geographical operating area of the JV sits beyond the eastern boundary of Cheshire East and therefore the establishment of the JV will have no equality implications for the residents of Cheshire East.
- 7.4.2 All employees transferring into the JV from the incumbent contractor or High Peak will do so under TUPE regulations.

7.5. Rural Community Implications

- 7.5.1 The geographical operating area of the JV sits beyond the eastern boundary of Cheshire East and therefore the establishment of the JV will have no impact upon the rural community of Cheshire East.

7.6. Human Resources Implications

- 7.6.1 The creation of the JV trading company and the award of contracts from High Peak and Staffordshire Moorlands to the company for the delivery of services will result in the transfer of employees from their existing employer to the new company. Any transfers will be conducted in accordance with TUPE,
- 7.6.2 All HR requirements associated with the transfer will be conducted by Ansa Environmental Services Ltd.
- 7.6.3 Trade unions associated with Ansa have been briefed.

7.7. Public Health Implications

- 7.7.1 The geographical operating area of the JV sits beyond the eastern boundary of Cheshire East and therefore the establishment of the JV will have no public health implications for Cheshire East residents.

7.8. Implications for Children and Young People

- 7.8.1 The geographical operating area of the JV sits beyond the eastern boundary of Cheshire East and therefore the establishment of the JV will have no public health implications for the children and young people of Cheshire East.

8. Risk Management

- 8.1 A full contract risk register has been developed and mitigating actions identified.
Overall the risk associated with phase 1 of the JV is considered low.

9. Access to Information/Bibliography

- 9.1. The background papers relating to this report can be inspected by contacting the report writer

10. Contact Information

Contact details for this report are as follows:

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