

Report to the Cabinet



**Epping Forest
District Council**

Report reference: C-015-2019/20

Date of meeting: 31st October 2019

Portfolio: Contracts and Technical

Subject: Charging for risk assessment and sampling of private water supplies.

Responsible Officer: Simon Bell (01992 564705)

Democratic Services: Adrian Hendry (01992 564246)

Recommendations/Decisions Required:

- 1) To note that strong progress has been made to improve private water supplies in the district to protect human health and vulnerable communities. The initial risk assessment, sampling and enforcement of majority of high-risk supplies in the district is now completed or improvements are in progress;**
- 2) Recommended that the Council begin charging for risk assessment and sampling of private supplies now that most immediate health risks are mitigated for the majority of supplies and that on-going sampling and risk assessment costs can be recovered;**
- 3) Recommended that the Council begin charging for officer time and mileage as permitted in legislation;**
- 4) Subject to agreement of the above that an additional CSB budget allocation of £10,000 per annum be agreed to meet the sampling costs to be subsequently recovered from property owners.**

Executive Summary:

The Council has a statutory duty to inspect, risk assess, sample and regulate private water supplies used for domestic purposes in our district. Private water supplies are non-mains water supplies such as a well or spring or onward supply of mains water to other properties. The Council has a duty to protect public health and is legally entitled to recover costs for carrying out this work from private supply owners. To date, these services have all been provided free of charge whilst the initial legislation was implemented. This situation is unique amongst local authorities who invariably recover their costs.

Private water supplies are often in rural areas and feature across the large horticulture sector in the district which have many migrant workers living in caravans on site. The Council has 92 recorded private water supplies within the district. 23 of the larger supplies must be sampled every year for three years according to private water supply legislation, the cost of which is circa £700 in laboratory analysis that the Council can recharge to recover this cost. In 2015 the Council was behind schedule for completing initial risk assessments and was criticised by the Drinking Water Inspectorate. Since then the Council have risk assessed and improved the majority of large supplies including 20 former private water supplies on the Council register have been replaced by connecting to the mains supply. Roughly 85% of the remaining larger supplies within the district have been risk assessed. 3 of these sites currently have applications to connect to the mains supply. Many more of these supplies have been significantly improved whilst these services were provided without charge.

The cost of providing sample analysis to all sites required in legislation will be circa £16,000 per annum for the next three years and then can be expected to reduce as more data is available. If the

regime proposed in the Resources section is implemented this value can be expected to be recovered per year with appropriate officer time for the next three years, and this would reduce for future years.

If a supply fails to meet the required standard the Council must serve Statutory Notices under the Regulations to require site owners to improve their private water supplies to protect human health and comply with statutory requirements. The Council has successfully prosecuted non-compliant supply owners.

Reasons for Proposed Decision:

The Council has a statutory duty to risk assess, inspect, sample and enforce private water supplies within the district. The reason for the proposed charging regime is because the cost of carrying out this work to the Council is significant and the Council is permitted to reclaim reasonable costs. The Regulations that were amended in 2018 require an additional duty to sample large suppliers for a wide range of parameters for three years to gather baseline data. To collect three years of sampling data is expected to cost circa £16,000 per year in laboratory analysis fees. These duties protect human health and some communities including children who may be put at risk by consuming contaminated water.

Other Options for Action:

The Council has a Statutory duty to undertake these services, the below options were considered and rejected:

1. The Council could continue to provide these services free of charge however this is considered unsustainable in financially challenging times that all local authorities are facing.
2. The Council could consider charging the full amount of analysis costs incurred only which would return partial costs incurred but not account for officer time or mileage. This would mean costs would be incurred by the Council but to a lesser extent than providing all services free.
3. The Council could choose not to fully undertake these Statutory Duties and be open to the risk to human health and public criticism from Central Government agencies such as the Drinking Water Inspectorate (DWI). This is not considered an acceptable solution as many of the supplies in the district could pose a significant risk to human health if unregulated.

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1. The Council has a Statutory Duty to undertake inspection, risk assessment and sampling of private water supplies. Unwholesome supplies sampled within the district include those significantly contaminated with bacteria and chemicals that can pose significant risks to human health such as E Coli.
2. The Council has 92 private water supplies on our register within the district. Whilst there are some more rural districts that have more supplies than this, many supplies in Epping Forest are large and complex mainly due to the horticultural nursery industry located here. There are also likely to be additional supplies within the district that have not yet been identified.
3. In 2015 the Council was criticised by the Drinking Water Inspectorate (DWI) for the failure to complete risk assessments and that supplies they witnessed in the district were among the worst they had ever seen. They featured these sites in their annual Chief Inspectors Report.
4. Historically the Council was behind schedule in completing initial risk assessments and sampling due to lack of resources and resistance of site owners. Site owners from the horticultural sector had meetings with the former CEO in response to investigation and enforcement of their private water supplies.
5. However strong progress has been made to improve high-risk supplies across the district and protect persons including migrant workers and their families living on these sites from harmful chemical and bacterial contamination.
6. Since 2015 the Council have risk assessed the majority of large supplies including 20 former private water supplies on the Council register have been replaced by connecting to the mains. Roughly 85% of the remaining large supplies within the district have been risk assessed. 3 of these sites currently have applications to connect to the mains supply. Through encouragement and enforcement, many more of these supplies have been significantly improved during the period that these services were provided without charge and human health has been protected.
7. In 2018, the DWI featured two of our large private water supplies within their Chief Inspectors Report detailing successful improvements to two private water supplies through Council investigation and enforcement.
8. Updated legislation in 2018 required that for large and commercial supplies, the council must collect three years of sampling data with each visit costing circa £700 in laboratory sample analysis which does not account for officer time and mileage. Following completion of three years of analysis, if the supply complies with the Regulations, certain parameters can be excluded from the sampling routine. Some of these supplies have already been risk assessed, sampled and improved voluntarily or through enforcement by the Council and are now compliant.
9. Since 2015 the Council has spent circa £16,000 with Affinity Water in sample analysis, most of this expenditure could have been recovered if a charging regime was in place. Due to amended regulations, the duty to sample supplies is more extensive going forward. Officer time and mileage could also have been reclaimed since 2009 but is harder to calculate than laboratory costs.
10. To meet our statutory duties an additional budget allocation would be required of £10,000. If using the proposed charges in the resource section overleaf, the estimated sampling and analysis costs can be expected to be recovered as well as some officer time for the first three years which would then reduce for following years.
11. Charging for this work will inevitably cause some resistance from site owners however it should encourage owners to take more responsibility for maintaining and improving their supplies to reduce their costs. Currently the tax payers of the district are effectively subsidising the risk assessment and sampling of these supplies.
12. The table below shows the numbers and types of private water supplies currently known within the district and when we are required to sample or risk assess.

	N ^o known supplies	Notes
Private distribution network *	24	Sampling based on risk, not sampled annually.
Large / Commercial Supplies	23	Must be sampled annually for all parameters for 3 years, then reduce parameters. Risk assessment every 5 years.
Other Supplies	10	Must be sampled every 5 years, likely to include more parameters.
Single Domestic Supplies	35	May be undertaken at authority discretion and must be if requested.
Total Supplies	92	

* Private distribution network – onward supply of mains-derived water distributed to additional properties beyond the water company's assets.

13. There will also be an income from cost recovery for officer time and mileage for risk assessment and sampling visits as detailed in the Resources Section but this cannot be readily quantified at this time.

14. Not recovering any of the costs incurred in inspecting, risk assessing and sampling private supplies is a significant cost for the council that we must incur which the supply and supply owners could reasonably be expected to bear a proportion of.

15. To not create a monopoly on this service, site owners can be encouraged to use suitably qualified and competent private companies to sample and risk assess their supplies. Independent contractors would need to be used for risk assessment, accredited transport and analysis. Contractors would need to be approved by the Council and provide certainty that the services required would meet high standards for all parts of the process. The limitation of this route is that the Council is required to monitor supplies to an approved standard and may lose assurance of quality. Whilst owners could contact a respected and independent company such as a Water Undertaker it may not be cost effective for a single supply owner due to economies of scale.

Resource Implications - Proposed Charging Regime

Service (activity)	Maximum Proposed Charges
Risk assessment (each assessment)	£500 – hourly officer rate + Mileage
Sampling (each visit) (1)	£120 – hourly officer rate + Mileage
Investigation (each investigation)	£80 - Hourly officer rate and mileage
Analysing a sample: taken under regulation 10 (for parameters referred to in paragraph (1)(a) to (e) of that regulation) 25	£10* – At Cost Rounded Down
Analysing a sample: taken during monitoring for Group A parameters	£42* – At Cost Rounded Down
taken during monitoring for Group B parameters	£500 – At Cost Rounded Down

* Unless additional chemicals are sampled for based on risk assessment.

There is an existing budget allocation for private water supply sampling and laboratory analysis of £6,000 per annum. However, an increase in the CSB allocation of £10,000 to £16,000 per annum is required to cover initial analysis costs for the first three years. These costs can then be reasonably expected to be recovered with an overall CSB saving for 2020-21 of £6,000 that was previously allocated. Officer time will be recovered as calculated by Finance as well as sampling assessment costs.

Legal and Governance Implications:

The legal and governance implications may include debt collection for non-payment of invoices and require officers to be diligent in recording time, mileage and hours spent on work. Undertaking this work is a statutory duty and the Council is legally permitted to recover these costs as detailed in the Private Water Supplies (England) Regulations 2016 (As Amended).

Safer, Cleaner and Greener Implications:

Ensuring a wholesome supply of water for domestic purposes for all the residents within our district is an important part of making the district safer for people to live and work in. Recovering cost for private water supply work will also help that we can continue to improve public health and reduce pollution across the district.

Consultation Undertaken:

Legal department to be consulted however the appropriate legislation which permits charging which is the Private Water Supplies (England) Regulations 2016 (As Amended). Further consultation not considered necessary at this time.

Background Papers:

Private Water Supplies (England) Regulation 2016 (As Amended)

Drinking Water Inspectorate – Regulation 21 Guidance Note on Charging

Appendix 1. Equality Impact Assessment

1. Under s.149 of the Equality Act 2010, when making decisions, Epping District Council must have regard to the Public Sector Equality Duty, ie have due regard to:
 - eliminating unlawful discrimination, harassment and victimisation, and other conduct prohibited by the Act,
 - advancing equality of opportunity between people who share a protected characteristic and those who do not,
 - fostering good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.
2. The characteristics protected by the Equality Act are:
 - age
 - disability
 - gender
 - gender reassignment
 - marriage/civil partnership
 - pregnancy/maternity
 - race
 - religion/belief
 - sexual orientation.
3. In addition to the above protected characteristics you should consider the cross-cutting elements of the proposed policy, namely the social, economic and environmental impact (including rurality) as part of this assessment. These cross-cutting elements are not a characteristic protected by law but are regarded as good practice to include.
4. The Equality Impact Assessment (EqIA) document should be used as a tool to test and analyse the nature and impact of either what we do or are planning to do in the future. It can be used flexibly for reviewing existing arrangements but in particular should enable identification where further consultation, engagement and data is required.
5. Use the questions in this document to record your findings. This should include the nature and extent of the impact on those likely to be affected by the proposed policy or change.
6. Where this EqIA relates to a continuing project, it must be reviewed and updated at each stage of the decision.
7. **All Cabinet, Council, and Portfolio Holder reports must be accompanied by an EqIA.** An EqIA should also be completed/reviewed at key stages of projects.
8. To assist you in completing this report, please ensure you read the guidance notes in the Equality Analysis Toolkit and refer to the following Factsheets:
 - Factsheet 1: Equality Profile of the Epping Forest District
 - Factsheet 2: Sources of information about equality protected characteristics
 - Factsheet 3: Glossary of equality related terms
 - Factsheet 4: Common misunderstandings about the Equality Duty
 - Factsheet 5: Frequently asked questions
 - Factsheet 6: Reporting equality analysis to a committee or other decision making body

Section 1: Identifying details
Your function, service area and team: Environmental Protection and Drainage, Contracts and Technical Services
If you are submitting this EqIA on behalf of another function, service area or team, specify the originating function, service area or team: No
Title of policy or decision: Charging for risk assessment and sampling of private water supplies.
Officer completing the EqIA: Simon Bell Tel: 4705 Email: sbell@eppingforestdc.gov.uk
Date of completing the assessment: 25/09/2019

Section 2: Policy to be analysed	
2.1	Is this a new policy (or decision) or a change to an existing policy, practice or project? Yes
2.2	Describe the main aims, objectives and purpose of the policy (or decision): The Council is required to undertake risk assessment, sampling and analysis of private water supplies used for domestic purposes such as wells to protect human health. To date the Council has not recovered these costs. Under the specific legislation the Council is permitted to recover reasonable costs incurred in undertaking this work from the owners of these supplies which includes businesses and home owners. The purpose of this report is to begin recharging for these services as permitted in legislation and ultimately protect human health from contaminated and high risk water supplies. What outcome(s) are you hoping to achieve (ie decommissioning or commissioning a service)? Cost recovery for private water supply services to help future proof these services to ensure the Council meets its statutory duties in the climate of financial restrictions for local authorities.
2.3	Does or will the policy or decision affect: <ul style="list-style-type: none"> • service users • employees • the wider community or groups of people, particularly where there are areas of known inequalities? Service Users – local businesses, local residents, horticulture sector. Will the policy or decision influence how organisations operate? No
2.4	Will the policy or decision involve substantial changes in resources? No

2.5	Is this policy or decision associated with any of the Council's other policies and how, if applicable, does the proposed policy support corporate outcomes? No
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Section 3: Evidence/data about the user population and consultation¹

As a minimum you must consider what is known about the population likely to be affected which will support your understanding of the impact of the policy, eg service uptake/usage, customer satisfaction surveys, staffing data, performance data, research information (national, regional and local data sources).

3.1	<p>What does the information tell you about those groups identified?</p> <p>The population likely to be affected by this change is owners and occupiers of properties supplied by private water systems. These properties are often in more remote areas not supplied by mains water and mains sewerage. These persons vary from single home owners to commercial businesses. There are many large commercial sites within the district that are used for horticultural nursery sites that often have caravans on site with migrant workers and families living. These are some of the people that we seek to protect by risk assessing and sampling supplies so that they can be improved. The owners of these sites do not represent a specific equality group as in the below section.</p>
3.2	<p>Have you consulted or involved those groups that are likely to be affected by the policy or decision you want to implement? If so, what were their views and how have their views influenced your decision?</p> <p>Groups likely to be affected by this change have not been consulted because there have not been specific groups identified in the assessment as being particularly prevalent users of the service. However, owners of properties with private supplies were invited in 2017 to comment on Defra consultations on the Regulations and notification that the charging for services they receive could change in future.</p>
3.3	<p>If you have not consulted or engaged with communities that are likely to be affected by the policy or decision, give details about when you intend to carry out consultation or provide reasons for why you feel this is not necessary:</p> <p>On the 20th of September 2017 a letter was sent to all private water supply owners that asked for their views on the updated Regulations that were implemented in 2018. The letter noted the removal of limits on charging being proposed in the Regulations and encouraged supply owners to respond to the Defra consultation with a link to it included in the letter. The consultation was also posted on the Councils website. In undertaking our current work it is also mentioned to site owners that future charging may be implemented to raise awareness.</p> <p>In this case consulting owners of private supplies is unlikely to provide constructive feedback as charging for a service that was formerly free will not be welcomed by the users of the service. If there was genuine hardship and inability to pay for services by residents, there could be some accommodation.</p>

Section 4: Impact of policy or decision

Use this section to assess any potential impact on equality groups based on what you now know.

Description of impact	Nature of impact Positive, neutral, adverse (explain why)	Extent of impact Low, medium, high (use L, M or H)
Age	Neutral This change in recharging services will affect residents and business owners of the district who own properties served by private water supplies. Private supplies are owned by a range of people at a range of ages.	L
Disability	Neutral This change in recharging services will affect residents and business owners of the district who own properties served by private water supplies. Private supplies are owned by a range of people who may or may not have a disability disabled, there is not an observed link.	L
Gender	Neutral This change in recharging services will affect residents and business owners of the district who own properties served by private water supplies. Private supplies are owned by a range of people who can be of different genders, there is not an observed link with gender. On site it is common to meet more males however often land and properties are jointly owned and in joint responsibility between males and females.	L
Gender reassignment	Neutral This change in recharging services will affect residents and business owners of the district who own properties served by private water supplies. Private supplies are owned by a range of people who can be of different genders, there is not an observed link with gender reassignment.	L
Marriage/civil partnership	Neutral This change in recharging services will affect residents and business owners of the district who own properties served by private water supplies. Private supplies are owned by a range of people who can be of different genders, there is not an observed link with marriage/civil partnerships.	L
Pregnancy/ maternity	Neutral This change in recharging services will affect residents and business owners of the district who own properties served by private water supplies. Private supplies are owned by a range of people who can be of different genders, there is not an observed link with maternity/paternity.	L
Race	Neutral This change in recharging services will affect residents and business owners of the district who own properties served by private water supplies. Private supplies are owned by a range of	L

	people who can be of different genders, there is not an observed link with race.	
Religion/ belief	Neutral This change in recharging services will affect residents and business owners of the district who own properties served by private water supplies. Private supplies are owned by a range of people who can be of different genders, there is not an observed link with religion or belief.	L
Sexual orientation	Neutral This change in recharging services will affect residents and business owners of the district who own properties served by private water supplies. Private supplies are owned by a range of people who can be of different genders, there is not an observed link with sexual orientation.	L

Section 5: Conclusion

		Tick Yes/No as appropriate	
5.1	Does the EqIA in Section 4 indicate that the policy or decision would have a medium or high adverse impact on one or more equality groups?	No X	
			If 'YES', use the action plan at Section 6 to describe the adverse impacts and what mitigating actions you could put in place.

Section 7: Sign off

I confirm that this initial analysis has been completed appropriately.
(A typed signature is sufficient.)

Signature of Head of Service: Q. Durrani

Date: 25/09/19

Signature of person completing the EqIA: S. Bell

Date: 25/09/19

Advice

Keep your director informed of all equality & diversity issues. We recommend that you forward a copy of every EqIA you undertake to the director responsible for the service area. Retain a copy of this EqIA for your records. If this EqIA relates to a continuing project, ensure this document is kept under review and updated, eg after a consultation has been undertaken.