

REPORT TO: Cabinet Member Technical Services
Cabinet

DATE: 15th December 2010
16th December 2010

SUBJECT: Merseyside Engineers Laboratory Service (MELS)

**WARDS
AFFECTED:** All

REPORT OF: Andy Wallis Planning & Economic Regeneration Director

**CONTACT
OFFICER:** Stuart Waldron Assistant Director Transport & Spatial Planning
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**EXEMPT/
CONFIDENTIAL:** No

PURPOSE/SUMMARY:

To appraise Members of the current situation with regard to the support and funding for the Merseyside Engineers Laboratory Service (MELS) for which Sefton Council is the lead authority and accountable body on behalf of the five Merseyside Districts. The report highlights the current and future budget situation that impacts on the viability of this Business Unit and hence staff resources.

REASON WHY DECISION REQUIRED:

Sefton Council act as lead authority and accountable body for the Merseyside Engineers Laboratory Service within the terms of a formal Agreement governing the service. Reduced demand for the service, due to the current financial situation, has resulted in a need to review the viability of this Business Unit. The Council as lead authority needs to approve and implement the outcome of the review, in consultation with the District Partners.

RECOMMENDATION(S):

It is recommend that Cabinet Member Technical Services recommends to Cabinet

1. The Merseyside Districts Authorities view that sufficient funding and hence commissions will not be available in the foreseeable future to maintain the Merseyside Engineers Laboratory Services as a viable Business Unit be noted.
2. In accordance with the Service Agreement with the Merseyside Districts Authorities the withdrawal of Sefton Council's consent to act as Designated

Council and the termination of the MELS Agreement be approved.

3. That officers continue to seek the full co-operation of the partner District Authorities to seek redeployment of the staff and to explore opportunities for the potential future utilisation of these specialist skills and equipment, including by private sector interests.

Note that this will involve a reduction in staff, to be achieved through the Council's normal personnel procedures and if necessary compulsory redundancies. Under the terms of the Agreement all the Merseyside District Authorities will be responsible for considering redeployment opportunities and to share any costs.

KEY DECISION: No

FORWARD PLAN: No

IMPLEMENTATION DATE: Following the expiry of the 'call in' period for the minutes of the meeting.

ALTERNATIVE OPTIONS:

The current joint Agreement for the service permits one of the other constituent authorities to take over the responsibilities of Designated Council and become the accountable body for the service. All four districts have been consulted and all have indicated they do not wish to pursue this course of action.

IMPLICATIONS:

Budget/Policy Framework: The service currently places demands on the Aids to Movement Budget within the Technical Services Portfolio with regard to the council's contribution to a 'core' fee (£15k/yr) and to cover any annual deficit in the budget after fees from commissions are taken into account.

Financial:

<u>CAPITAL EXPENDITURE</u>	2006/ 2007 £	2007/ 2008 £	2008/ 2009 £	2009/ 2010 £
Gross Increase in Capital Expenditure				
Funded by:				
Sefton Capital Resources				
Specific Capital Resources				
<u>REVENUE IMPLICATIONS</u>				
Gross Increase in Revenue Expenditure				
Funded by:				
Sefton funded Resources				
Funded from External Resources				
Does the External Funding have an expiry date? Y/N	When?			
How will the service be funded post expiry?				

Legal:

The terms and conditions of the Legal Agreement between the Constituent Authorities have been considered in compiling this report.

Risk Assessment:

Asset Management:

CONSULTATION UNDERTAKEN/VIEWS

FD573 The Interim Head of Corporate Finance & Information Services has been consulted and has no comments on this report.

LEGAL SERVICES DEPARTMENT

CORPORATE OBJECTIVE MONITORING:

<u>Corporate Objective</u>		<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		√	
2	Creating Safe Communities			√
3	Jobs and Prosperity			√
4	Improving Health and Well-Being			√
5	Environmental Sustainability			√
6	Creating Inclusive Communities		√	
7	Improving the Quality of Council Services and Strengthening local Democracy			√
8	Children and Young People		√	

LIST OF BACKGROUND PAPERS RELIED UPON IN THE PREPARATION OF THIS REPORT

The Merseyside Engineers Laboratory Services Agreement of January 1992, amended in November 1994.

1.0 Background

- 1.1 The establishment of a Merseyside Engineers Laboratory Service (MELS) dates back to the former County Council, and on abolition Sefton Council became the lead authority and accountable body.
- 1.2 A formal Agreement was signed on the 22nd January 1992 by the five Merseyside District Authorities (Sefton, St Helens, Wirral, Liverpool and Knowsley) to formally establish management and accountability responsibilities, including details of how the constituent authorities may withdraw from the Agreement. A supplementary Agreement was signed on the 7th November 1994 amending the period of notice for a Constituent Authority to withdraw from 12 months to 3 months.
- 1.3 Within the terms of the Agreement, as lead authority and accountable body Sefton Council became 'the Designated Authority', the other four district authorities being referred to as 'Constituent Authorities'.
- 1.4 As a consequence the Council operate a Business Unit on behalf of the Merseyside Districts. It is intended that the service shall be non-profit making and self financing with the charge for each element of the service being derived from and assessment of the costs involved.
- 1.5 The services provided by MELS include:
 - Highways and geotechnical laboratory services
 - Materials testing/failure analysis
 - Site investigations
 - Road condition surveys
 - Technical/policy support
 - Project management support
 - Research/innovation support and advice.
- 1.6 The service employs 9.5 fte staff and is based in the Cambridge Road Depot in Seaforth.

The Constituent Authorities undertake to use their best endeavours to make the fullest possible use of the Laboratory Service to satisfy their particular needs.

The operational budget is circa £600,000 per year. To fund this the 5 Districts are charged a core fee totalling £78k per year (Sefton - £15k / yr), the remaining funding coming from fees for individual work commissions. These commissions are mainly by the five Merseyside Districts, but work from other neighbouring authorities has been undertaken.

Typically over recent years departments within Sefton Council have commissioned over 40% of the value of commercial works delivered i.e. relating to Highway Maintenance and Improvement Schemes, monitoring third

party works within the highway and property and architectural services projects. Forecasting for all these areas of work indicate substantial reductions in funding and even cessation of programmes. In addition to maximise what can be achieved with available funding the scope and scale of services currently sought relating to material testing and surveys will be reduced.

- 1.7 Any deficit in the annual account results in a supplementary invoice to the Constituent Authorities in accordance with the population based distribution formula.

2.0 Service Review

- 2.1 Over recent financial years the volume of commissions placed by the Constituent Authorities has declined.

- 2.2 In the current financial conditions with substantially reduced capital and revenue budgets for maintenance and new improvement schemes the potential to grow and develop the business has become extremely difficult to achieve. All the Constituent Authorities have confirmed this position.

- 2.3 Efforts have been made to find new initiatives to support the business, including work to monitor the standard of statutory undertakers' reinstatements, and seek replacement as appropriate. However, this approach requires significant management and administrative time from core partner resources that all districts report as being under pressure. Commissions from other authorities have also been sought but again opportunities are becoming increasingly limited.

- 2.4 The Constituent Authorities are all concerned about the increasing demand to cover deficits in the operational budget from revenue budgets at a time when substantial cuts are under consideration. As a consequence the future of the service has been reviewed and the following options considered:

- i) New Agreement with financial arrangements that guarantee sufficient work to provide a Balanced Account.

All districts have indicated they could not sign up to a commitment that provides a guaranteed level of work.

- ii) Externalise the Services with existing Private Sector Partner or to the Open Market.

A number of the Constituent Authorities have arrangements in place with private sector companies providing services that link into those provided by MELS.

Assessments of this option would indicate complex legal and financial issues, and private sector partners requiring exclusivity of use and possibly mandatory buy in to services.

The Constituent Authorities have indicated that they would not be in a position to sign up to such agreements, and in addition significant liabilities would be retained, particularly on the lead authority.

iii) Closure of the Service

The scope and scale of demand for the MELS services by each Constituent Authority will be substantially reduced due to greatly reduced capital and revenue budgets from 2011/12 onwards. As a consequence, it is considered a viable service cannot be maintained at current resource levels. Options to reduce resource levels have been considered but to be viable a range of services would still need to be available that could be difficult to achieve, and furthermore the level of on-costs associated with the service will become disproportionately high significantly affecting the value for money provided.

2.5 Directing Group Recommendation

The MELS Agreement established a Directing Group to manage the service comprising Chief Officers or nominees from the five Merseyside Districts as Constituent Authorities.

The Directing Group has considered in detail the review of the service and concluded that a viable Business Unit cannot be maintained and hence the service should be discontinued in its present form.

Assessments of the options to sell or externalise the service in its current form would indicate it is not a commercially viable proposition and substantial alterations to operating practice and resources would be required.

3.0 Proposal

3.1 As Designated Council, the Agreement places increased liabilities on Sefton Council as lead authority and accountable body. The impacts on revenue budgets with no return on expenditure are unsustainable. As a consequence it is recommended that taking the views of the Constituent Authorities through the Directing Group into account, the Council take the lead and give notice to withdraw its consent to be the Designated Council and to terminate the Agreement.

3.2 Procedure for Termination

In accordance with the Merseyside Engineers Laboratory Services Agreement of January 1992, amended in November 1994, the following clauses are relevant to the proposed termination of the Agreement:

- i) The Constituent Authorities must give not less than three months notice of termination.

- ii) The Designated Council (Sefton Council) may give notice unto itself.
- iii) The Designated Council may give not less than three months notice to the Constituent Authorities to withdraw its consent to act as Designated Council. In this event the Agreement will terminate when withdrawal takes effect unless the Constituent Authorities have agreed another Council will be the Designated Council.
- iv) with regard to terminating the Agreement the Constituent Authorities responsibilities will be:
 - In the event that the service shall be discontinued the Constituent Authorities shall share in equal proportion the cost of such discontinuance account being taken of the cost of any redeployment of staff undertaken by the Constituent Authorities.
 - The Constituent Authorities will use their best endeavours to redeploy the staff appointed to the service within their own establishments.
 - The Constituent Authorities shall pay a proportion of all other outstanding debts such proportion being related to the respective populations of the Constituent Authorities.

3.3 The Director of Planning and Economic Development as Sefton's representative on the Directing Group has requested each of the Constituent Authorities to advise if Sefton withdraw as Designated Council if their authority would wish to take over this position as permitted in the Agreement. The other four Merseyside District Authorities have confirmed they would not wish to become the Designated Authority

3.4 It is therefore proposed that:

Sefton gives notice that it withdraws its consent to act as Designated Council – Clause 10(1) – 1992 Agreement as amended by Clause 2 of the 1994 Agreement

Sefton gives notice to terminate the Agreement – Clause 2(1) – 1992 Agreement as amended by Clause 1 of the 1994 Agreement.

3.5 If approved it is proposed to give formal notification of these actions on the 31st December 2010 to become effective on the 31st March 2011.

3.6 The Council will have to issue statutory notices to the staff on the 31st December 2010, to permit termination of employment on the 31st March 2011.

The reduction in staff will be achieved through the Council's normal personnel procedures and if necessary compulsory redundancies. Under the terms of the Agreement all the Merseyside District Constituent Authorities will be responsible for considering redeployment opportunities and to share the costs.

4.0 External Mitigation

- 4.1 The demand for the services provided by MELS is required on a commercial basis on a geographically wider and more focused basis than the MELS Agreement would permit to be considered.
- 4.2 There may be an opportunity for the private sector to utilise the expertise and skills of the MELS staff to establish a fully commercial private sector venture. Furthermore the Council will have equipment for disposal and a vacant facility to manage. Should such interest come forward the Council will seek to co-operate opportunities to mitigate the impact of the service termination.

5.0 Conclusion

- 5.1 The Directing Group of representatives from the five Merseyside District Constituent Authorities stressed that concluding that the service viability can no longer be maintained, was not a reflection of the excellent service provided by MELS over many years.
- 5.2 As Designated Council it is correct that the Council in partnership with the Constituent Authorities should take the lead in managing the way forward.
- 5.3 The proposed termination of the Agreement is considered the appropriate way forward to reduce unsustainable demands on revenue budgets.

6.0 Recommendation

It is recommend that Cabinet Member Technical Services recommends to Cabinet

- (i) The Merseyside Districts Authorities view that sufficient funding and hence commissions will not be available in the foreseeable future to maintain the Merseyside Engineers Laboratory Services as a viable Business Unit be noted.
- (ii) In accordance with the Service Agreement with the Merseyside Districts Authorities the withdrawal of Sefton Council's consent to act as Designated Council and the termination of the MELS Agreement be approved.

Note that this will involve a reduction in staff, to be achieved through the Council's normal personnel procedures and if necessary compulsory redundancies. Under the terms of the Agreement all the Merseyside District Authorities will be responsible for considering redeployment opportunities and to share any costs.