

Department of Planning and Environment
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By email: regional.town.water@dpie.nsw.gov.au

Re: Draft Regulatory framework for local water utilities (March 2022)

We write in response to the call for submissions on the draft regulatory framework for local water utilities.

The Water Directorate welcomes the release of the draft framework. Council owned local water utilities in regional NSW operate in a complex strategic and regulatory environment with numerous regulating agencies. Ideally, the revised regulatory framework will need to overcome a number of regulatory barriers, especially prescriptive and conflicting regulatory requirements and unclear roles for urban water management in regional NSW.

We consider that water management in NSW is fragmented and confusing with many opportunities for improvement, to:

- set clear a clear pathway for the future with strategic directions and goals
- clarify roles and responsibilities for regulating agencies and operators
- set accountability for achieving results
- engage all stakeholders in water more effectively
- provide sustainable, affordable and resilient water services for the people of regional NSW

Whilst there are some concerns in our stakeholder group that some of the detail is yet to be seen, and the timing may be rushed, we believe that it is imperative that we continue to work with the Department to maintain momentum.

As evidence of its shortcomings, much of the current regulatory framework needed to be set aside during the most recent drought to overcome urgent town water security challenges, including:

- the appointment of a Regional Town Water Coordinator, James McTavish
- the introduction of a Water Supply (Critical Needs) Act into NSW legislation as a *temporary pathway for the Minister for Water, Property and Housing to authorise critical water infrastructure developments which are urgently needed to secure water supplies for regional towns...*¹
- the urgent, unplanned allocation of \$284 million in emergency funding for water security over and above the \$1 billion Safe and Secure Water Program

¹ Source: <https://www.industry.nsw.gov.au/water/what-we-do/legislation-policies/acts-regulations/water-supply-critical-needs-act>

It was revealing how inter agency coordination and collaboration could be achieved during this severe drought through the Regional Town Water Supply Coordinator where an extremely sharp focus on water security was required.

Resilient water services are required to withstand current and future challenges in NSW, which include drought, bushfire, flood and pandemic. We support the regulatory framework moving away from its current prescriptive approach to an outcomes-focussed approach, fit for the local circumstances of any particular local water utility. Based on the experience in the last drought, processes such as Section 60 infrastructure approvals and approval of IWCM plans need to be overhauled and streamlined.

We ask that the Department consider the benefits of increased self-sufficiency and autonomy for Local Water Utilities over the longer-term through a structured capacity building partnership. Risk is best managed locally wherever possible. We would promote proactive risk management supported by a Local Water Utility maturity model that would allow reduced intervention where appropriate systems are in place to control risk.

In saying this, we recognise that the consequences of failure of water and sewerage services can be extremely high. Insufficient attention to risk will lead to public health incidents, unacceptable environmental impact and impact local economies. Where government intervention is necessary, we seek 'wise intervention' by listening to local stakeholders and their needs and avoiding a prescriptive 'one-size fits all' approach to water utility regulation.

Section 1: Vision and objectives

Does the approach outlined in Section 1 represent an appropriate approach for government to take to the regulation of the work of local water utilities?

Yes. The objectives reflect a triple bottom line approach with customer needs and expectations in mind.

Section 2: The department's regulatory role

Does the approach outlined in Section 2 represent an appropriate approach for government to take to the regulation of the work of local water utilities?

Partially, yes. Some further clarity would be welcome in the following areas:

- There is insufficient role clarity between DPE Water Utilities Branch's regulatory function, support/advisory function and technical review for funding approvals under the Safe and Secure Water Program. These functions are managed with the input of one group of subject matter experts with no clear separation of functions.
- In our opinion, the consequences of the above lack of role clarity are compounded by 'regulation by proxy' of strategic planning. That is, funding will not be released under Safe and Secure Water Program for capital works, or a works approval under Section 60 unless a current IWCM is available. The regulatory control under [Section 409 of the Local Government Act](#) was only ever to restrict expenditure of water and sewerage funds to water and sewerage activities, with the exception of a dividend payment where the council has 'substantially complied' with the Best Practice Management Guidelines. There is no direct regulatory power relating to strategic water business plans or IWCM's for councils. If a support and advisory role is all that

is required, then a regulatory power on strategic plans wouldn't need to be created in the current reform process.

- There is also evidence that there is a lack of role clarity between technical advisory on capital funding and selection/procurement of consultants (for IWCM) and designers/contractors for capital works.
- The involvement of Water Infrastructure NSW in project management as well as funding approvals has confused responsibilities. The need for two water related project management bodies (Public Works Advisory being the other) needs to be clarified. This concerns not just the Safe and Secure Water Program, but also roles and responsibilities for NSW government support during incidents and emergencies such as the recent North Coast floods.
- The lack of clarity extends across the regulatory functions of other NSW agencies such as NSW Health and NSW EPA, where the technical support function of DPE Water is implied as a regulatory function. It is recommended that the water management and service delivery framework for local water utilities be clearly articulated, and explicitly mention the numerous pieces of legislation governing local water utilities, such as the Public Health Act, Protection of the Environment Operations Act and others.
- We would like to see explicit application of the [Guidance for regulators to implement outcomes and risk-based regulation](#) in line with the NSW government's [NSW Guide to Better Regulation](#)². In particular, *documenting a full range of historical, current and emerging risks consistently and transparently that can affect the defined regulatory outcomes.*
- There is unfinished business in addressing the powers and duties of local water utilities and regulators due to shortcomings in the NSW Local Government Act.
- There needs to be attention applied to establishing minimum levels of service to underpin the regulation of local water utility performance.

Section 3: Strategic planning oversight

Does the approach outlined in Section 3 represent an appropriate approach for the department to take regarding the regulation of strategic planning conducted by local water utilities?

Partially, yes. Based on the comments on Section 2 above, we believe strategic planning is only regulated by indirect regulatory powers not a direct power. That is, DPE Water are using financial and works approvals to indirectly regulate strategic planning. In saying this we strongly support a continuing role in an advisory and technical support capacity, particularly where community and regulatory feedback from all regulators on strategic issues is transparent and publicly available.

Focus questions for Section 3:

1. *Do the identified strategic planning outcomes address the key risks?*

Partially, yes. However:

² Available at: <https://www.productivity.nsw.gov.au/better-regulation>

- the connection between LWU strategic planning, the NSW Water Strategy and Regional Water Strategies needs to be explicitly recognised to identify the NSW government’s role for strategic planning in water. Existing secure yield guidance for local water utilities is out of date and inconsistent with water security modelling undertaken in Regional Water Strategies. This guidance needs to be updated.
- The Department’s Eligible Risks and Issues List (ERIL) needs to be managed on an iterative and collaborative basis with Local Water Utilities as the environmental scan for strategic planning. The risk assessment methodology used in ERIL needs to be revised to reflect a contemporary risk management approach.
- The handover of the Safe and Secure Water Program to Water Infrastructure NSW has not had the intended outcome of streamlining the project pipeline for local water utilities.
- Work Health and Safety or Project/Program delivery risks do not appear to fall into the list of risks in Section 3, although it is understood the list is broad and might not have been intended to explicitly describe all categories of risk.

2. *Is the reasonable standard test applied to strategic planning outcomes appropriate?*

Partially, yes. However the definition of the ‘reasonable standard’ test is broad and would merit specific reference to contemporary national and international standards, otherwise ‘sufficient, appropriate and robust’ is likely to be interpreted under the old Best Practice Guidance. It must be acknowledged that introducing a new regulatory framework will not address the internal culture of the subject matter experts in the Department. Addressing culture is a key risk to efficient delivery of this framework, along with the structure, staff role definition, and their skills/capability.

Examples of recognised standards would include:

- Community engagement under the International Association for Public Participation principles/spectrum
- The Australian Drinking Water Guidelines
- ISO 55000 series for Asset Management
- IPWEA’s Australian Infrastructure Financial Management Manual (AIFMM) and International Infrastructure Management Manual (IIMM)
- ISO 31000 for Risk Management
- AS4183 for Value Management
- ISO 140001 for Environmental Management
- ISO 45001 for Occupational Health and Safety Management
- Australian Business Excellence Framework
- It is understood that the Commonwealth Productivity Commission has been researching policy and implementation frameworks for IWCM³, which is an indication that best practice in IWCM should be aligned with national experience.

This list is not intended to be exhaustive.

³ Productivity Commission (2020) *Integrated Urban Water Management – Why a good idea seems hard to implement*, Available at: <https://www.pc.gov.au/research/completed/water-cycle/integrated-urban-water.pdf>

This does not imply LWU systems must be audited and certified in the above standards, which would be extremely costly for LWU's. Rather, elements of these systems such as policies, plans and procedures would align with these standards where reasonable and practical. Most importantly, the above commentary does not imply that DPE Water are solely responsible for strategic planning as the above functions are largely regulated by other regulators, such as NSW Health, Office of Local Government and NSW EPA.

3. What factors may indicate that a local water utility is no longer achieving strategic planning outcomes to a reasonable standard?

Some factors might be the absence of:

- Strategic goals for a council's water/sewerage function, or
- Regular review of strategic risk factors, or
- Action/improvement plans to address risks and opportunities, or
- Monitoring, evaluation and review of the effectiveness of the strategic plan.

However, this question overlooks the problem that the majority of strategic challenges are outside of the control of an individual LWU solely to resolve. These external factors include:

- Regulated rivers and dams that are operated by WaterNSW
- Catchment and water quality challenges tend to become a 'tragedy of the commons'.
- Environmental planning approvals for major projects are regulated by Planning NSW
- Timely capital project funding approvals from Water Infrastructure NSW and the Commonwealth government
- The failing market for water operator training
- The absence of an explicit Community Service Obligation that would assist our smallest communities to achieve strategic outcomes.

It is acknowledged that the Department will look to address many of these challenges through the NSW Water Strategy and Regional Water Strategies, however other challenges such as the training market are specific to the local water utility sector. The Department should write, implement and continually review specific strategic action plans to address these particular water sector challenges in collaboration with LWU's.

4. How should the department arrive at an overall assessment result based on the assessments of the individual strategic planning outcomes?

Contemporary risk management is a spectrum and should not be producing a pass-fail result. A single score should be avoided. Any assessment must recognise that LWU's operate in distinctly different operating environments across NSW with different climatic, hydrological and demographic conditions.

5. What tools should the department use for compliance?

Simply ensuring that LWU's are monitoring, evaluating and reviewing their key strategic risks and implementing appropriate strategic actions. The annual 'check-in' process is supported, provided that it is driven by the Department's regional managers and inspectors. Ideally this should be conducted on a 'roundtable' basis with regional staff

from NSW Health and EPA to maintain familiarity and a consistent approach to strategic regulatory risks and issues. It is critically important that strategic reviews are not clouded with operational issues.

6. What are the priority areas for additional guidance for strategic planning, that should be delivered by the department as early as possible?

Recognition of the power of regional councils to truly 'integrate' water cycle management at the town/precinct scale, as the service provider for water, sewerage, stormwater, rainwater, recycled water, land use planning, community education and engagement, the implementation of Water Sensitive Urban Design principles, the ability to utilise stormwater harvesting to offset use of drinking water for green liveable spaces. This is a strategic advantage local councils have that metropolitan water utilities such as Sydney Water and Hunter Water do not have.

7. What requirements or guidance do local water utilities need for the 'understanding water security outcome'?

A significant proportion of LWU's operate on regulated rivers operated by WaterNSW. Water security in this context is not solely the responsibility of the LWU. Regional water strategies and operating rules need explicit recognition of town water supplies, most importantly an understanding of contingencies when the primary source is at risk of failing. In any case, every town needs a 'Plan B' or 'C', diversifying from one source of water. The Department should not be requesting secure yield modelling from 92 local water utilities, duplicating the regional water strategy modelling. Just as importantly, where the NSW government undertakes any modelling of town water security, it must be undertaken with deep consultation and involvement of the affected Local Water Utilities.

8. How should the regulatory framework integrate with the Integrated Planning and Reporting framework?

There should be one point of truth for water related risks and strategic actions, embedded in IP&R. A noted advantage of IP&R is that the Community Strategic Plan for a council is 'owned' by the community, meaning improved connection and consistency with customers and community regarding their water and sewerage services. LWU's should have all of their water related strategic planning documents publicly available on their website, along with recurrent progress reporting.

9. How should the department transition utilities that have or are preparing an 'IWCM strategy' under the existing regulatory framework?

Local water utilities have current contractual commitments to consultants as well as commitments through community and regulator engagement plans that should be respected and completed. Some local water utilities that are earlier in their IWCM process – particularly the 'issues paper' development phase – should be able to comfortably pause at the completion of the issues paper and progress towards integrating IWCM components into the IP&R process as water related strategic actions, plans and outcomes.

However it is notable that there appears to be a lack of progress in piloting alternative IWCM approaches through the Town Water Risk Reduction Program. The Department

needs to urgently identify and resolve any barriers that might be holding up pilots of alternative IWCM approaches. Further facilitation and guidance is likely to be required.

Section 4: Assessment and approval of dividends

Does the approach outlined in Section 4 represent an appropriate approach for the department to take to the assessments and approvals of dividend payments by local water utilities?

Guidance on paying a dividend have not been reviewed since the issue of the *Best Practice Management of Water Supply and Sewerage Guidelines*⁴ in August 2007, nearly 15 years ago.

Only 9 out of 92, or about 10% of Local Water Utilities have paid a dividend in the last 6 reporting years⁵. The amount of the dividend available has been capped at \$30/property assessment for each of the water and sewer funds respectively since the Best Practice guidelines were introduced. This represents about 4% of the weighted median Typical Residential Bill in 2021/22 (water and sewerage combined). An additional cap is placed with a maximum 50% of a surplus is available to be paid as a dividend. Having restrictions on dividends is reasonable.

There is a diversity of opinion amongst LWU's. Some would like to see the abolition of dividends, with any surplus remaining in the water/sewer fund to reduce pressure on future price increases. Some councils would like the caps reviewed with a view to increasing dividends. This would need to be carefully considered to ensure that risks to the water and sewerage business are appropriately controlled.

The Guidelines require an independent compliance audit report against the Best Practice elements, plus an independent financial audit report to ensure that internal overhead allocation is charged at a fair and reasonable cost. It appears that the cap on the dividend, and the compliance costs to obtain a dividend is a disincentive to councils paying a dividend from its water and sewerage funds. However, as discussed in the paragraph above, controls are necessary to control water utility risk.

10. How can the department improve its methodology for dividend assessment?

It is also understood that developer charges are included in the dividend calculation methodology for an operating surplus. As developer charges are a form of capital contribution, they don't fall into the definition of an 'operating surplus'. The Department should exclude developer charge income from the dividend calculation methodology.

Review the caps on dividend payments more frequently. Review the compliance requirements for paying a dividend.

⁴ Available at:
https://www.industry.nsw.gov.au/_data/assets/pdf_file/0004/147073/town_planning_water_utilities_best-practice_management_of_water_supply_and_sewerage_guidelines_2007.pdf

⁵ Source: DPE Water LWU performance monitoring data, available at:
<https://www.industry.nsw.gov.au/water/water-utilities/lwu-performance-monitoring-data>

Section 5: Assessment and approvals of proposed works

Does the approach outlined in Section 5 represent an appropriate approach for the department to take regarding the technical assessment and approval under section 60 of the Local Government Act?

Yes, but only partially. If the overall aim is to streamline project approvals so that LWU's can reduce risk, then a wholistic view of getting projects 'shovel ready' is required. An integrated view of the planning and approvals process would include:

- Achieving regulatory certainty that the concept for the project will be approved by regulators without competing regulatory requirements. These conditions should be developed through an Environmental Impact Statement (EIS) or Review of Environmental Factors (REF) under the EP&A Act.
- A 'no surprises' approach to Section 60 approvals. It is not appropriate to request significant changes to an overall project concept (such as adding higher treatment standards) after detailed design has commenced. This adds cost through re-design and delay, and consequently delays benefits to regional communities.
- The new approach to Section 60 approvals needs to minimise scope creep. The imposition of additional requirements without peer evidence contributes to increased capital outlay and financial burden on LWU's.
- Funding approvals from Water Infrastructure NSW need to be wholistic as well to provide more project certainty. The current evidence is that projects are being broken into smaller phases/funding deeds, requiring up front pre-construction expenditure from LWU's without certainty over construction funding to deliver the project.
- The Department needs to take a 'hands off' approach to LWU procurement of consultants and contractors. This is particularly necessary for design and construction contracts involving innovation clauses which gives incentive for newer more efficient and effective technologies and designs to be pursued during the design and construction process.
- Recognition that many projects proceed on more difficult, higher risk 'brownfield' sites where existing operations need to be maintained during construction. Approvals may be required to temporarily depart from licence conditions during this period, which should be minimised.
- It should also be recognised that no other state in Australia seems to have regulation similar to NSW's Section 60. In all other states the liability and control rests between the water utility, the designer and the construction contractor.

11. Is it appropriate to assess the proposed works at an early design phase for approval?

Yes. Certainty is required to be able to progress design and construction activities in a time efficient and cost-effective manner. The approval process needs to allow for innovation to be applied during the design and construction process.

12. What are the priority areas for additional guidance for section 60 assessment and approval, that should be delivered by the department as early as possible?

An escalation/appeal/decision review process should be implemented without delay. While it is acknowledged that there is a general right for administrative appeal of any government decision, we believe that an escalation process should first attempt to resolve appeals via a peer review process with a competent, experienced and independent water industry engineering expert – a ‘second opinion’. An onerous administrative appeals process should be a last resort for intransigent disputes.

The Department should participate in HAZOP reviews at an appropriate time to witness appropriate risk management that will feed risk controls into the design and mitigate the need for ‘hold points’.

The early consultation process with regulators would also benefit from a Value Management/Value Engineering⁶ approach

13. Are the proposed standard conditions for section 60 appropriate?

No, not entirely. Some proposed standard conditions seem redundant. For example, a condition directing an LWU to comply with legislation seems to suggest that LWU’s would not comply with legislation unless the Department directed it? If legislation is overseen by another agency, then it is not the Department’s role to regulate it.

The Department needs to be cognisant that liability for the design of a treatment plant remains with the designer and construction contractor with any residual risk managed by the LWU as the owner and operator of the asset. If the Department was to provide a direction on a design, the Department must accept liability for that direction.

There has been long held concerns that the Department requests enormous volumes of design and tendering information which it is not resourced to look at. It follows that the need to direct any changes in the later part of the design process should be questioned where early design involvement has been achieved.

There has been a culture in the Department of attempting to direct the removal of technology to make treatment plants ‘robust, and easy to operate’ when in fact automation and online technology contributes significantly to effective plant operation, risk reduction and ‘due diligence’. In addition, directing LWU’s to retain existing aging or out-of-date treatment technology which is no longer performing satisfactorily or fit-for-purpose is not appropriate risk management, noting that the risk remains with the LWU, not the Department.

⁶ Source, NSW Government at: https://www.infrastructure.nsw.gov.au/media/1974/26_value-management-and-value-engineering.pdf

Section 6: Inspection of water and sewage treatment works

Does the approach outlined in Section 6 represent an appropriate approach for the department to take regarding the inspection of water and sewage treatment works of local water utilities?

Yes. The Department should also ensure that its inspectors undertake continuing professional development to maintain competency in new/emerging technology.

14. How should the department communicate the result of inspections including any improvement actions with individual local water utilities?

Electronic records should be encouraged wherever possible to share sample results and meeting notes. Online data trending should be undertaken and shared to demonstrate long term process control and identify opportunities for continual performance improvement. This will complement visual inspections, grab sampling and on-site discussions.

15. How should the department integrate the result of inspections with other performance monitoring including sharing with other regulators?

That would require a value judgement on whether inspection results are opinion-based or evidence-based. Overall, a relationship with regulators is most valued where a Local Water Utility can proactively and safely bring 'bad news' to any regulator to obtain support without fear of sanction, with the intent that support can be obtained and performance can be improved. Risks and issues will be managed more quickly and effectively in this manner.

Another opportunity for collaboration with other regulators would be joint desktop exercises in incident and emergency management, which would be an excellent, proactive test of operating procedures and contingencies. These desktop exercises could be undertaken in regional groups of councils to foster regional relationships between LWU's and regional regulatory staff.

16. Should the department publish information about the results of inspections?

Inspection results shouldn't be distributed further than between the Department and the LWU without the LWU's consent to avoid eroding the trust in being able to bring 'bad news' to regulators.

Section 7: Trade waste concurrence

Do you have any comments on section 7?

The NSW Liquid Trade Waste Management Guidelines were only recently reviewed and published in 2021 after exhaustive consultation with LWU liquid trade waste staff. The Water Directorate support the approach to devolve as much local decision-making power as possible to LWU's through the 'assumed concurrence' approach spelled out in the Guidelines. We had concerns some years ago that the exponential pricing formulae in the model policy for exceedance of pollutant levels were quite punitive on major trade waste sites, however this concern should be mitigated by the idea that the LWU has ultimate discretion on whether the pricing is actually charged to the trade waste customer.

The interpretation of 'concurrence' should be clarified, as it appears that the approach taken by the Department reflects a parallel 'approvals' process. The Department should provide advice and expert comment rather than an additional approval role. Separately, support could be provided by taking on a research role on emerging Liquid Trade Waste related technology.

It is noted that this Section doesn't only deal with Liquid Trade Waste, but at the second dot point also mentions Developer Servicing Plans and commercial water and sewerage developer charges. Developer charges policy has not had significant mention in the regulatory reform process to date. Like Liquid Trade Waste, the revised *2016 Developer Charges Guidelines for Water Supply, Sewerage and Stormwater*⁷ were published relatively recently after a 2007 review by IPART⁸. While it is not expected that the Guidelines need to change, they are particularly complex, onerous and expensive to calculate and apply for small LWU's with low population growth rates. A brief review of simplified methods would be merited for these LWU's. The 2016 revision also removed the ability to agglomerate differences in DSP charges across a local government area which was more equitable for small populations. Water Directorate requests that the Department reinstate the ability to agglomerate developer charges across their local government area.

Section 8: Performance monitoring and reporting

Does the approach outlined in Section 8 represent an appropriate approach for the department to take to the performance monitoring and reporting of local water utilities?

Yes. We support a tiered approach, whereby the National indicators are the 'key' performance indicators, with additional NSW-specific indicators only collected where justified. There is some merit in conducting benchmarking exercises on a broader range of indicators on a lesser frequency – two-yearly to five-yearly.

17. Are the criteria identified for considering whether to collect information for performance monitoring appropriate?

Yes. The approach could be complemented by support for automated data collection to reduce the resource burden on LWU's.

18. Is the proposed information required to be reported appropriate?

In its current state, the level of data required – approximately 600 fields of data, with 1200 indicators after calculation and aggregation – is excessive and needs to be reduced. We understand that the new regulatory framework will reduce this level of data and agree with this direction, acknowledging that the revision process is yet to be completed.

⁷ Available at: https://www.industry.nsw.gov.au/_data/assets/pdf_file/0007/148372/2016-Developer-Charges-Guidelines.pdf

⁸ Available at: <https://www.ipart.nsw.gov.au/Home/Industries/Water/Reviews/Metro-Pricing/Review-of-DEUS-Developer-Charges-Guidelines-for-Water-Supply-Sewerage-and-Stormwater>

19. Is the streamlined approach to performance indicators and benchmark data appropriate?

Yes.

20. What performance outputs would be most useful for local water utilities and other stakeholders?

The 2015/16 reporting year was the last year where the Department issued Performance Monitoring Reports, Benchmarking Reports⁹ and concise Action Plans for individual LWU's for their further investigation of issues raised by the data. We strongly recommend that these types of reports be reinstated, in a modernised and revised format following the review and adoption of 'key' performance indicators.

Section 9: Review of decisions

Does the approach outlined in Section 9 represent an appropriate approach for the department to take to the review of decisions requested by local water utilities?

Considering that there has been little ability to review decisions, a structured escalation process to the DPE Water Executive is supported, on the basis that the review is not simply referred back to the same subject matter experts that made the original decision.

It should be recognised that there is a power imbalance. LWU's do not want to jeopardise funding opportunities for their future projects, nor unnecessarily delay project approvals. In our opinion, there is insufficient freedom for an LWU to exceed a minimum standard.

The scope of these comments should be considered in light of decisions made not only by the Water Utilities Branch of DPE, but also Water Infrastructure NSW in terms of its funding decisions. Technical support is included in funding decisions.

While it is acknowledged that there is a general right for administrative appeal of any government decision, we believe that an escalation process should first attempt to resolve appeals via a peer review process.

21. Is the internal review approach appropriate?

Yes, partly but this should be complemented with an attempt to resolve appeals via a peer review process with a competent, experienced and independent water industry engineering expert – a 'second opinion'. We see limited benefit in a decision review being returned to the subject matter experts that made the original decision.

It should be recognised that the costs of obtaining additional engineering advice and providing additional justification for an alternative approach can be significant. The Department should not be requesting this lightly. LWU's shouldn't have to provide additional justification for exceeding a standard.

An onerous administrative appeals process should be a last resort for intransigent disputes.

⁹ Available at: <https://www.industry.nsw.gov.au/water/water-utilities/lwu-performance-monitoring-data/performance-monitoring>

Section 10: Coordination between regulators

Does the approach outlined in Section 10 represent an appropriate approach for government to take to the regulation of local water utilities?

Yes. We would recommend that regular engagement be structured around:

- Operational matters can be dealt with regional regulatory staff, say quarterly or monthly
- Strategic matters should allow access to more senior regulatory staff, such as regional managers, say 6-monthly or annually
- Meeting with LWU's in regional groups to reduce the burden of meeting with 92 LWU's should be encouraged.
- MoU's should be encouraged that identify appropriate values, principles and activities for collaboration between regulators and LWU's. For example, NSW Health has a number of MoU's with water utilities in NSW covering strategic and operational collaboration.
- A 'whole-of-government' approach to local water utility matters

Further comments beyond the questions posed in the survey

- Although the Town Water Risk Reduction Program does consider emergency and incident management as one of its focus areas, there is no discussion in the draft regulatory framework of Section 62 of the Local Government Act¹⁰ concerning Ministerial powers during emergencies.
- Regulatory support for cross border town water arrangements would merit further consideration, which is addressed to a partial degree in the Local Government Regulation, Section 141¹¹. Cross border arrangements are becoming an increasingly common solution to regional water security challenges.

Concluding comments

We welcome the overhaul of the regulatory framework for Local Water Utilities, which is well overdue. It is clear with our experience during the last unprecedented drought, fires, floods and pandemic that water regulation and management cannot continue to be done the way it has always been done. Regulation needs to be proportionate, flexible and outcomes focussed.

LWU's have been frustrated with the significant delays in Section 60 works approvals and approval of IWCM plans. In most cases LWU's know what needs to be done but are regularly prevented by these approvals processes from delivering their projects.

The draft framework makes good progress to address these challenges. We look forward to collaborating with the Department on the various supporting elements that demonstrate what good practice will look like. But we also highlight a key risk. We have continuing concerns with the culture and capacity of the Department to adapt to this less prescriptive, outcomes focussed approach.

¹⁰ Available at: <https://legislation.nsw.gov.au/view/html/inforce/current/act-1993-030#sec.62>

¹¹ Available at: <https://legislation.nsw.gov.au/view/html/inforce/current/si-2021-0460#sec.141>

We strongly support the principles of collaboration and co-design and a whole-of-government approach to regulation of local water utilities. The regulatory powers bestowed by the NSW Local Government Act do not operate on their own. There is a complex web of sometimes competing legislation that requires collaboration between all water related regulators. We encourage the Department to take on a role in as a coordinating agency with regulatory advice so that the government can speak to Local Water Utilities with one voice.

Please do not hesitate to contact me at [REDACTED] if any further information is required on this submission.

Yours sincerely,

[REDACTED]
Brendan Guiney
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