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GUNNEDAH SHIRE COUNCIL | GWYDIR SHIRE COUNCIL | LIVERPOOL PLAINS SHIRE COUNCIL | TAMWORTH REGIONAL COUNCIL | WALCHA COUNCIL

3 May 2022

Ms Erin Cini
Director
Town Water Risk Reduction Program
E: regional.town.water@dpie.nsw.gov.au

Dear Erin

On behalf of the member councils of Namoi Unlimited, and the Namoi Water Alliance this is a submission into the consultation process on the draft Regulatory Framework for Local Water Utilities released March 2022, which is intended to replace the Best-Practice Management for Water Supply and Sewerage Guidelines.

This document is a draft of the regulatory framework the department intends to apply to local water utilities in regional NSW from 1 July 2022 and it covers:

- local government councils exercising water supply functions under Division 2 Part 3 Chapter 6 of the NSW Local Government Act 1993
- utilities exercising water supply functions under the NSW Water Management Act 2000.

Members of the Namoi Water Alliance are Walcha Council, Tamworth Regional Council, Liverpool Plains Shire Council, Gunnedah Shire Council and Gwydir Shire Council.

Member Councils and their Local Water Utilities (LWU) are responsible for delivering safe, secure, efficient, sustainable, and affordable water supply and sewerage services to 87,915 people. Whilst the population of the Namoi represents 4.88% of the 1.8 million in regional NSW, the region is part of the New England North West region of NSW, where the NSW Government is investing in two Special Activation Precincts (Moree and Narrabri) and a Regional Jobs Precinct (Namoi). This region is pursuing strategic growth and the provision of water is critical for public health, the environment, economic development, amenity and liveability. The Namoi Joint Organisation (Namoi Unlimited) recognises water in its strategic regional priorities, acknowledging water is the enabler for our communities.

Members of the Namoi Water Alliance recognise that this framework will apply to LWU and that the new framework is being proposed because member of the Namoi Water Alliance support moves change and improvement to the current approach.

The role of Department of Planning and Environment (DPE) is tasked to oversee and support LWU's in their delivery of safe, secure, sustainable, and affordable, water and sewerage services. The degree to which DPE has been overseeing and supporting LWUs was assessed by the NSW Auditor General in September 2020. The intent of referencing the recommendations of the Auditor General, is to retain the focus of improvement and this submission. The Auditor General's recommendations to DPE were that they should;

1. Develop and implement a clear policy and regulatory approach to overseeing and supporting LWUs.
2. Address coordination, timing and LWU sector engagement risks to integrating state-wide regional water planning with investments in town water infrastructure and risk reduction.

3. Design and commence implementation of an outcomes-focused approach to its oversight and support of LWUs' Integrated Water Cycle Management (IWCM) planning, supported by: clear definitions, assessment criteria, procedures and timeframes for the assessment of IWCM planning instruments, accurate data to monitor and publicly report on IWCM planning and implementation status, and assistance to LWUs to procure value-for-money IWCM planning services, including enabling joint or regional approaches.
4. Improve the administration and transparency of its LWU oversight, support and funding activities.
5. Establish governance arrangements that coordinate its strategic planning, investment prioritisation and regulatory approaches to improving town water outcomes.
6. Formalise consultative arrangements with the LWU sector that better enables collaboration.
7. Monitor and evaluate its investments in town water risk reduction and infrastructure funding to improve transparency and enable the department to identify outcomes and the contributions of its investments towards its policy goals.

As a response to the Auditor General's Report, DPE established the Town Water Risk Reduction Program (TWRRP) which is tasked with developing and implementing a new approach that enables, develops and drives a framework that supports LWU to manage risks, strategically plan and prioritise town water infrastructure and systems to reduce risk.

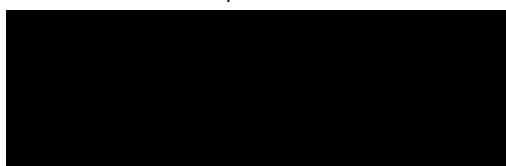
The TWRRP is a new partnership approach and members of the Namoi Water Alliance welcome and appreciate the focus and progress of the TWRRP. The TWRRP as a genuine effort by the NSW Government to address shortcomings in the NSW Government's present involvement in the delivery of water and wastewater services by LWU's within NSW.

However, concerns remain that some of the proposed changes are cosmetic at best, and do not address the real issues of concern. In particular the changes suggested for Section 60 approval and strategic planning (particularly IWCM) would suggest that all positive change will simply be achieved by culture change within the appropriate department.

Cultural change in any organisation is recognised as very difficult and time consuming to achieve. It is disappointing that after all the consultation it seems there is little constructive change recommended, other than a recognised need to change culture. Affecting cultural change within an organisation is difficult and requires ongoing focus by the TWRRP.

In addition to the comments provided in this submission, Namoi Water Alliance and its members support the submission from the Water Directorate.

Yours sincerely



Rebel Thomson
Executive Officer
Namoi Unlimited

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? :

The Vision and objectives described in Section 1 provide a clear vision and objectives for the LWU sector, and reflects the expectations of customers in regional NSW.

The Foreword mentions that the regulatory control when finalised will be gazetted by the Minister for Lands and Water, that the framework will replace the 2007 Best-Practice Management of Water Supply and Sewerage Guidelines under section 409(6) of the Local Government Act.

409(6) says that

The Minister for Water, Property and Housing, with the concurrence of the Minister administering this Act—

- (a) is to cause guidelines to be prepared and published in the Gazette relating to the management of the provision of water supply and sewerage services by councils, and*
- (b) may, if of the opinion that a council has not substantially complied with the guidelines, direct the council to comply with any particular aspect of the guidelines before making any further deduction under subsection (5).*

Namoi Water Alliance concurs with the Water Directorate that Section 409 of the Local Government Act pertains to the consolidation of funds by Councils, and is intended to restrict expenditure of water and sewerage funds to water and sewerage activities.

It is not clear as to why section 409(6) is to be amended and the effect of an amendment to the intent of the Consolidation of Funds clauses.

It is recommended that advice from the NSW Office of Local Government (OLG) on this and other applications to the Local Government Act is published for the sector.

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?:

Every LWU and community faces unique challenges and risks in its vision for safe, secure, sustainable and affordable water and sewerage services.

The Principles at 2.5 should be described at the front of section 2. The collaborative principles are the strength behind the application and operation of the new framework.

DPE and LWUs are committed to implementing a risk and outcomes approach to; water security (including continuity of service provision), water quality, the environment, assets and infrastructure, customers (including water supply and pricing), and financial sustainability of the utility.

DPE is responsible for overseeing local water utilities in this task.

To support that oversight, DPE have a number of tools that, it can gazette for the sector, such as; policy, regulation, monitoring and supporting performance, and making regulatory decisions.

As a regulator, the department will:

- set regulatory requirements for strategic planning and assess whether they are being met in accordance with its regulatory objectives and principles
- approve (or not) construction or extension of water treatment works

- approve (or not) the provision of sewage from its area to be discharged, treated, or supplied to any person
- assess and approve a utility's dividend payments
- liaise with local water utilities to coordinate and support the process of regulation, including providing general advice on how to comply with specific stages and requests in the regulatory process
- produce clear, concise, and accessible guidance that provides more detail about the department's regulatory requirements (within the boundaries of its regulatory objectives and principles, e.g., outcomes-focussed, and risk-based), as well as 'how to' guidance, templates, case studies and tools that help local water utilities understand and meet expectations
- work with local water utilities to resolve any actual or perceived overlap between regulatory functions and requirements managed by the department and those managed by other regulators
- conduct performance and risk monitoring to inform regulatory assessments and activities, drive strategic and operational improvements, and identify performance trends over time.

It is proposed by this framework that DPE will implement a new regulatory framework, and expand provisions for Councils (highlighted in blue text above) and use its regulatory functions to ensure local water utilities are appropriately managing potential areas of risk.

Those areas of risk are; strategic planning, technical assessments and approvals, and performance monitoring. (As described in Figure 1 below.)

Figure 1. The department has 3 core regulatory functions to provide assurance for regional water supply and sewerage services



In addition to these regulatory functions, DPE also intends to play more of an advisory and support role in helping local water utilities manage and reduce risks.

Namoi Water Alliance agrees with the Water Directorate that there is insufficient detail available to understand the application and implementation of the new framework.

DPE needs to be cautious that the three functions do not become inter-dependant or reliant on each other, that as the Water Directorate has described that; funding from the Safe and Secure Water Program for capital works, or a works approval under Section 60 will not be available unless the regulatory described strategic planning is to DPE standard.

Namoi Water Alliance has been critical of the technical requirements of DPE in the approvals process previously, and agrees with the Water Directorate that there needs to be clear roles and functions between technical advice, the selection and procurement of consultants (specifically for IWCMs) 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 clarification.

DPE needs to be careful in dictating or regulating payments to Council's general revenues.

Accepting that the framework is to be implemented, it is important to also make comments on operational aspects of the proposal;

- There needs to be clarity around DPE's regulatory functions, the support/advisory function and technical review function, and the funding approval function.

Currently these functions are managed within one group of subject matter experts with no clear separation of roles or functions.

- DPE should separate the roles for technical assessment and approvals, to monitoring historic performance monitoring, risk and reporting.
- DPE should also provide Guidance for other regulators and foster collaboration to implement the outcomes and risk-based approach.
- How DPE will proactively identify areas of potential need for a local water utility by conducting regulatory and performance monitoring activities.
- The documenting and data evidence for historical, current and emerging risks remains a priority for DPE. A consistent and transparent source of truth that can be used by all parties to affect and define outcomes is necessary.

Departmental staff will act as trusted advisors providing free, independent, and impartial advice and support. There should be consideration for other partnership/third party functions and advice such as; Joint Organisations, supportive regional Councils, the Water Directorate and Audit Risk and Improvement Committees for Councils, commercial partners for example and consideration for the potential roles these organisations can play in the support, planning, performance monitoring, and general support to LWUs. This would also provide some separation between support and regulator roles.

The approach seems to be that DPE will provide all support, regulatory and technical information however, the Namoi Water Alliance supports an approach that will support compliance by capacity and capability building within LWU and Local Government as well as DPE. For example, Councils are adopting new internal audit, and enterprise risk improvement mechanisms. These mechanisms will undertake engagement, monitoring, risk identification and analysis, DPE should be looking to break down duplication and cost for the sector and working with the specific issues of Councils to address specific challenges.

Such an approach would be more flexible and proportionate, outcomes focussed, creating the balance resourcing between our regulatory oversight and proactive support roles.

The draft framework regulation should describe clearly the roles and functions of other regulators like; NSW Health, the NSW Environmental Protection Authority, the Office of Local Government, the Natural Resources Access Regulator, Dams Safety NSW, and the Independent Pricing and Regulatory Tribunal of NSW all have specific responsibilities for overseeing and supporting local water utilities within their own regulatory frameworks, and how these relate to DPE's role, and who is the decision maker. (NOTE: further comments on Section 10.)

Noted is that LWUs can also approach the department for specific or general support (such as conducting options analysis to inform an application under section 60 of the Local Government Act). Namoi Unlimited on behalf of the Namoi Water Alliance has been vocal in advocating for the following around Section 60 applications. At a minimum DPE should consider including an;

- An appeals or review mechanism.
- A comparable and fit-for-purpose assessment, enabling systems and processes to be developed that reflect the Council's and the communities capacities.
- A trailing or testing regulatory framework to enable Councils and DPE to build safe and affordable options for the challenges around water security, quality and uses for recycled water.

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?:

The consultation draft says that *“Local water utilities can best meet the needs of their customers, and manage key risks, when their decisions and activities are based on effective, evidence-based strategic planning,”* and that *“the department is committed that all local water utilities should undertake effective, evidence-based strategic planning.”*

DPE is seeking to regulate strategic planning conducted by LWUs as it is an essential element of best practice management to reduce utilities' risks under the Local Government Act.

Namoi Water Alliance agrees with the Water Directorate that DPE seem to be seeking to use a financial control to indirectly regulate strategic planning. The regulatory control when finalised will be gazetted by the Minister for Lands and Water, that the framework will replace the 2007 Best-Practice Management of Water Supply and Sewerage Guidelines under section 409(6) of the Local Government Act.

409(6) says that

The Minister for Water, Property and Housing, with the concurrence of the Minister administering this Act—

- (c) is to cause guidelines to be prepared and published in the Gazette relating to the management of the provision of water supply and sewerage services by councils, and*
- (d) may, if of the opinion that a council has not substantially complied with the guidelines, direct the council to comply with any particular aspect of the guidelines before making any further deduction under subsection (5).*

Namoi Water Alliance concurs with the Water Directorate that Section 409 of the Local Government Act pertains to the consolidation of funds by Councils, and is intended to restrict expenditure of water and sewerage funds to water and sewerage activities.

It is not clear as to why section 409(6) is to be amended and the effect of an amendment to the intent of the Consolidation of Funds clauses.

It is recommended that advice from the NSW Office of Local Government (OLG) on this and other applications to the Local Government Act is published for the sector.

Namoi Unlimited believes that the regulation to establish effective, evidence-based strategic planning and outcomes should be driven by the existing strategic planning framework of Councils, the Integrated Planning and Reporting (IP&R) framework.

Incorporating water into the IP&R framework would provide the planning framework for infrastructure and investment to support the development of projects for the Safe and Secure Water Program to Water Infrastructure, a pipeline of projects for LWU in NSW, and budgeting.

This would provide DPE with the assurances that the community and other stakeholders have effective and evidence-based strategic planning around water provision and infrastructure. This also provides DPE to focus on;

- the connection between LWU strategic planning, the NSW Water Strategy and Regional Water Strategies
- updating, developing and providing secure yield guidance for LWU
- updating, developing and providing water security data and modelling
- updating, developing and providing the Eligible Risks and Issues List and data, including work, health and safety priorities.

The department's regulatory role will work in tandem with our separate advisory and support role.

As noted in Section 2 about, the Namoi Water Alliance supports the provision of guidance, advice, and support to local water utilities to help them complete strategic planning, however questions if this is a role for DPE, that there are other options that could build the capacity and capability of Councils and regions that would be sufficient, appropriate, and robust, and contribute to the communities of regional NSW.

Noted is that the Safe and Secure Water Program can provide co-funding to eligible utilities to undertake strategic planning, including regional strategic planning. This program support does not extend to capacity building for Councils, i.e. staff to directly assist LWU with this requirement. OLG, Councils and Joint Organisations would be better placed to be supported to have a long-term view of regional strategic planning and provide this support to Councils and LWU.

Namoi Unlimited would support resourcing Councils or Joint Organisations to provide strategic planning help to LWUs, rather than DPE. Councils and Joint Organisations understand the needs of local and regional customers, and LWU are the entities that will deliver those needs for customers. Councils need to maintain decisions and directions around planning and investing in infrastructure. Councils and LWU also maintain the ongoing operations and maintenance, creates the pricing structure and manages the risks for; water security, water quality, the environment, assets and infrastructure, customers, and their financial sustainability.

There are contradictory statements in this direction; *"the department's regulatory role will work in tandem with our separate advisory and support role,"* and *"local water utilities can best meet the needs of their customers, and manage key risks, when their decisions and activities are based on effective, evidence-based strategic planning"* – the roles remain unclear, and the extent to which these roles will participate in LWU and Council business is not clearly defined.

Namoi Water Alliance does support DPE working in partnership with LWU to integrate state, regional and local water utility strategic planning, and playing a leadership role, in the development of and access to modelling and data. This is a critical and substantial support task for DPE.

DPE has provided a list of strategic planning outcomes (3.2) upon which DPE will measure outcomes to a reasonable standard, that is:

- sufficient – underpinned by evidence-based analysis that supports the conclusions reached
- appropriate – underpinned by relevant departmental guidance and industry standard approaches to conduct planning and reach conclusions

- robust – underpinned by evidence that draws on appropriate sources and recognises and rebuts potential alternative interpretations.

It would appear that an ‘appropriate’ standard requires the guidance of the department. Namoi Water Alliance has provided feedback in the past around IWCMs and Section 60 approvals that the advice from the department is over-prescriptive, expensive and doesn’t reflect the desires of customers. Further advice has been provided that where Councils have drawn on evidence from appropriate sources and interpretations, DPE staff have found this to be unsatisfactory. Such standards also need to reflect the capacity and capability of Councils to invest in such process, and access any funding through Safe and Secure for this process.

Namoi Unlimited recommends that DPE review these standards, and acknowledge and consider the application of;

- ‘compliance’ or ‘non-compliance’ with the requirements/regulation.
- ‘sufficient’ evidence here mainly refers to the number/amount of audit evidence.
- ‘appropriate’ here refers to the quality of evidence
- ‘evidence’ as described above can be provided by Councils, DPE, industry organisations and standards, as well as appropriate external consultants who may concur or have alternative interpretations.

More problematic for Councils will be that a reasonable standard will be assessed on all three characteristics, rather than on a scale that reflects the capacity and capability of the Council and the LWU involved. Such an approach also does not enable a continuous improvement mechanism.

The considerations we will apply to the reasonable standard test and how these may be addressed are set out in more detail in Table 1. Importantly, ‘sufficient’, ‘appropriate’, and ‘robust’ are 3 distinct though interlinked characteristics we assess when considering whether strategic planning outcomes are achieved to a reasonable standard, rather than levels of assessment (see Figure 2).

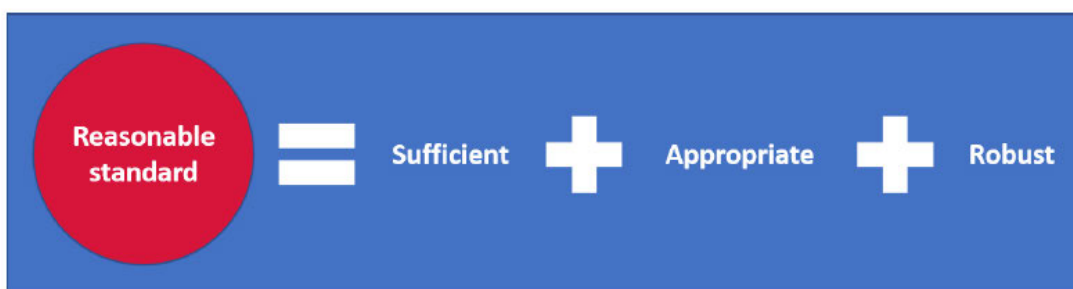


Figure 2. The 3 considerations comprising the ‘reasonable standard test’

When reviewing the considerations for a LWU or a Council to review a ‘Reasonable Standard’;

- The decisions rest with DPE, this doesn’t reflect the approach that LWUs and Council are responsible for delivering strategic planning that is relevant to the needs of the community, and produced to reflect the needs of the community.
- If the strategic planning is based on risk, and the Council as the Board of the organisation assesses the risk and is comfortable with the level of risk and how it is to be managed over time, then this strategic planning functions should be a Council determination/consideration not DPE.
- DPE may consider the need for a mechanism to instruct a poor performing entity to conduct planning a certain way, however this should not be an approach for every LWU.
- The table should be reviewed to reflect the audit definitions of sufficient and appropriate.

- The outcome should be that the Strategic Planning is either compliant or not.
- Under ‘appropriate’ DPE will consider whether regulatory, legislative, industry or other standards or methodologies have been applied correctly, strategic planning is usually supported by business and operational planning, such detail required here may go beyond the scope of strategic planning.
- DPE maintains veto over the appropriateness of sources, options and interpretations, this is a barrier that has been identified within this process, that independent or alternate advice to DPE is dismissed or under-valued.
- The ‘Ways to substantiate’ for LWU seems to maintain the current process and practice applied by DPE which has been deemed not to be supportive of LWU.

Table 1. Assessment of the 3 considerations of reasonable standard

| Consideration | Sufficient | Appropriate | Robust |
|-----------------------|---|--|--|
| Applied by department | <p>The evidence that underpins each strategic planning outcome provides objective support for the conclusions reached</p> <p>We will consider:</p> <ul style="list-style-type: none"> • whether objective evidence has been provided in respect of each of the strategic planning outcomes. • whether the evidence provided supports the conclusions drawn. • the extent to which any gaps in available evidence can be justified. | <p>Use of industry standard approaches to planning and reaching relevant conclusions</p> <p>We will consider:</p> <ul style="list-style-type: none"> • whether regulatory, legislative, industry or other standards or methodologies apply to the aspect of strategic planning under consideration • if such standards or methodologies apply, whether the local water utility has both used those standards or methodologies and applied them correctly • if such standards or methodologies apply and the utility has either not used them or not applied them correctly, whether there is any reasonable justification for this. | <p>Evidence draws on appropriate sources that recognises and rebuts potential alternative interpretations.</p> <p>We will consider whether:</p> <ul style="list-style-type: none"> • the evidence presented was generated or prepared with the intention of supporting the conclusion reached. • the evidence presented represents an appropriate way to demonstrate a particular conclusion. • alternative constructions of the evidence presented have been considered (i.e., if the evidence is open to interpretation, have all interpretations been considered and/or rebutted). |

The list of outcomes is extensive, and should the assessment of considerations be retained, this is an extensive and exhaustive list of outcomes required to be developed for strategic planning. From the experience of the Namoi Water Alliance in the Namoi Regional Town Water Supply Strategy, all of these outcomes will be difficult for LWUs to achieve without a partnership approach to data, modelling, capture, interpretation and access.

Namoi Water Alliance concurs with the advice provided by the Water Directorate that the definition of the reasonable/standard test is broad and requires more specific reference to contemporary national and international standards, otherwise ‘sufficient, appropriate and robust’ is likely to be interpreted as the same

as the old Best Practice Guidance just in different words. The regulatory framework will not address the internal culture of the subject matter experts within DPE.

To provide assurance whether effective, evidence-based strategic planning occurs, DPE is proposing to assess:

- whether the strategic planning undertaken by the local water utility achieves each outcome area to a reasonable standard
- based on its assessment of outcomes areas, whether the local water utility has in place effective, evidence-based strategic planning
- whether we wish to make any recommendations to the utility, and if so, what these are.

Namoi Water Alliance maintains that this role again reiterates the current status and process, rather than acknowledging that a LWU or the Council needs to hold and retain ownership of any strategic planning process, and the value of the exercise needs to be driving compliance. DPE needs to be focussed on the areas of 'non-compliance' not sector-wide control. Further examples of this are;

- Maintaining currency of assessment of strategic planning - Both local water utilities and the department can trigger a review and re-assessment of whether the strategic planning undertaken by a utility is effective and evidence-based, including for both the overall assessment and the assessment of individual strategic planning outcomes.

The review mechanisms added complexity and compliance that is unnecessary, if DPE incorporates this planning with the IP&R process, reviews and updates occur regularly .

An annual 'check-in' process by DPE to review a local water utility's strategic planning, will be cumbersome and not add value to Council/LWU operational processes.

This should only be triggered where a Council/LWU is non-compliant with strategic planning.

This is the same oversight that DPE currently has over LWU, disabling rather than enabling.

Descriptive measures in 3.4 contradict the partnership intent of this work, and maintain the current DPE prescriptive processes that LWU's have been calling for change for some time. This part of the document needs review and DPE should assess what value this will achieve for LWUs, or disabling the barriers for LWU.

Namoi Unlimited is involved in a regional approach to strategic planning for Councils, at the time of writing this submission, the only Joint Organisation that has sought a regional approach since the program was announced. Councils are grateful for the funding support and DPE support on this project. The descriptions in this section appear to restrict the regional or collaborative work to;

- identification of local and regional cross-boundary options and development of effective and efficient regional solutions to address water security risks
- identification, assessment, and development of regional cross-boundary options for drinking water treatment, sewage treatment and reuse
- assessment of how regional cross-boundary solutions can be integrated into each local water utility's own strategic planning, including governance, asset ownership and ongoing management and pricing arrangements. Regional, catchment-based data collection or analysis could inform individual a local water utility's strategic planning, especially water security analysis.

The experience of the Namoi project has enabled the relationships between LWUs, further, it has driven the integration of work with the Regional Water Strategies and considerations for future demand around the Regional Jobs Precinct. This is difficult collaboration, and limiting the scope of regional collaboration to these

three areas will restrict the capacity of alliances to address strategic and operational issues and secure funding from programs like Safe and Secure.

Namoi Water Alliance agrees with the Water Directorate that there are significant strategic challenges for LWU that are outside the control of Councils, and these challenges are difficult for Councils to address in such a prescriptive framework, including:

- 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 and approvals from Water Infrastructure NSW and Commonwealth
- The failing market for water operator training
- The absence of a Community Service Obligation that would assist our smallest communities to achieve strategic outcomes.

The framework seems to seek inclusive content from LWUs and Councils, yet the approach to support from DPE does not provide the same inclusivity required across the regulators, between departments of DPE and between DPE and OLG.

Section 4: Assessment and approval of dividends

Guidance on paying a dividend have not been reviewed since the issue of the Best Practice Management of Water Supply and Sewerage Guidelines in August 2007, 15 years ago. As noted in this document, this section is not materially changed from the department's existing approach.

The Water Directorate in their submission reports that only 9 of 92 LWUs, (about 10%) have paid a dividend in the last 6 years reporting years.

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.

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.

DPE needs to review the caps on dividend payments regularly.

DPE needs to review the compliance requirements for paying a dividend.

Section 5: Assessment and approvals of proposed works

Under section 60 of the Local Government Act, section 292(1)(a) of the Water Management Act, and section 121 of the Water Management (General) Regulation, the Minister for Lands and Water has responsibility for the approval of:

- construction or extension of water treatment works by a council (s.60(b))

- provision of sewage from its area to be discharged, treated, or supplied to any person by a council (s.60(c)). 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?:

The processes outlined in this section are designed to apply to all section 60 applications. Namoi Water Alliance sees little change in the process DPE and Councils follow to obtain a section 60, and thus if this process remains unchanged the results will remain the same.

This process provides the introduction of a clock for a utility's application for a section 60 approval, with a commitment to achieving approval within 60 days of receiving a completed application (phases 2, 3 and 4).



Figure 4. Section 60 approvals process

DPE only applies the clock at stages 2, 3 and 4. DPE retains the right to request/require additional information, in writing, and stop the clock. The clock should be initiated from Stage 1, and include the workshop assessments and collaboration phases of the section 60 process.

If DPE is to create, maintain and update a public register to 'status of assessment incomplete' and 'stop the clock' information such information must clearly state the reasons as to why the process has stopped, why it has been stopped, by whom the process has been stopped, and what information is required to restart the process.

Namoi Water Alliance supports comments from the Water Directorate that;

- If the overall aim is to streamline project approvals to reduce LWU's risk, a wholistic view of projects is required. An integrated view of the planning and approvals process could include:
 - Achieving regulatory certainty that the concept will be progressed/approved by regulators without competing regulatory requirements. These conditions could 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.
- Funding approvals from Water Infrastructure NSW need to provide more certainty, current evidence is that projects are being broken into smaller phases and smaller funding deeds, requiring up front pre-construction expenditure from LWU's without certainty over construction funding.
- DPE needs to have a 'hands off' approach to LWU procurement, especially for consultants and contractors.

- DPE support should embrace design and construction contracts involving innovation and technology, providing incentives for newer, more efficient and effective technologies and designs. Support needs to be provided in the design and construction process.
- DPE needs to recognise that many projects may need to 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.
- There needs to be an escalation and an appeal decision or review process implemented without delay.
- DPE 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'.

Matters to be considered before granting approval broadly says that DPE can mandate any considerations concluding *'provision of any documents or information the minister needs to be satisfied of the council's competency to carry out the construction or extension in question'* and *'provision of any documents or information the minister needs to be satisfied that any inspections of the work or site of work that the minister has directed the council to do for the purposes of determining the application for approval has been done'*. Again this changes none of the existing process and maintains that on behalf of the Minister DPE can continue to request irrelevant changes and information of Councils and consultants.

The Namoi Water Alliance has previously provided comment that it has never been made clear what the benefits to a LWU of pursuing Section 60 approval are, as it seems when something goes wrong with a treatment process there is limited to no support from DPE or government agencies to assist or fund upgrades even though Section 60 approval was granted. It seems that Section 60 is a very expensive tick box exercise and, when completed the sole responsibility for the provision of the service remains with the LWU. The proposed changes do not seem to change this.

Namoi Unlimited has commented previously, that there is no attention in this process to the Section 60 approach to the use of recycled water. In a previous submission to the Minister and the TWRRP process in 2021 Namoi Unlimited commented as follows;

RECOMMENDATIONS

That,

- I. The Minister for Water seek an urgent review of the Namoi Increasing Resilience to Climate Change Project by the Town Water Risk Reduction Program, specifically the application of the Section 60 process for a trail to use recycled water on gravel roads in the Tamworth Regional Council and Walcha Council Local Government Areas, with the intent to provide approval to conduct the trial;
- II. The Minister for Water seeks the support of the Minister for Planning to investigate the use of recycled water for the Winterbourne State Significant renewable energy project, Environmental Impact Statement;
- III. The Minister for Water provide funding to assist the region to develop options around recycled water for the Namoi region; and

- IV. The Town Water Risk Reduction Program adopts the Increasing Resilience to Climate Change project as a ‘case study’ or ‘pilot’ project to assist Namoi Unlimited with this project and to progress the project to trial.

KEY ISSUES

Namoi Unlimited was funded \$285,000 by the NSW Increasing Resilience to Climate Change Program to investigate and trial the use of recycled water for gravel roads. The outcomes of this project was to determine if; recycled water could be used at Level 4 Water Restrictions on gravel roads, refine risk management tools, and practice.

The regulation framework for Section 60 approval for this project will not permit Tamworth Regional Council and Walcha Council to undertake a trial to test how recycled water can be used for gravel road construction and maintenance at level 4 water restrictions.

There are a number of areas of disagreement between the project team and regulators from DPIE Water and NSW Health that are described below;

1) Risks to Public

DPIE Water and NSW Health maintain that this project is ‘high exposure’.

The project team maintain that the proposed scheme is not ‘high exposure’ with respect to the public. Gravel roads are located in rural areas with low population density, low traffic numbers and extremely low pedestrian and cyclist numbers. The risk management plan identifies ways to close or restrict traffic, and cease the flow of water should a member of the public be in the area. The project team suggest that the proposed scheme should be classified as ‘low’ exposure.

2) Disagreement in the Approach by the Regulators

In the initial stages of the project and before required workshops with the regulators, DPIE Water directed the project team to develop specific recycled water targets for the project.

Health disagrees, and their position is that the recycled water targets should be the same as the standard targets for ‘municipal use’ (e.g. irrigation of public open spaces, sports grounds, golf courses, public gardens etc.).

3) Risks to Council Workers

The project team acknowledges that the exposure potential for Council workers is higher than the general public and this is reflected in the Risk Assessment Report.

Councils are responsible for, and are currently managing the risks associated with recycled water. Councils have substantial experience in managing WHS risks across its operations, including personnel being exposed to raw sewage and wastewater at treatment facilities (e.g. sewage pumping stations, wastewater treatment plants).

The National Guidelines (p90) states: “*Exposure assessment typically focuses on the public or consumers ... in most cases, occupational exposure can be managed by workplace procedures.*”

This is rejected by DPIE Water and NSW Health.

4) Wastewater Pathogen Testing

Six rounds of pathogen testing have been conducted for the project at the Walcha Council and Tamworth Regional Council treatment plants. The regulators have dismissed the testing as inadequate, even though the number of tests conducted exceeds the guidance in Section 5.3.1 of the National Guidelines that recommends “*at least three, and ideally five*” rounds of testing should be undertaken.

5) Regulators suggest the Victorian validation guidelines are more appropriate.

The application of another state’s guideline in this process has not been explained and seems excessive.

The project team maintain that the Victorian guidelines are for Class A recycled water [that] has the highest microbiological standard and requires the highest level of treatment because it has end uses that carry a high risk of direct human exposure to, or incidental ingestion of, the water. These high exposure uses include residential developments (such as ‘dual pipe’ systems for toilet flushing and garden use), the irrigation of public open spaces where access is unrestricted, and the irrigation of crops that are consumed raw or unprocessed.

6) End Use Controls

Issues identified by the project team remain outstanding as the above issues could not be resolved in workshopping with the regulators.

IMPACTS

Some councils ceased the maintenance of gravel roads during the recent drought due to the lack of water and this led to significant road safety risks on deteriorating gravel roads, economic and community impacts .

“Across the Namoi region droughts are becoming shorter and more severe than those seen before the 1950s.”

“The recent drought has been more severe than other droughts. Recent drought conditions in the region have been some of the worst on record and resulted in:

- *Lowest inflows on record*
- *Lowest recorded storage levels*
- *Restrictions for town water supplies*
- *Zero and low allocations for high security and general security licences*
- *Cease-to-flow conditions persisted along the regulated Namoi River for 10 months from March 2019 to February 2020*
- *Loss of connectivity¹”*

Draft Namoi Regional Water Strategy list of options:

- Option 5. Investigate the use of advanced water treatment technologies for towns
- Option 6. Reuse, recycling and stormwater projects
- Option 31. Water efficiency projects (towns and industries)

Vestas is developing the State Significant Development proposal for the 700 MW Winterbourne Wind Farm project outside of Walcha. The proponents are currently preparing the Environmental Impact Statement (EIS). If the development is approved, construction is expected to commence mid-2023.

During construction the proponents expects they will require approximately 100 ML of water, over the course of approximately two years, for the purpose of dust suppression on Council roads and wind farm access roads.

The proponents believe that there is an opportunity to use recycled wastewater for this purpose.

CONSULTATION

The NSW Government established the Town Water Risk Reduction Program and Section 60 and its application has been discussed in detail and the NSW Department of Planning, Investment Environment (DPIE) Water and recommendations for improvements are being made to the NSW Government.

¹ Draft Namoi Regional Water Strategy 2020

Namoi Unlimited is a stakeholder of the Town Water Risk Reduction Program Stakeholder Advisory Panel and has been involved in the review of existing arrangements and the development of improved processes.

Member Councils of Namoi Unlimited

Private sector operators including consultants for the project – Geolink and Vertas.

FINANCIAL IMPLICATIONS

Namoi Unlimited is recommending to Local Government NSW the funding program administrators for the increasing Resilience to Climate Change program that there are two options for the continuation of this project;

- The section 60 is granted for the trail; and or
- Feasibility and options are investigated for (1) further treatment at the Walcha Treatment Plant, and (2) a portable recycled water vehicle for Tamworth Regional Council.

Namoi Water Alliance maintains that there is no described change in this process in the new regulation

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?:

Namoi Water Alliance supports comments made by the Water Directorate that;

- DPE should also ensure that its inspectors undertake continuing professional development to maintain competency in new/emerging technology.
- DPE should enable electronic records keeping and data. Online data trends should be analysed and shared to demonstrate process control and identify opportunities for continuous improvement and performance.
- Online data and records and analysis would complement and enhance inspections and on-site support and discussions.
- Any relationship between regulators and LWUs that can proactively and safely bring 'bad news' to a regulator without fear of sanction, with the intent that further support can be obtained and performance can be improved to obtain support could mean risks and issues will be managed more quickly and effectively.
- DPE can facilitate and coordinate support and collaboration with other regulators with joint desktop exercises in incident and emergency management, proactive testing of operating procedures and contingencies. These desktop exercises could be undertaken in regional groups of councils and Joint Organisations of Councils to foster regional relationships between LWU's and regional regulatory staff.
- Inspection results should not be published or distributed without the LWU's consent to avoid eroding the trust and relationship between LWUs, DPE and regulators.

Section 7: Trade waste concurrence

This section is not materially changed from the department's current approach. The department recently reviewed this approach (in 2021) and does not intend to make any changes at this time. The NSW Liquid Trade Waste Management Guidelines were reviewed and published in 2021 after exhaustive consultation with LWUs.

The Water Directorate and Namoi Water Alliance 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.

It is noted that this Section also mentions Developer Servicing Plans and commercial water and sewerage developer charges. The 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 were published relatively recently after a 2007 review by IPART .

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.

Section 8: Performance monitoring and reporting

Namoi Water Alliance supports comments made by the Water Directorate for 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.

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

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.

The expectation is that the new regulatory framework will reduce this level of data and streamline the collection of data for specific purposes and continuous improvement.

The 2015/16 reporting year was the last year where the Department issued Performance Monitoring Reports, Benchmarking Reports and concise Action Plans for investigation of issues raised by the data. We strongly recommend that these reports be reinstated.

Section 9: Review of decisions

Namoi Water Alliance supports the Water Directorate to establish a structure that provides LWUs with ability to seek a review of decisions, and supports a structured escalation process to the DPE Water Executive.

The concern is that this structure is DPE providing a review on the decisions of itself initially, and then who the DPE CEO will refer to for a review of the decision.

It could be implied that a DPE decision will be referred back to the same people who made the original determination at both levels.

Namoi water Alliance sees this process of review as important to addressing the cultural change required and power imbalance that exists within DPE and seeks some engagement with a party or parties external to DPE.

The timeliness of a review decision also needs to be addressed.

DPE could embrace a process of peer review and external improvement review.

It should also be noted that there are costs throughout the Section 60 process in particular that are being incurred by Councils. Currently due to COVID the impact of price increases and the availability of goods and services for construction is impeding project progress.

Any review and decision process should be based on risk, risk mitigation and responsibility.

Section 10: Coordination between regulators

The roles and functions of regulators have been clearly defined. However, the new regulatory framework provides little guidance about who will coordinate discussions among regulators.

DPE could support LWUs by providing regular engagement with local and regional regulators. Examples provided by the Water Directorate are;

- Operational matters can be dealt with regional regulatory staff, regularly, quarterly or monthly
- Strategic matters should allow access to more senior regulatory staff
- Meeting with LWU's in regional groups
- MoU's 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