

## **Cabinet**

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**Date of Meeting:** 08 May 2018

**Report Title:** Alliance Environmental Services Ltd – Phase 2

**Portfolio Holder:** Cllr Paul Bates – Finance and Communication  
Cllr Don Stockton - Environment

**Senior Officer:** Frank Jordan, Executive Director of Place

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### **1. Report Summary**

- 1.1. Ansa Environmental Services Limited (Ansa), a company owned by Cheshire East Council was established in April 2014 with the objective of delivering key services, such as waste collection, to the residents of Cheshire East whilst at the same time looking to secure new income generating opportunities to assist the council in funding its essential services.
- 1.2. As such Ansa's business plan seeks to explore opportunities to expand its customer base. In June 2017 Cabinet gave approval for Ansa to form a Joint Venture (JV) Company called Alliance Environmental Services Ltd (AES) in collaboration with High Peak Borough Council (HPBC) and Staffordshire Moorlands District Council (SMDC).
- 1.3. It was also agreed that this Joint Venture would be developed on an incremental basis and in discrete phases. The first phase was implemented on 4 August 2017 and this delivered the successful transfer of waste collection and associated waste fleet management services from HPBC to Alliance Environmental Services. Although AES has only been trading for a relatively short amount of time, Phase 1 has been seen as a success by the JV partners (HPBC and SMDC). AES has continued to deliver services to a high standard whilst also being on target to achieve the desired efficiencies for High Peak Borough Council. In addition it is delivering the anticipated financial benefits back to Cheshire East Council.
- 1.4. This report seeks the approval of Cabinet to implement a second phase of this Joint Venture. The scope of Phase 2 will focus upon expanding the scope of services to incorporate waste collection and fleet management services currently being directly delivered by SMDC. This will include the TUPE (*Transfer of Undertakings, Protection of Employment*) transfer of existing employees from SMDC who are currently delivering the waste

collection service and a small number of mechanics and fitters from their outsourced fleet maintenance provider to AES.

- 1.5. The business case has been reviewed by the Council and also by independent external consultants (Retearn) who have supported the required due diligence process.
- 1.6. The geographical operating area of Phase 2 sits outside the boundary of Cheshire East. All works undertaken will be delivered through facilities available within Staffordshire Moorlands and will not impact upon services provided by Ansa to the residents of Cheshire East.
- 1.7. The purpose of the report is to secure Cabinet approval for Ansa via AES Ltd to deliver waste collection and associated waste fleet management for SMDC ( Phase 2) with a planned commencement date of 1<sup>st</sup> July 2018.
- 1.8. It is be noted that by committing to “Phase 2” activities, with AES contracting with Staffordshire Moorlands there will not be any further commitment to continue to any future phases.
- 1.9. Any further expansion of AES will be subject to a separate approval of Cabinet.

## **2. Recommendations**

- 2.1. Cabinet is recommended to:
  - 2.1.1. Note the findings of the due diligence work undertaken by Retearn and Cheshire East Council legal services on the detailed business plan for implementing Phase 2 (Appendices 1 and 2).
  - 2.1.2. Approve the expansion of Alliance Environmental Services to include the delivery of waste collection and fleet management services on behalf of Staffordshire Moorlands District Council.
  - 2.1.3. Authorise the Executive Director, Place in consultation with the Portfolio Holder for the Environment to finalise the financial, legal and technical details of Phase 2.

## **3. Reasons for Recommendation/s**

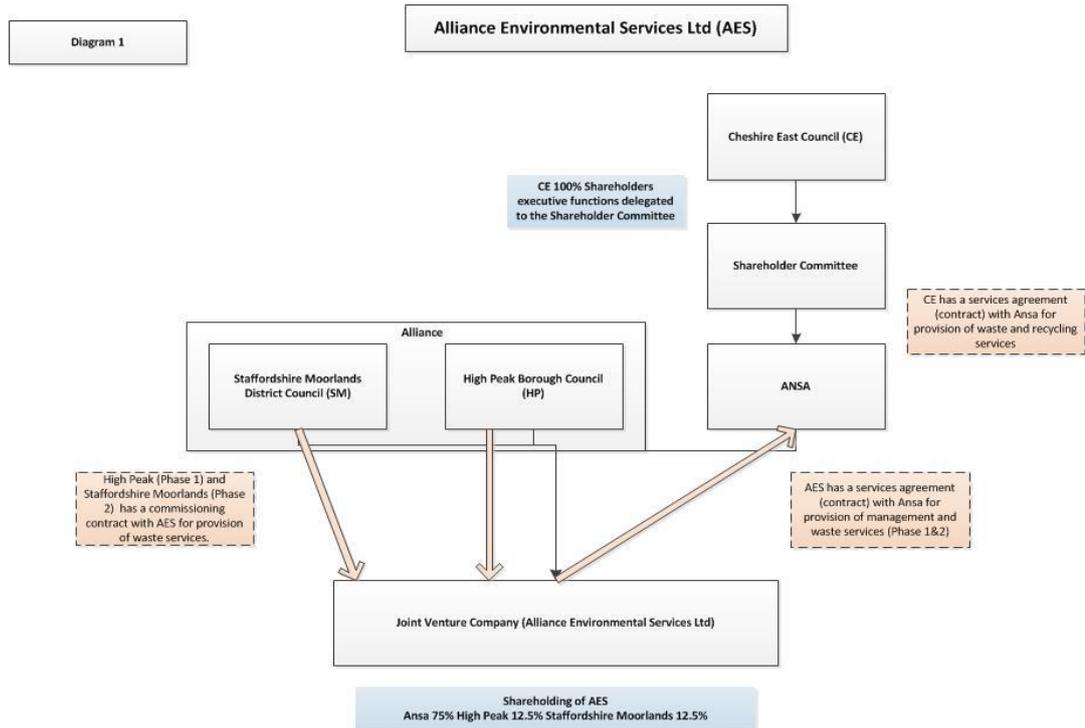
- 3.1. Phase 2 of the project is now focussed on progressing the expansion of AES as per the agreed objectives for the joint venture.

#### **4. Other Options Considered**

- 4.1. In February 2016 HPBC and SMDC considered three options for the future delivery of its Council's waste collection services. These included:
  - Delivery of services in-house
  - The contracting out of services
  - Exploring partnership models with other councils and/or providers.
- 4.2. Following an option appraisal undertaken by HPBC and SMDC it was concluded that the JV partnership model was the preferred option and on this basis AES was developed.
- 4.3. Ansa has considered the option of not progressing with Phase 2 however this would create the following risks:
  - Reputational damage
  - Potential damage to relationships with the existing JV partners
  - Reduced ability to deliver proposed efficiency savings on the phase 1 contract as economies of scale would be limited
  - Reduced ability to deliver the level of shared overheads between Ansa and AES over the contract lifetime that form a key element of the financial business case for the set-up of the initial joint venture.
- 4.4. As part of the due diligence work, Cheshire East Council has considered other options with regard to how Phase 2 can be delivered. The current governance structure has been reviewed including the option to restructure the governance arrangements. However having undertaken this review the current governance arrangements are the preferred option.

#### **5. Background**

- 5.1. At the June 2017 meeting of Cabinet, a business expansion opportunity for Ansa was considered with the establishment of a joint venture trading company with High Peak Borough Council and Staffordshire Moorlands District Council.
- 5.2. The first phase of this project went live, as scheduled, at midnight on Friday 4th August 2017 with the formation of AES Ltd. Waste collection services commenced on Monday 7th August 2017 for HPBC.
- 5.3. The governance arrangements established for Phase 1 will be replicated for Phase 2 and are shown in Diagram 1 below.



- 5.4. In developing the second phase for the project a project board has been established which includes representatives from Ansa and HPBC/SMDC (the management alliance). The Council has also established a project board to oversee the required due diligence and decision making processes.
- 5.5. Retearn have undertaken a due diligence exercise on the detailed business case for Phase 2 covering both the operating and financial risk (see Appendix 1, the Appendix contains exempt information and is included in Part 2 of the agenda). The highlights of their report are that:
- 5.5.1. Phase 1 is working very well and all KPIs are being met
- 5.5.2. The risk profile for Phase 2 is assessed as low, this is due to the Phase 2 model being a replication of Phase 1, the processes are identical, using the same staff, same vehicles and there are no concerns regarding an extension to AES's operating license.
- 5.5.3. It is acknowledged that whilst there is still some work to be done, the conclusion of the study is that a large proportion of the work is planned and that there is time to complete it prior to sign off and service commencement.
- 5.6. Ansa has a detailed management plan in place to effectively deliver the required work in time for the planned mobilisation date .

5.7. As identified by Retearn considerable work has been undertaken so far and subject to Cabinet approval it is anticipated that Staffordshire Moorlands waste collection would commence as of the 1<sup>st</sup> July 2018.

## **6. Implications of the Recommendations**

### **6.1. Legal Implications**

6.1.1. The creation of AES Ltd and externalisation of the services from High Peak and Staffordshire Moorlands is subject to The Public Contracts Regulations 2015 (PCRs).

6.1.2. However, Regulation 12 of the PCRs 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 PCRs.

6.1.3. 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.

6.1.4. The Agreement between Staffordshire Moorlands and AES is a tripartite agreement with Ansa guaranteeing the performance of the services by AES. Ansa is the principal obligor of the 3 parties forming AES and will be primarily liable for the contracts performance over the 10 year contract term.

6.1.5. ANSA, High Peak and Staffordshire Moorlands can contract with each other to create a JV (AES) and award a service contract to ANSA without breaching the PCRs. However, the service contract between ANSA and AES could impact on CEC’s ability to remain within the Teckal exemption. In the event that the services provided to AES, 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 PCRs and directly award contracts to Ansa. This will be addressed as part of Ansa’s reporting obligations under its operating agreement with the Council.

6.1.6. In order to avoid illegal state aid Ansa must ensure that services provided to AES are on a full cost recovery, inclusive of appropriate overheads,

basis to ensure that the company does not receive a “competitive advantage”.

6.1.7. Appendix 2 (The Appendix contains exempt information and is included in Part 2 of the agenda) provides further detail on the legal due diligence that has been undertaken by CEC legal services. It is recognised that the risks for Phase 2 remain the same as in Phase 1 and that Ansa’s replication of the AES model for Phase 2 will need to be carefully managed so as to ensure that, in the event that Ansa is no longer considered an in house company, it is in a position to stand alone in the market and bid for not only the Council’s contract but also the management services contracts of its joint ventures.

## **6.2. Finance Implications**

6.2.1. The business case prepared by Ansa for Phase 2 has considered 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.

6.2.2. External professional advice has been procured via Retearn, to carry out the necessary due diligence, and provide the levels of commercial experience and assurance necessary.

6.2.3. 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 2 (Staffordshire Moorlands) being in the order of £4m per annum. The business case for Cheshire East demonstrates positive financial returns for Ansa 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 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 specify what will happen in the event of losses/ failure of AES, 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.

6.2.4. Prior to commencement of phase 2 activities, full management fee schedule will be finalised and agreed with all parties.

### **6.3. Policy Implications**

6.3.1. The expansion of AES Ltd to include Phase 2 is not within the geographical footprint of Cheshire East and as such has no direct impact on Cheshire East Council policy.

### **6.4. Equality Implications**

6.4.1. The geographical operating area of Phase 2 sits beyond the eastern boundary of Cheshire East and therefore will have no Equality implications for the Residents of Cheshire East.

6.4.2. For any service changes considered by Phase 2 associated with services provided to the residents of Staffordshire Moorlands full Equality Impact Assessments will be undertaken by the respective Councils

6.4.3. All employees transferring into AES Ltd from SMDC will do so under TUPE Regulations. These regulations preserve employees' terms and conditions when a business or undertaking is transferred to a new employer.

### **6.5. Human Resources Implications**

6.5.1. The implementation of Phase 2 will result in the transfer of employees from SMDC to AES. Any transfers will be conducted in accordance with the TUPE process. Phase 2 activities will impact 55 existing waste collection employees who are directly employed by SMDC including a small management/administrative team along with vehicle drivers/loaders. In addition to SMDC employees there is a small number of fleet mechanics (5) who will have TUPE rights to transfer to AES from the incumbent fleet provider. All human resource requirements associated with the transfer will be conducted by Ansa Environmental Services Limited.

### **6.6. Risk Management Implications**

6.6.1. A detailed risk register has been developed that sets out the potential risks and opportunities associated with the project. Each risk has a mitigation plan in place and is closely monitored.

### **6.7. Rural Communities Implications**

6.7.1. The geographical operating area of Phase 2 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.

## **6.8. Implications for Children & Young People**

6.8.1. The geographical operating area of Phase 2 sits beyond the geographical footprint of Cheshire East and as such has no direct impact on the children and young people of Cheshire East.

## **6.9. Public Health Implications**

6.9.1. The geographical operating area of Phase 2 sits beyond the geographical footprint of Cheshire East and as such has no direct impact on the public health of residents in Cheshire East.

## **7. Ward Members Affected**

7.1.1. The geographical operating area of Phase 2 sits outside the boundary of Cheshire East and therefore will have no impact upon any Wards or Ward Members of Cheshire East. All Phase 2 works will be done through facilities available within Staffordshire Moorlands and will not impact upon services provided by Ansa to the residents of Cheshire East.

## **8. Consultation & Engagement**

8.1. Throughout the development of Phase 2, regular progress updates have been provided to Ansa Directors and CEC Portfolio Holders.

8.2. During the mobilisation period, employee consultation will be conducted with all employees within scope for the TUPE transfer. This will be done in accordance with formal consultation procedures that will be initiated by SMDC as the existing employer and then subsequently managed by Ansa/AES.

8.3. Residents of SMDC will be consulted over any proposed service changes that they may experience as a consequence of the transition between service providers.

8.4. Trade Unions associated with Ansa have been briefed.

## **9. Access to Information**

9.1. Appendices 1 and 2 to this report contain exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972 (Information relating to the financial or business affairs of any particular person (including the authority holding that information)) and are therefore NOT FOR PUBLICATION. The Appendices will be considered in Part 2 of the agenda.

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

## **10. Contact Information**

10.1. Any questions relating to this report should be directed to the following officer:

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