

EXECUTIVE COMMITTEE

22 March 2016

SCRUTINY MINUTE EXTRACT – 18 FEBRUARY 2016

3. PROTECTION OF PRIVATE WATER SUPPLIES

- 3.1 With reference to paragraph 5 of the Minute of 29 October 2015, the Chairman welcomed Mr Anthony Carson, Regulatory Services Manager, Mr Anthony Barker, Environmental Health Officer, and Mr John Hayward, Development Standards Manager, to the meeting to give a presentation on the Protection of Private Water Supplies across the Scottish Borders. There had also been circulated copies of a Briefing Note by Mr Carson. Members were advised that there were currently 1,500 known Private Water Supplies (PWS) in the Borders which supplied over 4,500 properties and explained that, when a Planning application was made, Scottish Borders Council (SBC) and the Scottish Environment Protection Agency (SEPA) both had a role in ensuring that private water supplies were protected. The different roles and responsibilities of these organisations were summarised including where consideration had to be given to the protection of water supplies, whether a proposed development did or did not need a water supply, an example being where a development did not require a water supply but had the potential to impact on water supplies in the locality. Mr Carson gave examples of three different Planning applications and the approaches/responses required for developments of varying size and complexity, including that of a large wind farm application.
- 3.2 Members were informed that under the Water (Scotland) Act 1980, any person erecting a building was required to satisfy the Council that there would be a sufficient supply of wholesome water in pipes for the domestic purposes of the persons occupying or using the building. SBC also had a duty to keep itself informed about the wholesomeness and sufficiency of water supplies to all premises in its area. In order to comply with these duties, Regulatory Services, on behalf of SBC, reviewed every planning application in relation to the proposed water supply required for the development and/or the impact the development could have on existing water supplies. In considering the water supply required for a development, Mr Barker explained that when the supply was to be served by the public mains water supply, the applicant was expected to provide written evidence from Scottish Water to that effect.
- 3.3 Mr Barker then explained that there were two types of developments, the first of which was where a development was to be served by a private water supply. In this case, a range of information was required, such as the type of supply/source eg borehole, spring, well etc; an 8 figure grid reference for the location of the site; details of other properties supplied by the same source; details of any flow tests; evidence that the supply would not have a detrimental effect on other supplies in the area; details of any treatments to be installed on the system; and data relating to tests that had been carried out to ensure the wholesomeness of the water. In situations when this information was not provided, a suspensive condition was applied in order to ensure that the site was adequately serviced without detriment to the surrounding water supplies of nearby properties. A decision as to the suitability of the

proposed supply would then be made following receipt of the required information and consultation with SEPA whenever relevant. Any agreement between an applicant and other users of a water supply was considered to be a civil matter and the Council would not request such information.

- 3.4 The second category was developments where no water supply was required but there was a potential impact on existing supplies. Smaller developments were typically not expected to have any effect. It was possible, however, that larger sites could impact on the wholesomeness and sufficiency of existing supplies and in these situations, a monitoring programme as part of a condition for the construction and decommission stages of the development would be put in place with SEPA taking the lead role. Mr Barker advised Members that most of the private water supplies in the Scottish Borders were from groundwater sources and in order to clarify its legal responsibilities and provide guidance on the protection of groundwater, SEPA had developed the "Groundwater Protection Policy for Scotland" and also issued guidance for the protection of groundwater from planning applications. This guidance included wind farms; as part of a planning application, SEPA required detailed information on all water resources located on or near the development site and where the source was a private water supply, the applicant was required to provide a range of data such as the number of properties served by that specific supply. In some cases, a detailed risk assessment was required eg where infrastructure from the development was within 250m of a water resource. Further information on SEPA's role could be found in Planning Advice Note 51 (Planning, Environmental Protection and Regulation.)
- 3.5 The Briefing Note provided examples of three different types of planning applications to demonstrate the varying complexity of developments. In relation to a single dwelling house application where the water supply would be from a private resource and where a suspensive condition had been applied, the development could only commence once all the required information had been provided and the condition subsequently discharged. Where a development was likely to use higher volumes of water from ground water that already provided a private supply, eg a small commercial business, SEPA would be involved in assessing whether an abstraction licence would be necessary in addition to planning consent and again, the development could proceed only when all data had been received and any conditions discharged.
- 3.6 With larger developments such as wind farms, there was potential for construction and installation works to impact on groundwater and local private water supplies. In these situations, a hydrogeological risk assessment would be required. SEPA would take the lead role and would consider any impact on local private water supplies. In addition, SEPA would also engage with the applicant to agree the monitoring and assessment programme and would receive update reports.
- 3.7 Members asked for clarification on a number of points. Mr Carson advised that developments were categorised according to the size of the development and the amount of water the development would require and Mr Hayward confirmed that any site over 2 hectares would require an Environmental Impact Assessment (EIA). In response to a question about the Council's statutory role in relation to private water supplies, Mr Barker explained that the Council maintained a Register of all known properties and private water supplies across the Scottish Borders. The information was, at times, based on historical data, and although the Register was updated regularly, it was acknowledged that it could be incomplete. It was also noted that the Register may identify properties with a private water supply but not necessarily the location of the source of that supply. Mr Barker further advised that it was not always possible to collect and collate the data for all smaller, domestic properties due to limited officer-time resources. Larger developments would be pursued by SBC if the water supply was found to be unwholesome. However, if property

had a private water supply and there was an issue, owners needed to check their title deeds or deed of servitude to establish whether the supply from a private supplier was for 'water' or 'wholesome water' and what was the legal agreement for the terms of such a supply. Grants could be available from the Scottish Government to assist in improving a private water supply subject to the required criteria being met; these grants could be accessed either by individual or groups of owner/occupiers and further information was available on the Scottish Government website. Members asked what sanctions/enforcement were available to the Council and Mr Hayward confirmed that in addition to involvement by SEPA, in terms of Planning, a large development such as a wind farm could be stopped if a breach was considered to be substantial. With regard to contamination of surface water, Members were advised that a number of actions could be taken, such as fencing animals away from a water supply and setting up specialised treatments to the water. SEPA would also carry out testing the wholesomeness of a water supply following referral by a customer.

- 3.8 The Chairman also extended a welcome to Mr James Taylor, Chairman of Eddleston Community Council, who was present to provide additional information to the Committee. Mr Taylor explained that during the 4 years that he had lived at his current address, there had been planning applications for 3 wind farms in that locality, each still awaiting a decision by Scottish Ministers. During each planning process, Mr Taylor had carried out some research to determine the location and utilisation of private water supplies and had found that the information he collated did not reflect the data held on the Council's Register. He had produced a map which detailed the locations of private water supplies and properties supplied (one supply was likely to have originated in the 16th century) which he was happy to share with officers but felt that further clarity in respect of ownership and responsibility for private water supplies would be useful for general public access. Members were advised that Data Protection applied when providing information from the Register but excerpts could be made available on request. Mr Carson responded to a question in relation to the accuracy of the Register and explained that 15-20 years previously, the onus was on the private water supplier to provide precise data to the Council but this was no longer the case and it was now more challenging for officers to maintain the Register. Mr Barker advised that EIAs were used to discover any inaccuracies in the Register, eg to identify previously unknown properties. Members were informed that, in terms of wind farm planning applications, SEPA might state concern but would not object to a development on the grounds of private water supply. It was therefore important to ensure that as much accurate data as possible was included on the Register for examination by Scottish Ministers when required. In order to assist in this process, Mr Taylor agreed to meet with officers from Regulatory Services to share the information he had gathered and consider any lessons learned during his research.
- 3.9 Discussion followed in respect of the information available to the public and how this could be extended and improved. It was agreed that engagement with Area Fora, Community Councils and individuals was essential as this would capture local knowledge and enable officers to review and update the Register. A media campaign to publicise the grants scheme for improving private water supplies was already being delivered in conjunction with the Scottish Government and included mail drops to those on the Register and a presence at local events such as the Border Union Show. It was agreed that the Council's Communications Team be asked to progress a public awareness campaign to encourage people with a private water supply to send in details of their property/source which would give a more complete picture in the Private Water Supply Register. The campaign would focus on Area Fora and Community Councils and would include information about grants/conditions available for the improvement of private water supplies and the development of maps of source locations not currently on the Register.
- 3.10 Following further discussion, Members were advised that staffing resources were in place to enable the Council to fulfil its statutory responsibilities in relation to private water supply but

not to do much more. Mr Hayward advised that Mr Carson and Mr Barker could be invited to attend a planning event for Community Councils which was currently being developed. The Chairman then thanked officers and Mr Taylor for their contributions.

DECISION

- (a) NOTED the presentation;**
- (b) AGREED that officers from Regulatory Services meet with Mr Taylor to share the information he had gathered and consider any lessons learned during his research**
- # (c) AGREED to RECOMMEND to the Executive Committee that:**
 - (i) Officers from Regulatory Services work with the Council's Communications Team to progress a public awareness campaign –**
 - giving information about grants/conditions available for the improvement of private water supplies;**
 - encouraging people with private water supplies not on the Private Water Supplies Register to send in their details to allow a more complete mapping of properties/source locations not currently on the Register;**
 - placing information on the Council's website;**
 - attending Area Fora meetings; and**
 - involving Community Councils asking for their assistance by providing a map of known properties/sources within their area and requesting them to populate these maps further using local knowledge; and**
 - (ii) the Director of Regulatory Services continue to ensure sufficient staff resources were available to meet the Council's statutory needs for private water supplies.**