

Department of Planning and Environment

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Consultation draft: Regulatory framework for local water utilities

Replacing the Best-Practice Management for Water Supply and Sewerage Guidelines

March 2022





Acknowledgement of Country

The Department of Planning and Environment acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Consultation draft: Regulatory framework for local water utilities

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Acknowledgements

Thank you to the many stakeholders across the local water utility sector who have partnered and collaborated within the Town Water Risk Reduction Program to design an improved regulatory framework for local water utilities.

This document was developed in collaboration with members of the Town Water Risk Reduction Program's:

- Stakeholder Advisory Panel
- Strategic Planning Working Group
- Technical Assessments and Approvals Working Group.

This is a draft for consultation and is not endorsed by the members of the groups above. We welcome feedback to ensure that this draft regulatory framework meets the needs of all stakeholders.

Front cover photograph

Carcoar water filtration plant, supplied by Central Tablelands Water

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Foreword

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. It covers:

- local government councils exercising water supply functions under Division 2 Part 3 Chapter 6 of the NSW [Local Government Act 1993](#)¹
- utilities exercising water supply functions under the NSW [Water Management Act 2000](#).²

Local water utilities are responsible for delivering safe, secure, efficient, sustainable, and affordable water supply and sewerage services to 1.8 million people in regional NSW. They protect public health and the environment and support economic development and liveability.

The Department of Planning and Environment oversees and supports local water utilities in their delivery of safe, secure, sustainable, and affordable water and sewerage services for healthy and resilient communities, businesses, and the environment, now and into the future.

Every local water utility faces unique challenges and risks. By working in partnership with local water utilities, other regulators, and the wider sector, we can enable local water utilities to manage risks and priorities in urban water systems more strategically and effectively. This will reduce the risks to regional NSW communities over time.

We are amending the regulatory framework in collaboration with the sector as reform is required. Improved regulatory settings and approaches are crucial to allow local water utilities and their NSW Government regulators to identify risks and effectively and efficiently manage them. This proposed new framework will empower and enable utilities to address risks and strategic challenges effectively and efficiently based on locally developed plans and management systems. The department's Town Water Risk Reduction Program and its Water Utilities team has worked in partnership with the local water utility sector to produce this draft framework.

When finalised and gazetted by the Minister for Lands and Water, the framework will replace the 2007 [Best-Practice Management of Water Supply and Sewerage Guidelines](#) under section 409(6) of the [Local Government Act](#). This regulatory framework will contribute to the implementation of relevant NSW Government commitments under the National Water Initiative, National Competition Policy, and the NSW Water Strategy.

In publishing this draft of the framework, we are seeking industry and community support and feedback. We are proposing the new framework takes effect from 1 July 2022, subject to publication by the Minister for Lands and Water as specified by section 409(6) of the [Local Government Act](#) and with the agreement of the Minister for Local Government.

¹ A list of the local government councils exercising water supply functions under the *Local Government Act 1993* is available at: www.industry.nsw.gov.au/water/water-utilities/local-water-utilities

² The following utilities are exercising water supply functions under the *Water Management Act 2000*: Cobar Water Board, Essential Energy, WaterNSW for the Fish River Water Supply and Central Coast Council.

We will support the new framework by taking a stronger partnership approach and culture, and by taking a collaborative approach to problem solving. We will proactively engage with local water utilities, other regulators and the community to focus on solutions to support compliance.

This document sets out the department's draft regulatory framework for local water utilities, proposing changes and improvements to the current approach. In addition to its regulatory role, the department provides expert strategic advice and financial and technical support to local water utilities and other stakeholders for regional urban water supply and sewerage services. This support covers planning, pricing, capital works, operation, maintenance, management, and training. We are also a funding partner with local water utilities in the delivery of critical water and sewerage projects.

As part of our commitment to continuous improvement, we will conduct a performance review of the implementation of this regulatory framework (and associated guidance materials) within 2 years from finalisation. There will also be regular periodic reviews of the full suite of relevant regulatory documents, which will happen at least every 5 years.

We want your views on this draft regulatory framework

The department is seeking your input to ensure that this draft regulatory framework meets the needs of all stakeholders.

The multiple roles of the department

While this document sets out a draft regulatory framework for local water utilities, proposing changes and improvements to the current approach, the department also has an advisory and support role, assisting local water utilities to manage and reduce risks.

Our staff act as trusted advisors to our stakeholders, working in partnership with local water utilities to facilitate outcomes by providing free, independent, and impartial advice and support.

We are also a funding partner with local water utilities in the delivery of critical water and sewerage projects through programs such as the Safe and Secure Water Program.

The advice and support provided by the department, over and above and separate to its regulatory role, includes:

- advice on managing regulatory issues with the department and other local water utility regulators
- expert specific or general technical advice, including on planning, pricing, capital works, operation, maintenance, and management
- incident and emergency management support
- coordinating programs such as water efficiency and training
- promoting the exchange of insights between local water utilities to promote best practice in the industry.

Ongoing engagement with local water utilities means we gain an understanding of emerging risks and can provide advice to inform a response. Local water utilities benefit by gaining a better understanding the department's regulatory stance and processes. This makes the whole regulatory process more efficient.

During times of drought or water supply emergencies, we provide technical and/or financial assistance to help prepare or revise drought management plans, manage depleted supplies, implement emergency capital works, or undertake carting water where appropriate and feasible.

Emergency capital works include things like emergency bore supplies, temporary or permanent connection to another source or water supply scheme, or the development of new water sources.

We may also provide technical support to help manage risks to water and sewerage services, such as those posed to town drinking water following bushfires or flooding.

The department manages the \$1 billion Safe and Secure Water Program, the NSW Government's flagship water infrastructure program for local water utilities. It provides co-funding to help regional towns remove risks to water quality, water security, and environment.

Things to consider when reviewing this document

This draft regulatory framework was designed in partnership with stakeholders in the local water utilities sector, including utilities, utility regulators and the private sector. The draft regulatory framework is based on the actions for change and collaboration mechanisms identified in the department's [Roadmap to an improved regulatory framework for local water utilities \(PDF, 350.78KB\)](#). We established working groups and focus groups to bring together and tap into the different perspectives and diverse expertise and experience of all sector stakeholders, collaboratively creating this improved regulatory framework.

The proposed regulatory framework will evolve based on your feedback. We will consult publicly on the framework between 1 April and 30 April. During and following this consultation period, we will revise the framework in response to feedback and the issues raised.

The revision process will draw on experts within and outside the department (including from the working groups that supported the development of the framework). We will carefully consider all perspectives raised.

The framework is intended to provide a high-level articulation of how the department will regulate local water utilities. Guidance providing more detail about the department's regulatory requirements as well as 'how to' guides, templates, case studies and tools will be issued by the department and can be expanded on over time. We have taken this approach because feedback received from stakeholders indicated that current approaches were too prescriptive and did not allow sufficient flexibility for both the department and for local water utilities.

The sections of this framework are designed to be read in sequence. Each section builds on the previous section. The principles and approaches established in sections 1 and 2 should be considered to apply generally throughout the document.

List of key questions

We have provided a range of key questions that we would like your opinion on as part of the consultation process. These questions have been developed based on feedback already received from internal and external stakeholders, as well as a review of current challenges with the framework. The key questions appear at the end of a section.

For reference, we have listed all key questions here.

Section 3 – Strategic planning oversight:

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

2. Is the reasonable standard test applied to strategic planning outcomes appropriate?
3. What factors may indicate that a local water utility is no longer achieving strategic planning outcomes to a reasonable standard?
4. How should the department arrive at an overall assessment result based on the assessments of the individual strategic planning outcomes?
5. What tools should the department use for compliance?
6. What are the priority areas for additional guidance for strategic planning, that should be delivered by the department as early as possible?
7. What requirements or guidance do local water utilities need for the 'understanding water security outcome'?
8. How should the regulatory framework integrate with the Integrated Planning and Reporting framework?
9. How should the department transition utilities that have or are preparing an 'IWCM strategy' under the existing regulatory framework?

Section 4 – Assessing and approving dividend payments:

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

Section 5 – The department assesses and approves proposed works:

11. Is it appropriate to assess the proposed works at an early design phase for approval?
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?
13. Are the proposed standard conditions for section 60 appropriate?

Section 6 – Inspecting water and sewerage works:

14. How should the department communicate the result of inspections, including any improvement actions, with individual local water utilities?
15. How should the department integrate the result of inspections with other performance monitoring, including sharing with other regulators?
16. Should the department publish information about the results of inspections?

Section 8 – Performance monitoring and reporting:

17. Are the criteria identified for considering whether to collect information for performance monitoring appropriate?
18. Is the proposed information required to be reported appropriate?
19. Is the streamlined approach to performance indicators and benchmark data appropriate?
20. What performance outputs would be most useful for local water utilities and other stakeholders?

Section 9 – Review of departmental decisions:

21. Is the internal review approach appropriate?

How you can submit feedback

The deadline for feedback is **30 April 2022**.

There are two ways to provide feedback:

1. Respond to [our online survey](#)
2. Provide a written submission.

We will publish all submissions on our website. Individual survey responses will not be published, although a summary of survey responses will be made available.

We will consider all submissions and survey responses in the development of the final regulatory framework for local water utilities.

You can make a submission by emailing regional.town.water@dpie.nsw.gov.au

Data privacy

The Department of Planning and Environment is subject to the NSW *Privacy and Personal Information Protection Act 1998* in managing your personal information. In the interests of transparency, feedback will be published on the department's website. You can choose to have your feedback published anonymously or not published at all. Please review our [privacy statement](#) for further information. Feedback that contains confidential or commercially sensitive information will be considered along with all feedback received but will not be published on the department's website.

1 Vision and objectives of the local water utility sector

1.1 Local water utility sector vision

This framework is guided by the collective vision of all sector stakeholders.

Our shared vision is:

‘Safe, secure, sustainable and affordable water and sewerage services for healthy and resilient communities, businesses and the environment, now and into the future.’

1.2 Local water utility sector objectives

The local water utility sector includes local water utilities, the department, other regulators, industry associations, the private sector, and other interested stakeholders.

The sector objectives are to continue to ensure:

- safe and secure drinking water supply to protect public health and the environment, and to support economic development and liveability
- effective sewerage services to protect public health and the environment, and to support economic development and liveability
- services that, where possible, meet customer needs, expectations, and preferences
- financially sustainable water utilities with efficient and affordable pricing for services.

1.3 The role of local water utilities

The role of local water utilities is to deliver safe, secure, efficient, and affordable water and sewerage services to customers and communities, providing public health outcomes, and supporting economic development, liveability and the environment. They are governed by the *NSW Local Government Act 1993* and the *NSW Water Management Act 2000*.

2 The department's regulatory role

Every local water utility faces unique challenges and risks. By working in partnership with local water utilities, other regulators and the wider sector, the department can enable local water utilities to manage risks and priorities in urban water systems more strategically and effectively and, as a result, reduce risks in regional NSW communities over time.

2.1 Oversight of local water utilities

The Department of Planning and Environment is responsible for overseeing local water utilities in their delivery of safe, secure, sustainable, and affordable services and management of water service risks. To achieve this, we:

- set policy
- regulate
- monitor and support performance
- make regulatory decisions.

In addition to our regulatory role, we play an advisory and support role in helping local water utilities manage and reduce risks. This role sees departmental staff act as trusted advisors to our stakeholders, working in partnership with local water utilities to facilitate outcomes through the provision of free, independent, and impartial advice and support. The role also sees the department as a funding partner with local water utilities in the delivery of critical water and sewerage projects through initiatives such as the Safe and Secure Water Program.

We will proactively identify areas of potential need for a local water utility by conducting regulatory and performance monitoring activities, and enhancing the support we provide. Local water utilities 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).

2.2 Why the department regulates local water utilities

Ensuring utilities are managing key risks

The department's regulatory role seeks to ensure utilities are managing key areas of risk relating to:

- water security (including continuity of service provision)
- water quality
- the environment
- assets and infrastructure

- customers (including water supply and pricing)
- financial sustainability of the utility.

Overarching regulatory objectives

In managing risks, the department's overarching regulatory objectives are:

- driving the supply of safe and secure water and sewerage services
- supporting the protection of public health
- supporting the protection of the environment
- promoting the principles of integrated water cycle management to support sustainability and liveability
- promoting resilient infrastructure and fostering innovation
- protecting the interests of current and future customers and the community.

We achieve our regulatory objectives by requiring and enabling local water utilities to:

- implement effective, evidence-based strategic planning for water supply and sewerage services that applies the principles of integrated water cycle management and considers climate risks
- manage risks in strategic and effective ways
- implement robust and effective operational risk management, including effective and safe operation and maintenance of systems and robust emergency and incident management
- make fit-for-purpose infrastructure investments
- implement robust and effective processes to monitor performance
- protect and promote the interests of customers through efficient and affordable pricing
- be financially sustainable and manage finances prudently.

Regulatory functions

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.

The department uses its regulatory functions (outlined in Figure 1) to ensure local water utilities are appropriately managing potential areas of risk.

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



The 3 regulatory areas are covered in more detail within this framework:

- strategic planning is detailed in sections 3 and 4
- technical assessment and approvals are detailed in sections 5, 6 and 7
- performance monitoring is covered in section 8.

In line with a risk-based and flexible approach, we will support compliance by providing information to support capability building. We may provide information in response to a request from a local water utility to help it comply with a specific regulatory matter, or a more general request for support to ensure compliance.

We will support implementation of this framework by providing regulatory advice and guidance to local water utilities. We will publish guidance material that provides further detail on regulatory expectations, as well as templates, forms, and case studies to help local water utilities understand and meet expectations.

2.3 Other regulators

In addition to the department, other NSW Government regulatory agencies are responsible for overseeing local water utilities within their own regulatory frameworks. The department works

collaboratively with other regulatory agencies to ensure we provide efficient and effective support to local water utilities.

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.

More information about coordination with local water utility regulators is given in section 10.

2.4 Risk-based regulation

We take a risk-based approach to regulation. This means we target our efforts for oversight, support and intervention based on analysis of greatest risk for each local water utility, and across the sector.

In applying risk-based regulation, we will:

- undertake ongoing monitoring with early engagement to inform risk analysis and identification
- take a flexible and proportionate approach focused on outcomes
- balance resourcing between our regulatory oversight and proactive support roles
- balance best practice in infrastructure design and operation with how best to meet the needs of the communities that the infrastructure supports
- be clear about why data needs to be collected and proactive in how analysis is actioned.

2.5 Regulatory principles

The department has a series of regulatory principles that influence the way it makes decisions, engages with local water utilities, and performs its regulatory functions. These principles govern our relationship with local water utilities and provide a clear standard for how we will conduct regulatory functions.

We will focus on outcomes and be flexible and proportionate in our regulation:

- When exercising our regulatory role for local water utilities, we will focus on outcomes and be flexible in assessing how different local water utilities achieve the required outcomes.
- We will have guidelines in place that balance the need for clear expectations with providing local water utilities with the flexibility to make their own decisions.

We will prioritise according to risk:

- We will allocate our resources to deliver the greatest benefit, while prioritising the biggest risks to public health, customers, or the environment.

We will be fair and accept accountability:

- We will work in partnership with the local water utility sector to ensure that our approach to regulation and advice is relevant and targeted.

- We will seek information and input from local water utilities before making key decisions and explain our decisions once we make them. We will be answerable for our decisions, including providing mechanisms for our decisions to be reviewed, such as with an escalation process.
- We will set clear timelines for our regulatory processes and keep local water utilities updated on how their matters with us are progressing. We will publicly report on how we are meeting our timelines.

We will be transparent:

- We will publish our policies, priorities and expectations and provide information that explains what local water utilities can expect from our regulatory processes.
- We will use plain language and be clear and concise in our communications.
- We will ensure there is a clear distinction between our advice and support functions, our funding role, and our regulatory functions.

We will work collaboratively with other regulators:

- We will work collaboratively with other regulators of local water utilities to ensure we all have clear roles and responsibilities and that we communicate effectively with each other and local water utilities.

We will actively seek feedback and opportunities to improve:

- We will listen and be responsive to requests and feedback.
- We will monitor and evaluate our performance as regulators, including actively seeking feedback from local water utilities, regulators, and other stakeholders. We will use this information to improve our regulatory approach and processes.

3 Strategic planning oversight

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 department is committed that all local water utilities should undertake effective, evidence-based strategic planning. This will ensure utilities deliver safe, secure, accessible, and affordable water supply and sewerage services to customers and be able to manage key risks now and into the future, and in the event of significant shocks.

The department regulates strategic planning conducted by local water utilities as it is an essential element of best practice management to reduce utilities' risks under the Local Government Act. We regulate this by establishing what outcomes effective, evidence-based strategic planning must achieve and by providing assurance to the community and other stakeholders that effective, evidence-based strategic planning is happening and, as a result, key risks to service provision are managed effectively.

The department's regulatory role will work in tandem with our separate advisory and support role. As outlined in section 2 of this document, we provide guidance, advice, and support to local water utilities to help them complete strategic planning that is sufficient, appropriate, and robust.

In addition, the Safe and Secure Water Program provides co-funding to eligible utilities to undertake strategic planning, including regional strategic planning.

Strategic planning helps local water utilities ensure they understand the needs of their customers and how best to meet those needs. It also helps them plan infrastructure investment, ongoing operations and maintenance, and to create a pricing structure necessary to effectively manage risks to:

- water security
- water quality
- the environment
- assets and infrastructure
- customers
- their financial sustainability.

Local water utilities' strategic planning contributes to the water security of their regions and the entire state. The department will work in partnership with local water utilities to support integration of state, regional and local water utility strategic planning. We will play a leadership role and provide access to our resources (including models and data).

We do not specify how local water utilities should undertake or document their strategic planning, or how local water utilities should resource this activity. However, we will assess the strategic planning conducted by utilities against a set of outcomes. Local water utilities should conduct planning in a manner that is proportionate to their capacity, capability, and risk profile.

We establish what outcomes effective, evidence-based strategic planning must achieve (see section 3.2) and then assess whether a local water utility's strategic planning and decision-making achieves these outcomes to a reasonable standard (see sections 3.3 and 3.4).

We then communicate the result of our assessments publicly so that the utility, its community, financiers, and other regulators are assured that the outcomes of strategic planning have been met (see section 3.5). Publishing the result of assessments is also a key compliance tool available to the department. In addition, we will write to general managers, councils, or boards about the result.

To support the implementation of the regulatory framework, we will produce:

- additional guidance about opportunities to integrate strategic planning with the Local Government Integrated Planning and Reporting (IP&R) framework
- guidance for specific outcome areas to achieve a reasonable standard
- “how to” guides and templates
- exemplar case studies of local water utilities that are undertaking strategic planning to a reasonable standard or beyond.

Gaps in a local utility's strategic planning may expose regional communities to risks. We will proactively seek to identify any gaps. Where gaps are identified, we will assist local water utilities by providing appropriate advice and guidance. This will help local water utilities reduce risks and strengthen their strategic planning.

3.1 Local water utilities decide how to undertake their strategic planning

Generally, the department will not specify the tools, processes and approaches that a utility should use for strategic planning. Local water utilities are responsible for developing and implementing their own strategic planning. There is no single ‘best practice’ way for this work to be delivered. Our overall priority is to ensure strategic planning outcomes (outlined in Section 3.2) are achieved to a reasonable standard.

Local water utilities vary in size, geography, demographics, challenges, and organisational arrangements, which means strategic planning approaches and outputs can be significantly different across regional NSW.

For example, many council-owned water utilities have expressed interest in using the Integrated Planning and Reporting (IP&R) framework of the Local Government Act as a vehicle for local water utility strategic planning. The value of the IP&R framework as a standardised and well understood approach to strategic planning and reporting is widely recognised by the local government sector. We acknowledge that some councils have already incorporated elements of the IP&R framework into their local water utility strategic planning. For others, the IP&R framework may not be an appropriate or desirable approach. In some instances, the framework may need to be supplemented to adequately cover key outcomes of local water utility strategic planning (such as understanding water security).

We will provide ongoing support to ensure that local water utilities can undertake planning in a way that will meet the outcomes set by the department. A local water utility can also specifically request advice and support from department staff. In addition, when the department identifies (through data analysis and engagement) that a local water utility may face challenges in its strategic planning activities, we may provide support on a proactive basis.

3.2 Strategic planning outcomes

For effective, evidence-based strategic planning to occur, the department expects strategic planning to achieve the following outcomes to a reasonable standard:

- **Understanding service needs**
 - What are customers' needs and preferences?
 - What current and future demands are placed on water supply and sewerage systems?
- **Understanding water security**
 - What is the local water utility's access to current and potential water sources?
 - How will the utility address current and future risks around reliability of access to water?
- **Understanding water quality**
 - How will the local water utility address current and future water quality risks in its supply systems?
 - How will the local water utility meet relevant regulatory standards, such as on drinking water quality management?
- **Understanding environmental impacts**
 - How will the local water utility address current and future environmental impact risks in its sewerage systems?
 - How will the local water utility meet relevant regulatory standards, such as licence requirements set by the environmental regulator?
- **Understanding system capacity and efficiency**
 - What is the capacity of systems to deliver water (and future capacity needs)?
- **What is the capacity of its systems to collect and treat sewerage (and future capacity needs)?**
 - How will the local water utility ensure water efficiency in its systems?
- **Understanding other key risks and challenges:**
 - How will the local water utility address other key risks in its systems now and into the future?
 - How will the local water utility meet relevant regulatory standards such as on dam safety?
 - How has the local water utility considered climate risks?
 - How is the local water utility planning for drought?
 - How is the local water utility planning for incidents and emergencies and ensuring continuity of service?

- **Understanding solutions to deliver services**
 - How are options for delivering services and managing risks analysed?
 - How are supply and demand side options for water supply identified and evaluated?
 - How are assets managed over their life cycle to ensure service levels are met?
- **Understanding resourcing needs**
 - What resourcing is needed to deliver services and manage risks?
 - What are the life-cycle costs of managing assets?
 - What are the technical and operational skills needed to deliver services and manage risks?
 - How does the local water utility undertake workforce planning?
- **Understanding revenue sources**
 - What are the revenue sources available to fund the delivery of services?
 - What is the customers' ability to pay for services?
 - What is the customers' willingness to pay for services?
- **Make and implement sound strategic decisions**
 - Based on its understanding and adequately considering service needs, risks, and resources, how does the utility set service levels and deliver services?
 - How does the local water utility ensure sufficient revenue streams to allow efficient delivery of services over the long term?
 - How are customers engaged in decision-making and informed of choices between service levels, risks, and cost?
 - How does the utility monitor, and report on, performance to understand whether service levels are met and risks are managed?
- **Implement sound pricing and prudent financial management**
 - How are equitable and affordable prices set?
 - How is the utility consistent with National Water Initiative pricing principles?
 - How does the utility enable recovery of efficient revenue requirements and implement a cost-reflective and consumption-based tariff structure to promote efficient water use?
 - How does the utility set appropriate developer charges to recover the infrastructure cost of servicing growth?
 - How does the utility 'ring-fence' the water supply and sewer business fund from council's general-purpose fund?
 - How does the utility consider payment of tax equivalents and dividends?
- **Promote integrated water cycle management**
 - How are urban water cycle outcomes including water security, public health, environmental and urban amenity identified?
 - How are urban water cycle outcomes achieved and funded?
 - How is the local water utility supporting customers to increase water literacy and support water efficiency measures?

3.3 Achieving outcomes to a reasonable standard

The department expects that a local water utility's strategic planning achieves the strategic planning outcomes to a reasonable standard.

A reasonable standard is met if the utility considers and addresses an outcome in a way 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.

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).

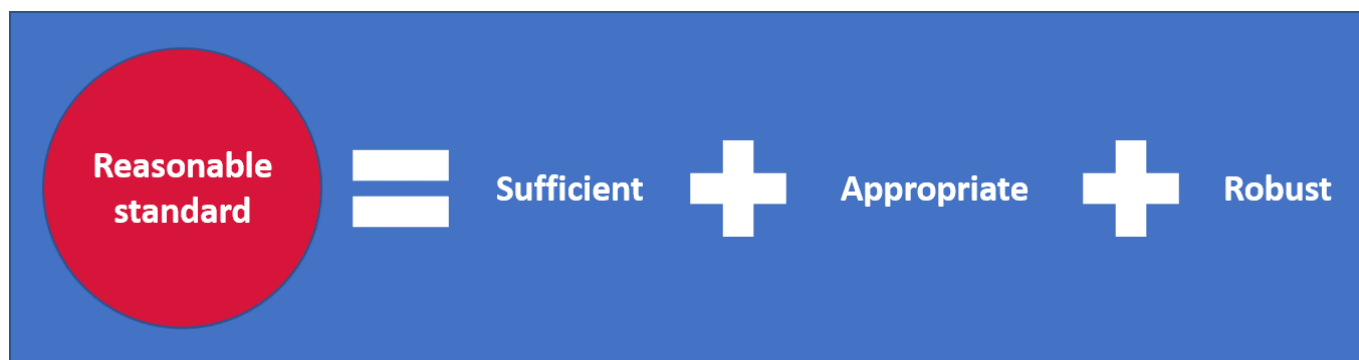


Figure 2. The 3 considerations comprising the 'reasonable standard test'

Table 1. Assessment of the 3 considerations of reasonable standard

Consideration	Sufficient	Appropriate	Robust
<p>Applied by department</p>	<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).

Consideration	Sufficient	Appropriate	Robust
Ways to substantiate	Evidence includes: <ul style="list-style-type: none"> expert advice or input (e.g. reports from consultants, analysis on demographic projections) audited materials (e.g., financial statements) internally generated materials (e.g. links to or copies of IP&R documents or reports on stakeholder engagement) external accreditation (e.g. compliance with ISO standards) public data (e.g. NSW Common Planning Assumptions, ABS demographic projections) observations by the department's staff of processes and approaches where appropriate. 	Local water utilities should: <ul style="list-style-type: none"> highlight what standards or methodologies they think apply outline how these standards or methodologies have been applied the extent to which they departed from these standards or methodologies and an explanation for that departure. 	Local water utilities should: <ul style="list-style-type: none"> highlight what evidence has been used to support what conclusions outline the analysis of that evidence undertaken to support the conclusions reached highlight any alternative interpretations of the evidence available Outline why the local water utility has reached the conclusion that it has.

The department is available to provide guidance, advice, and support to local water utilities to help them understand and meet strategic planning outcomes to a reasonable standard. More detail on this advisory and support function is given in section 2.

3.4 Strategic planning assessment will follow a clear, documented, and timely process

To provide assurance whether effective, evidence-based strategic planning occurs, the department will 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.

The department will maintain a public register of its assessment results.

3.4.1 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.

A local water utility can request a review of the assessment of its strategic planning at any time. When requested, we will conduct a review in line with the process outlined in section 3.4.2 of this framework.

The department can also trigger a review of the assessment of a local water utility’s strategic planning. We can trigger a review if we become aware of factors that suggest the local water utility may no longer achieve strategic planning outcomes to a reasonable standard.

We will also conduct an annual ‘check-in’ process to review a local water utility’s strategic planning.

The department will also work with local water utilities to support the ongoing achievement of strategic planning outcomes to a reasonable standard. This work will include meetings and performance monitoring as required.

In addition to the review and annual check-in processes, we have access to a range of sources of information on the performance of local water utilities (through performance and risk monitoring, information provided by other regulators, and statewide and regional datasets. As part of our risk-based approach, we will draw on information collected directly from local water utilities (as outlined in this section) as well as other sources to inform our support, advisory, and regulatory operations.

3.4.2 Strategic planning review process

A review follows the same process whether it is triggered by the utility or the department. This process is outlined at Figure 3 and explored in more detail below.

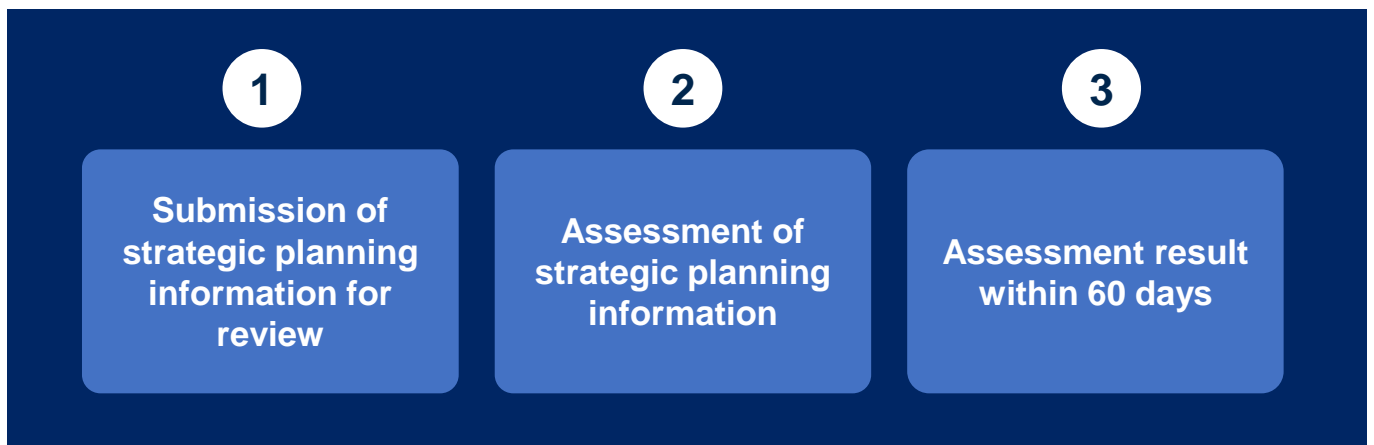


Figure 3. Strategic planning review process

The process ensures we will provide a decision about the assessment of a local water utility’s strategic planning within 60 days of receiving a review request accompanied by the relevant information (see phases 2 to 4 below).

If we need additional information, we will request it in writing, update the public register status and ‘stop the clock’ until the information is provided by the local water utility.

If a utility is unable to provide requested information, we may reach an assessment of ‘unsatisfactory due to incomplete information’.

Phase 1 – Submission of strategic planning information for review (starts the clock)

We encourage local water utilities to liaise with us before submitting their strategic planning information for review. We can provide informal advice to help utilities provide a submission that is fit for purpose and includes all required information.

Local water utilities can submit their review request and associated strategic planning information for assessment at any time. Similarly, we may request that a local water utility submit a review and associated strategic planning information to the department if we become aware of factors that suggest that the utility may no longer achieve strategic planning outcomes to a reasonable standard.

The department will accept a range of information as evidence. There is no expectation that a single comprehensive document will detail the local water utility’s ‘strategic plan’. Rather, our emphasis is on effective, evidence-based strategic planning that best integrates with a local water utility’s frameworks (including those of councils, where local water utilities are council-owned) so that it is actioned and implemented.

We encourage local water utilities to draw on existing materials wherever possible. There is no expectation that new information should be generated. Where information is published online, local water utilities can share a link to the information.

The associated information should include links or attachments for all relevant materials and supporting documentation.

Phase 2 – Assessment of strategic planning information

We will consider the information provided and make an assessment. All assessments will consider the strategic planning outcomes sought by the department and whether the outcomes are achieved to a reasonable standard.

If necessary, we may request additional information in writing to the utility. We will update the public register to ‘status of assessment incomplete’ and ‘stop the clock’ until that information is provided.

We or the local water utility may initiate further meetings to clarify an information request.

While other regulators are responsible for overseeing and supporting local water utilities within their own regulatory frameworks, there are consistency benefits when all a utility’s regulators have a coherent perspective. To enable this, we will share information on a utility’s strategic planning with other regulators as appropriate. We will also seek advice from those regulators on the alignment with their regulatory work of the information provided by the local water utility.

If other regulators need additional information to clarify matters before giving us advice, we will communicate this request in writing to the utility. We will update the public register to ‘status of assessment incomplete’ and ‘stop the clock’ until that information is provided.

Phase 3 - Assessment result within 60 days

Once we have analysed the strategic planning information provided, we will make an assessment and provide our reasons to the local water utility in writing.

Where we consider making an assessment different to that requested (where the review is triggered by utility) or changing the current assessment (where review is triggered by the department), we will notify the utility of this intention and provide utility with the opportunity to respond.

Final assessment decisions will be made by a senior executive within the department. The assessment will include written reasons. Where necessary, we will provide recommendations or guidance for potential improvements.

3.4.3 Annual 'check-in' process

We expect local water utilities to monitor any changes to their key assumptions, objectives or context that would trigger the need to update any part of their strategic planning.

An annual 'check-in' process must be undertaken by the local water utility to support this monitoring and to report to the department on key changes. The process is outlined in Table 2.

The annual 'check-in' is designed to minimise the time and resource impost on local water utilities. We will work with individual local water utilities to identify a specific time that an annual check-in will be conducted, where possible taking capacity and resourcing constraints of both the department and local water utility into consideration.

Table 2. Annual review process

Step	Description
1. Templated annual return	<p>The department will send each local water utility a templated annual return that helps us and the utility understand whether strategic planning should be reassessed and potentially updated.</p> <p>The annual return will ask local water utilities to consider:</p> <ul style="list-style-type: none">• Are the key assumptions and information underpinning strategic planning still current, effective, and appropriate?• Are there any new strategic or operational events that need investigation or major changes?• Are there any new strategic directions set by council or the Board, including within the IP&R framework?• If the answer is 'yes' to any of questions 1 to 3, does the local water utility intend to update any of its strategic planning documentation in the next year? If not, why not?• Has any relevant strategic planning information been updated in the last year?• How has the local water utility implemented any recommendations made by the department?

Step	Description
2. Analyse responses	The department will collate annual return information and analyse them to identify where strategic planning may need updating, where the current assessment may need revision and any trends across a region or the local water utility sector.
3. Proactively engage	The department will apply risk-based principles to identify local water utilities that may benefit from engagement on strategic planning issues. The department will then schedule meetings as required.
4. Communicate annual 'check-in' outcome	<p>Based on the annual return information and any further discussions, the department will communicate its view on any gaps or risk profile issues to each local water utility for formal reporting to the council or Board. This will enable timely input into the organisation's overall strategic planning work.</p> <p>Following the assessment of any strategic planning information provided, the department will make an assessment in writing.</p> <p>Where the department considers changing its assessment result, it will notify the utility of its intention and provide the utility with the opportunity to respond.</p> <p>The department will consider the response and include its consideration in the reasons for the assessment.</p> <p>Final assessment decisions will be made by a senior executive within the department. The assessment will include written reasons. Where necessary, the department will provide recommendations or guidance for potential improvements.</p>

3.4.4 Review of strategic planning assessments

The strategic planning assessment provided by the department will be accompanied by guidance outlining how it can be reviewed.

A local water utility can seek a review of the department's strategic planning assessment if it believes that, in making the decision, the department made a mistake or considered:

- matters outside those set out in this regulatory framework
- information that was misinterpreted by the department
- information that was not provided with the application
- information that was not requested to be provided by the local water utility
- information that was not provided by other local water utility regulators in response to the application.

This will help to ensure that that we make decisions that are consistent between any local water utilities seeking assessment of their strategic planning.

Further detail on options for review of the department's regulatory decisions is provided in section 9 of this document.

3.5 Publishing and public reporting

The department will publish on its website a register that tracks the assessments of local water utility strategic planning.

This will include:

- our assessment of whether a local water utility has in place effective, evidence-based strategic planning and achieves strategic planning outcomes to a reasonable standard
- the results of reviews and annual ‘check-ins’ undertaken.

The register will identify:

- local water utilities that have in place effective, evidence-based strategic planning
- local water utilities that do not have in place effective, evidence-based strategic planning and any recommendations to be actioned by the utility
- local water utilities that have not submitted information on their strategic planning.

We will also publish on our website our performance against the committed assessment ‘clock’ of 60 days.

Where a local water utility does not have in place effective, evidence-based strategic planning, we may elect to write to the local water utility’s senior representatives (such as senior executive, council, the Board or an audit, risk and improvement committee) or other stakeholders to highlight the need for strategic planning.

3.6 Regionally based local water utility strategic planning

Groups of local water utilities may decide to work together to undertake certain elements of strategic planning on a regional basis. This could occur through joint organisations of councils or other groups of local water utilities facing similar strategic and operational issues.

These strategies may help address broader issues across local water utility boundaries, such as providing urban water security, water supply services or sewage management services across a region. Similarly, there may be efficiencies that groups of utilities could obtain through a regional approach to strategic planning (for example, combined scoping or procurement of data modelling services).

Critically, we recognise that such an approach could help to better integrate strategic planning of individual local water utilities with relevant regional water strategies and improve coordination of the delivery of regional water strategy outcomes at both the regional and local level.

A regional town water strategy could include:

- 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.

On request, the department can assess whether a regional town water strategy is sufficient, appropriate, and robust input to achieve the strategic planning outcomes (see 2) covered by the regional town water strategy using the same process outlined in this chapter.

Key questions

Q1. Do the identified strategic planning outcomes address the key risks?

The draft regulatory framework proposes 12 strategic planning outcomes that utilities are expected to achieve to a reasonable standard

- Do the identified outcomes address the key risks? Why? Why not?
- Are these outcomes sufficiently specific and clear? Why? Why not?

Q2. Is the reasonable standard test applied to strategic planning outcomes appropriate?

Under the reasonable standard test that is applied to individual strategic planning outcomes (section 3.3), outcomes need to be considered and addressed in a manner that is sufficient, appropriate, and robust.

- Is this set of 3 considerations suitable? Why? Why not?
- Are the definitions for this set of three considerations sufficiently clear? Why? Why not?
- How should they change?

Q3. What factors may indicate that a local water utility is no longer achieving strategic planning outcomes to a reasonable standard?

As part of the assessment process (section 3.4), the department can review the assessment of a local water utility's strategic planning where it becomes aware of factors that suggest that the utility may no longer achieve strategic planning outcomes to a reasonable standard. The department is interested in stakeholder views on the factors that may indicate this.

- Can you suggest any factors the department should monitor?

Q4. How should the department arrive at an overall assessment result based on the assessments of the individual strategic planning outcomes?

The department is interested in feedback about how the framework should arrive at an overall assessment result (effective, evidence-based strategic planning) based on the assessments of the individual strategic planning outcomes. The department is also considering whether a more nuanced assessment of strategic planning, into categories of 'good', 'excellent', and 'best', might be useful for utilities, rather than simply providing a binary assessment.

Q5. What tools should the department use for compliance?

Publishing the result of assessments is the main compliance tool available to the department. In addition, the department will write to general managers, councils, or boards about the result.

- Should the department make available in its public register the assessment results for individual outcome areas?
- Are there other compliance tools or strategies the department should consider for those local water utilities who do not have a strategic planning assessed to a reasonable standard?

Q6. What are the priority areas for additional guidance for strategic planning, that should be delivered by the department as early as possible?

In addition to the regulatory framework, the department intends to produce clear, concise, and accessible guidance providing more detail about the department's regulatory requirements (within the boundaries of its regulatory objectives and principles – for example outcomes-focussed, and risk-based), as well as 'how to' guidance, templates, case studies and tools that help local water utilities to understand and meet expectations.

Q7. What requirements or guidance do local water utilities need for the 'understanding water security' outcome?

Local water utilities' strategic planning for water security contributes to the water security of their region and the state. The department will work in partnership with local water utilities to support integration of state, regional and local water utility strategic planning. We know the local water utility sector is looking for leadership from the department and to access our resources (including models and data).

Q8. How should the regulatory framework integrate with the Integrated Planning and Reporting framework?

The draft regulatory framework enables council-owned local water utilities the option to use on a voluntary basis outputs from the Integrated Planning and Reporting (IP&R) framework for strategic planning for some or all the outcomes.

- Should the final regulatory framework maintain this approach, or instead shift to a position where all council local water utilities are supported to use the IP&R framework for strategic planning by the end of the next cycle of IP&R (i.e. by 30 June 2025)?

Q9. How should the department transition utilities that have or are preparing an 'IWCM strategy' under the existing regulatory framework?

The department is interested in hearing from local water utilities that have or are preparing an IWCM strategy about how to transition to the new regulatory framework for strategic planning. Where a utility has a valid 'concurrence' from the department on its IWCM strategy, we consider it would automatically be assessed as achieving strategic planning outcomes to a reasonable standard.

- Do you agree with this position?
- How should the department transition local water utilities that are currently developing an IWCM strategy under the existing framework?
- How should the department identify and deal with local water utilities who need more time to strategic planning in place?

The department will also need to consider the resourcing impacts for the transition period.

4 Assessing and approving dividend payments

This section is not materially changed from the department's existing approach.

Under section 409(5) of the Local Government Act, a local water utility may pay an annual dividend from its water supply and sewerage business surplus to its council. A dividend is a 'return on investment' paid to the 'shareholder', which in this case is the local government council responsible for managing and investing in the local water utility's water supply and sewerage functions. Such dividends may be paid for each business at the end of the financial year after meeting the eligibility criteria.

A county council may pay a dividend to its constituent councils on a pro-rata basis based on the number of assessments.

This section sets out the requirements that a local water utility must meet to pay a dividend, and the department's assessment and approvals process.

4.1 Eligibility criteria

To be eligible to make a dividend payment from a surplus, a local water utility must:

- 1. have its strategic planning assessed as being effective and evidence-based**
The local water utility must have its strategic planning assessed by the department as being effective and evidence-based, as set out in section 3 of this regulatory framework.
- 2. verify special-purpose financial reports are a true and accurate reflection of the business**
The local water utility must obtain an independent financial audit report that verifies the water supply and/or sewerage special-purpose financial reports are a true and accurate reflection of the business.
- 3. verify that the overhead reallocation charge is a fair and reasonable cost**
The local water utility must get an independent audit report that verifies that the overhead reallocation charge to the water supply and/or sewerage businesses is a fair and reasonable cost. Where the unqualified financial audit and report addresses this, it may be relied on.
- 4. have a council's resolution**
The local water utility must resolve in a council meeting open to the public that it intends to pay a dividend and that it has met the other required criteria.

4.2 Calculation of surplus and maximum dividend

The calculation of surplus and payment of dividend from a surplus of the water supply and sewerage businesses is subject to the following conditions:

1. The dividend must be calculated based on the income statement of the business activity in council's audited special-purpose financial reports. The department's dividend payment form provides a step-by-step process for calculating maximum dividend from surplus.
2. The dividend from surplus must not exceed 50% of this surplus in any one financial year.
3. The dividend from surplus must not exceed the number of water supply or sewerage assessments as of 30 June of the relevant year multiplied by \$30 less the dividend for tax equivalents.
4. The total dividend from surplus paid in each rolling 3-year period must not exceed the total relevant surplus in the same period.

Local water utilities facing major capital expenditure for new or replacement infrastructure should defer paying a significant dividend from their surplus. Such a payment would directly increase the customers' bills. Such capital expenditure in any financial year is defined as that which exceeds 3% of the current replacement cost of the utility's water supply or sewerage assets.

4.3 Department approval

If a local water utility is eligible to pay a dividend from the surplus and elects to do so, it will need to apply to the department for approval with the following documents prior to payment of a dividend:

- council's minutes resolving achievement of required outcome and payment of dividend
- council's special-purpose financial statements for the dividend year
- statement of compliance and statement of dividend payment
- dividend payment form
- unqualified independent financial audit report for water supply and/or sewerage business(es)
- independent audit report verifying that overhead reallocation charges are fair and reasonable.

We will access the local water utility's current strategic planning assessment.

Review of department decisions

The advice about payment of dividends provided by the department will also be accompanied by guidance outlining how the decision can be reviewed.

A local water utility can seek a review of the department's dividend decision if it believes that, in making the decision, the department made a mistake or considered:

- matters outside those set out in this regulatory framework
- information that was misinterpreted by the department
- information that was not provided with the application

- information that was not requested to be provided by the local water utility.

This will help ensure that we are able to make decisions that are consistent between any local water utilities seeking to pay a dividend.

Further detail on options for review of the department's regulatory decisions is provided in section 9.

Key questions

Q10. How can the department improve its methodology for dividend assessment?

The department is interested in hearing from stakeholders about how we can design a methodology and assessment that allows for more flexibility and scope for larger dividends the better a local water utility performs.

5 Assessing and approving 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)).

The Minister for Lands and Water has delegated the responsibility for assessment and approval of section 60 applications to the department.

The process outlined in this section is designed to enable that assessment and approval function. It seeks to ensure that works are fit for purpose, manage relevant risks, and provide robust and safe infrastructure for customers of council-owned local water utilities.

In addition to our regulatory role, we provide technical and other advice to local water utilities proactively and whenever requested by the utility. We will always seek to clearly distinguish between our regulatory and advisory roles. Advisory technical and other guidance is provided without charge but cannot be considered binding on the department's formal section 60 determination regulatory role.

The processes outlined in this section are designed to apply to all section 60 applications. However, we may, at our discretion, consider alternative assessment processes to expedite applications being made for section 60 approvals under emergency circumstances where rapid infrastructure approval and construction are required.

5.1 Works that need approval under section 60

Table 3 gives a list of works that need approval under section 60.

Table 3. Works that require approval under section 60

Work type	Works that need approval	Works that do not need approval
Construction or extension of water treatment works by a council s.60(b)	<ul style="list-style-type: none"> • New water treatment plant • Augmentation of a water treatment plant • Replacement of a water treatment plant • Adding a new treatment process 	<ul style="list-style-type: none"> • Replacement of treatment unit in a water treatment plant • Construction or extension of water supply network • Construction of raw water supply pipelines
Provision of sewage from its area to be discharged, treated, or supplied to any person s.60(c)	<ul style="list-style-type: none"> • New sewage treatment plant or water recycling plant • Augmentation of a sewage treatment plant with or without recycling capability • Adding a new treatment process • New sewage collection network • New network for supplying recycled water • New discharge of treated sewage to the environment 	<ul style="list-style-type: none"> • Replacement of treatment unit in a sewage or recycled water treatment plant • Minor extension of sewage collection network

If a local water utility is uncertain about what works need approval, it should contact the department.

5.2 Section 60 approvals will follow a clear, documented, and timely process

It is the responsibility of a local water utility to apply to the department for assessment and approval. We urge local water utilities to submit section 60 applications at an early design stage. This is the most efficient time to seek approval and aligns with our flexible and proportionate approach to regulation.

We will maintain a public register of the section 60 approval submitted by a utility and the department's decision.

Figure 4 shows the proposed section 60 assessment and approval process.

This process ensures that we will provide a decision about a local water utility’s application for a section 60 approval within 60 days of receiving a completed application (phases 2, 3 and 4). If we require additional information, we will request it in writing, update the public register to ‘status of assessment incomplete’ and ‘stop the clock’ until the information is provided.

A local water utility can always withdraw, amend, or resubmit an application for section 60 approval at any time. In these cases, the ‘clock’ for assessment and approval would restart.



Figure 4. Section 60 approvals process

Phase 1 – Initial engagement prior to making a submission

Prior to planning for any proposed works, we encourage local water utilities to proactively engage with the department. This engagement could include an informal discussion about the strategic context of the works proposed. The local water utility may also access our advisory and support role to seek expert strategic and technical advice from us throughout the life of the project. This includes during the development and options consideration phases for treatment works.

In our regulatory role, we can also discuss completion of the template application form for a section 60 application and any background information held by the utility that should be submitted with the application. We can also explain the matters that we must consider before granting approval of a section 60 application.

While local water utilities can leverage the department’s advisory and support role during the life of a project, any advice provided under the advisory role cannot be considered binding on a formal section 60 determination.

Phase 2 – Submission of written application (starts the clock)

When it wishes to seek approval for works, a local water utility must make a written application to the department using our application form requesting approval under section 60.

Local water utilities can apply at any time. However, they should have sufficiently detailed documentation to allow the department to decide before applying. The type of information that could be submitted as evidence for a section 60 application is outlined at section 5.5 of this document. Local water utilities should submit applications early to give us enough time to make an assessment – the ‘clock’ time is 60 days. Local water utilities bear the risk associated with submitting a formal application at later stages of planning and development.

All applications must use the same application form. This form will be published on our website and may be updated from time to time.

The application needs to address the works proposed, why the works are proposed, and how the works will meet the local water utility's strategic goals, including meeting their customers' needs. This submission should include all relevant materials and supporting documentation.

Phase 3 – Assessment of the application

We will assess the application and all material provided and make a decision. All applications will be assessed against the matters that must be considered before granting approval.

We may use internal resources or commission an independent expert or an independent expert panel to undertake all or part of the assessment and provide recommendations to a senior executive that is the delegated decision-maker within the department.

We will seek input from other regulators of the local water utility where relevant to facilitate consistent decisions on a regulatory matter. Where other regulators require additional information, we will communicate this request in writing and 'stop the clock' on the decision period until the information is provided. This will be reflected on the public register. Other regulators are responsible for overseeing and supporting local water utilities within their own regulatory frameworks.

If needed, we or the utility may initiate further meetings to clarify an information request.

Phase 4 – Approval within 60 days

Decisions will be made by a senior executive within the department within 60 days. The decision will be communicated to the utility in writing and include reasons that reflect the matters that must be considered before granting an approval.

We will either:

- approve the works
- approve the works subject to particular conditions
- not approve the works.

Where a section 60 approval process is required to consider the works under Part 5 of the *Environmental Planning and Assessment Act 1979*, the 60-day timeline may be extended with written notice to the local water utility.

As described in section 8 of this framework, local water utilities can request internal review of any section 60 applications. In addition, decisions are subject to review under administrative law.

We will publish the decision, its reasons and any approval instrument on our website.

Review of decisions

A local water utility can seek a review of the department's decision if it believes that, in making the decision, the department made a mistake or considered:

- matters outside those that must be considered before granting approval
- information that was misinterpreted by the department

- information that was not provided with the application
- information that was not requested to be provided by the local water utility
- information that was not provided by other local water utility regulators in the assessment of the application.

This will help ensure that we are able to make decisions that are consistent between local water utilities seeking approval for works.

Section 9 gives further detail on options for review of the department’s regulatory decisions.

Phase 5 – Monitoring compliance with conditions

If an approval is given subject to conditions, we will monitor the progress of the works to ensure those conditions are complied with. This may include seeking additional information or input from the local water utility subject to the conditions set.

5.3 Matters considered before granting approval

The department is required to consider certain matters before granting approval.

An approval under section 60 may be granted if certain matters have been satisfied. These mandatory considerations include:

- provision of relevant documents in council’s possession, such as plans and specifications of the construction or extension in question, and documents and data that are relevant to the construction or extension in question
- 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
- 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.

These mandatory considerations will form the basis of all assessment processes and criteria. Local water utilities should always consider these criteria in preparing their applications under section 60.

The criteria the department will apply to assess a section 60 application are:

- **fit for purpose**
 - Are the proposed works identified in the local water utility’s strategic planning?
 - Has the strategic planning been assessed by the department as being effective and evidence-based (see section 3)?
 - Is there another justification for the works?
 - Does the scope of the works meet the intent of the project?
- **able to manage risks**
 - What technical or operational risks are the works intended to overcome or mitigate?
 - Have these risks been considered as part of the design of the proposed works?

- Will these risks be managed by the proposed works?
- **able to meet public health and environment standards**
 - Are the proposed works able to meet the Australian Drinking Water Guidelines, Australian Guidelines for Water Recycling, and other relevant health regulations and standards?
 - Are the proposed works able to meet relevant environmental regulations and standards?
- **able to meet relevant regulations**
 - Are the proposed works capable of adhering to relevant industry standards and regulations related to the design and construction of infrastructure and the management of water supply and sewerage services?
- **aligned to the competency of the local water utility**
 - Is the local water utility itself competent to carry out the proposed project or has it engaged another party who has the capability or competency to do so?

The section 60 approval will not consider cost-effectiveness. Local water utilities are expected to consider cost-effectiveness in all decisions including for infrastructure investment. We do consider cost-effectiveness in the context of the strategic planning assessment outlined in section 3.

Where the department or other NSW Government agency is providing funding for the works, a cost effectiveness and value-for-money assessment would be completed separately as part of that funding decision.

In line with the department’s intent to ensure regulatory decision-making is informed by all relevant and available data, insights generated through the section 60 approval process may inform decision-making regarding the reasonableness of strategic planning (as outlined in section 3). The department will notify the local water utilities if this is the case.

5.4 Information to be submitted with an application

The department bases its decision on the suite of documents that accompany the application.

We consider the materials set out in Table 4 are relevant for our assessment.

Table 4. Material to be provided for section 60 assessment and approval

Material	Detailed description
Works description	<p>Documentation outlining the intended objective, nature, scope, and purpose of the proposed works</p> <p>Include links to the existing strategic planning of the local water utility or other justification for the works. Documentation should contain sufficient detail to enable the department to assess whether the proposed works or disposal represents an appropriate solution.</p> <p>Describe the planned process for design and construction.</p>
Preliminary risk assessment	Preliminary water safety design assessment developed in conjunction with NSW Health

Material	Detailed description
Early design for works	Technical drawings and other design materials, completed to at least the level of detail that would be expected at an early design stage of works, including: <ul style="list-style-type: none"> • a plan of the works including a list of all inclusions and exclusions in the works and how it will be delivered, costed, and programmed • operational philosophy • process flow diagram, concept piping and instrumentation diagram, general arrangement overview, site layout and electrical line drawing • site and infrastructure plans (and any other relevant site plans) • descriptions of any relevant existing infrastructure (which may include existing reticulation pipework, storages, or treatment systems) • description of the process, including a summary of the source water or sewage characterisation and the treated water or sewage targets
Documented experience	Documented previous experience with design and construction of water treatment infrastructure and/or having access to qualified and experienced technical resources, who have competence in water infrastructure Describe the intended approach to procurement.
Confirmation of environmental planning assessment	For works requiring approval under the <i>Environmental Planning and Assessment Act 1979</i> , a statement that the council has complied with the Act and a copy of the supporting review of environmental factors

Some local water utilities may choose to progress design efforts to a more advanced stage (for example to a 75% design stage) to include additional design details before requesting a section 60 assessment. However, only the material requested will be assessed by the department.

5.5 When applications should be submitted

We encourage local water utilities to apply for assessment and approval at an early design stage to have certainty to progress the project to detailed design and avoid cost inefficiencies for the community. Applications can be submitted once all required information is available, and the application is complete.

The department may impose conditions to ensure that the works remain consistent with the application and approval through the subsequent design and delivery stages. For more information, see section 5.6.

5.6 Conditions on approvals and requests for further information

Under section 60, the department can make its approval subject to conditions. A local water utility receiving an approval subject to conditions must ensure these conditions are addressed. We can use conditions to provide direction for, and oversight of, any works for which section 60 approval is sought.

The types of conditions attached to an approval may differ depending on the type of works being approved and the risk profile of the application.

We propose the following standard list of conditions, which are likely to be applied to most approvals:

- **Consistency with design** – It will generally be a condition that a local water utility only construct drinking water treatment works that are broadly consistent with those approved, or that it provides for sewage to be discharged, treated or supplied in a way that is broadly consistent with the way that was approved. Some degree of variation is acceptable to ensure that the practical realities associated with design and construction, or treatment and discharge, are accounted for.
- **Consistency with standards** – Local water utilities must always adhere to any relevant legal, regulatory, industry or technical standards in completing the works (including environmental planning requirements where relevant).
- **Maintaining competency** – Local water utilities must ensure they maintain the competency needed to deliver the project.
- **Requirement to provide additional information in relation to conditions** – Reasonable requests to provide additional information or to discuss the project with the department must not be refused by a local water utility. There is an ongoing reporting obligation during the project to identify risks and enable ongoing monitoring.

Additional conditions may be imposed to manage project-specific risks.

Under the powers delegated to the department by the minister under section 61(1) the Local Government Act, the department can request additional information or make inspections of sites to ensure any conditions set are being complied with.

5.7 Publishing and public reporting

The department will maintain a register and publish on our website our decisions about section 60 applications.

We will publish on our website our performance against our committed 'clock' of 60 days for the assessment and approval of section 60 applications.

Key questions

Q11. Is it appropriate to assess the proposed works at an early design phase for approval?

The department proposes to encourage (but not require) local water utilities to submit materials for approval at an early stage of project development.

- Is this an appropriate point for proposed works to be assessed for approval? Why? Why not?
- What other points in time would be appropriate?

Q12. 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?

In addition to the regulatory framework, the department intends to produce clear, concise, and accessible guidance providing more detail about the its regulatory requirements (within the boundaries of its regulatory objectives and principles, for example, 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.

Q13. Are the proposed standard conditions for section 60 appropriate?

The department proposes to apply standard conditions to all approvals.

- Are the proposed standard conditions appropriate? Why? Why Not?
- What other standard conditions could or should be set?
- How should the department monitor standard conditions?

6 Inspecting water and sewage treatment works

This section is not materially changed from the department's current approach.

Under section 61 of the Local Government Act, we undertake regular inspections of the safety, operation and maintenance of water treatment works and sewage treatment works owned and managed by utilities in regional NSW.

These inspections provide the Minister for Lands and Water and the local water utility with confirmation that treatment works are being operated safely and appropriately. If they are not, the minister can exercise power under section 61 of the Local Government Act to direct the local water utility to carry out any necessary corrective action.

Key outcomes of the inspections are improvements to safety, operations and maintenance of treatment works throughout NSW.

We also provide staff mentoring for local water utility operators as well as technical assistance in resolving operational matters before they become a problem.

We tailor the scope and frequency of inspections to the requirements of each treatment works using a risk-based approach.

Collaboration is an important part of the inspection process. We provide assistance and advice to local water utilities to avoid escalation of potential issues. The process is designed to build trust, foster relationships, and share information needed to build local water utility capacity. Regulatory tools are used only as a last resort.

6.1 Inspection role

The department's regulatory role is to assess whether local water utility water treatment works and sewerage treatment works are being operated safely and appropriately.

Ultimately, under the NSW *Work Health and Safety Act 2011* and the *Work Health and Safety Regulation 2017*, local water utilities are responsible for maintaining health and safety in the workplace.

In addition to our regulatory role, we have a separate role to provide advice to and to advocate on behalf of local water utilities. This role includes:

- providing advice to local water utilities in their water and sewerage operations regarding the protection of public health and the environment

- providing operational and other local water utility staff with mentoring and training to complement the local water utility’s own capability building initiatives
- directly engaging with local water utilities to avoid or reduce the risk and impact of incidents. The department is involved in incident management and departmental staff are nominated as an initial point of contact when an incident occurs
- ongoing, informal, engagement with local water utilities to understand emerging regulatory issues and to provide initial advice on their treatment or management
- under the Aboriginal Communities Water & Sewerage Program, facilitating interaction between Aboriginal communities, local water utilities and NSW Health.

6.2 Scope of inspections

The inspection process includes discussion with operational and other local water utility staff on any existing and potential operational issues that are occurring at the time of the inspection. Inspections also entail a physical inspection of asset condition and maintenance and the general operations of the facilities.

The scope of the inspection includes a report to document findings and any identified actions.

The scope of each inspection is based on the department’s assessment as set out in Table 5.

Table 5. Assessment of onsite inspection and performance

What is assessed	Considerations
<p>For water treatment this may include:</p> <ul style="list-style-type: none"> • catchment • clarification • filtration • chemical dosing • fluoridation • disinfection • connect with networks 	<ul style="list-style-type: none"> • Performance of process units • Compliance and understanding (e.g. drinking water management system, environmental, relevant codes, and local water utility policy) • Identification and mitigation of key risks and potential anomalies • Documentation and understanding of incident management procedures
<p>For sewage treatment this may include:</p> <ul style="list-style-type: none"> • connection with collection system • preliminary treatment • primary treatment • secondary treatment • tertiary treatment • chemical dosing • recycled water • reuse scheme 	<ul style="list-style-type: none"> • Performance of process units • Compliance and understanding (e.g. environmental protection licence, relevant codes, and local water utility policy) • Identification and mitigation of key risks and potential anomalies • Documentation and understanding of incident management procedures

What is assessed	Considerations
Samples may be taken from throughout the process for analysis off-site	Independent verification, process validation and supporting data
The operations and maintenance of the plant, including: <ul style="list-style-type: none"> • maintenance of critical components • operational procedures and testing • operational data records 	May include review of: <ul style="list-style-type: none"> • day sheets • lab records • diaries • laboratory equipment • online monitoring instrumentation • safety management processes
Process control including critical control points (CCP)/operational control points (OCP)	<ul style="list-style-type: none"> • Visibility, operator understanding, performance and appropriateness • Adherence with Drinking Water Quality Management System

6.3 Risk assessment to inform inspection frequency

We will determine inspection frequency by applying a risk-based approach using defined criteria.

This approach helps us target resources and assistance to ensure both our regulatory effort and advice and support addresses the highest risk. The considerations for a range of risks are set out in Table 6. Risk is re-assessed at every inspection and can change significantly with a change of staff, plant augmentation or process changes.

The frequency of each inspection is based on our assessment of the factors set out in Table 6.

Table 6. Risks to consider and combine into an overall risk rating

Risks	Considerations
Performance risk	<ul style="list-style-type: none"> • Recent water quality test results • Local water utility operations, capacity, and capability • Recent incidents
Operating environment risk	<ul style="list-style-type: none"> • Assets and asset condition • Variability of raw water quality and quantity • Seasonal variability of sewage quality and quantity loading • System condition • Safety
Process risks (specifically CCP & OCP)	<ul style="list-style-type: none"> • How well the plant operates within the CCP/OCP/licence parameters

Risks	Considerations
Special case risk	<ul style="list-style-type: none"> • Various scenarios such as temporary augmentations, emergencies, and breakdowns

Key questions

Q14. How should the department communicate the result of inspections, including any improvement actions, with individual local water utilities?

The department is seeking feedback to design the most effective and appropriate way to communicate the result of inspections. The department's existing approach is to communicate the result of inspections to council's General Manager. Usually, the local water utility manager and/or engineer is also included in the communication.

- Should the department change this approach? Why? Why not?

Q15. How should the department integrate the results of inspections with other performance monitoring, including sharing with other regulators?

The existing approach is for the department's regional officers to participate in interagency stakeholder meetings to provide information. Some local water utilities use inspection reports to inform their communication with other agencies.

- Should the department change this approach? Why? Why not?

Q16. Should the department publish information about the results of inspections?

The department does not currently publish information about the results of inspections.

- Should the department change this approach? Why? Why not?

7 Concurrence for approvals to discharge liquid trade waste

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.

Sewerage systems are designed to safely collect, transfer, and treat wastewater, mostly of domestic origin. However, these systems may also be capable of accepting liquid trade waste provided the discharges are planned, known, and controlled within acceptable limits.

In the absence of suitable controls and pricing, liquid trade waste may have adverse impacts on the sewerage system, the environment and the health and safety of workers and the public.

It is important that councils implement best practice in administering, regulating, monitoring, and pricing sewerage and liquid trade waste.

Councils are responsible for approving liquid trade waste discharges to their sewerage systems through section 68 of the Local Government Act. However, section 90(1) of the Act and clause 28 of the Local Government (General) Regulation 2021 require them to obtain concurrence to council approval from the Secretary, Department of Planning and Environment. The department's Water Utilities branch provides concurrence on behalf of the secretary.

7.1 NSW Framework for the Regulation of Sewerage and Liquid Trade Waste

The NSW Framework for the Regulation of Sewerage and Liquid Trade Waste involves a preventive, risk-management approach developed to address the use of common resources by providing economic incentives for dischargers to minimise their waste and to consistently comply with their conditions of approval.

Each council must implement all the following integrated measures under the NSW Framework for the Regulation of Sewerage and Liquid Trade Waste:

- preparation and implementation of a sound liquid trade waste regulation policy, assessment of each liquid trade waste application, and determination of appropriate conditions of approval. Conditions must be consistent with council's strategic planning
- preparation and implementation of a sound development servicing plan with commercial sewerage developer charges to ensure new development pays a fair share of the cost of the required infrastructure

- full cost recovery with appropriate sewer usage charges and liquid trade waste fees and charges to provide the necessary pricing signals to dischargers. These charges must include non-compliance trade waste usage charges and non-compliance excess mass charges to provide the necessary incentives for dischargers to consistently comply with their conditions of approval
- monitoring, mentoring, and coaching of dischargers to achieve cleaner production and assist them to comply with their conditions of approval
- enforcement, including appropriate use of penalty notices in the NSW legislation. Orders may also be issued under the Local Government Act (see section 2.8.3 of the Liquid Trade Waste Management Guidelines)
- disconnection of a liquid trade waste service in the event of persistent failure to comply with council's conditions of approval (see section 2.8.5 of the Liquid Trade Waste Management Guidelines).

The department has prepared the [Liquid Trade Waste Management Guidelines \(PDF 15 MB\)](#) for council staff who manage the approval, monitoring and cost recovery for sewage and liquid trade waste discharges to the sewerage system.

8 Performance monitoring and reporting

We will collect information from each local water utility on a regular basis. Over time, this information will enable increasingly granular analysis of performance trends for each local water utility and provide a measure of performance relative to other local water utilities.

We will use this monitoring and reporting information and analysis to:

- target regulatory effort and inform the regulatory assessments and activities we undertake
- take proactive action to drive improvements in risk management and performance, and help local water utilities achieve their regulatory objectives, including by proactively engaging with local water utilities and by helping other regulators to do the same
- inform our responses to applications for local water utilities to develop new infrastructure
- identify performance trends over time and strengthen local water utilities' and our responses to those changes
- publish information to facilitate local water utilities' understanding of their performance, including compared to other local water utilities, and opportunities to improve
- provide information to customers and the community about the performance of local water utilities.

8.1 Roles in performance monitoring

Both the department and local water utilities have a role to play in ensuring the performance monitoring process is efficient and effective.

Our role is to specify the information we need from utilities, analyse it when provided/collected, and make regulatory and other decisions using it. Our role also includes:

- risk, performance, and compliance monitoring, collecting data and information and explaining how information provided will be used
- coordinating with other regulatory agencies to share information and avoid duplication in reporting efforts
- implementing a proactive monitoring approach that includes analysis, publication, and responses to changes in performance to help local water utility officers and decision-makers to manage water security, water quality and environmental risks

- acting as the NSW data coordinator for local water utilities' obligations to report information to the Bureau of Meteorology's Urban Water National Performance Report³ and the Australian Bureau of Statistics.

The role of local water utilities in performance monitoring is to provide all the necessary information. Utilities are also responsible for drawing on analysed outputs to benchmark their own activities and to make strategic decisions in response.

The department is committed to providing a proportionate regulatory regime. This includes monitoring our success as a regulator. We have committed to the following actions:

- We will develop a monitoring and evaluation framework to monitor our performance as a regulator and regularly review our processes – to be published in mid-2022. This includes consulting with the local water utilities sector on potential new measures and requirements to track the effectiveness of the proposed new approach to strategic planning,
- We will continue to investigate options for an integrated approach to local water utility reporting to NSW Government agencies.
- We will investigate and test analytical tools that meet the needs of local water utilities and allow them to undertake their own comparison analysis of performance and risks and maturity. We will report back to the sector by October 2022.

8.2 Information that needs to be reported

When collecting information, the department commits to provide clearly articulated reasons for why the information is required and how it will be used to monitor trends and identify whether outcomes have been achieved. We will apply criteria when deciding whether to collect information. These include:

- identifying whether there is a clear use-case or rationale for the data, and communicating this accordingly
- identifying whether the additional information has clear alignment to a key risk or regulatory outcome, as defined in sections 3 to 7
- assessing whether the benefits of asking local water utilities to provide information outweigh the costs of data gathering, cleansing, and provision
- assessing whether the information is already collected through other channels (for example, by other agencies or regulators)
- confirming that the information request itself is clear and easy to understand.

³ As required under the *Water Act 2007 (Cth)*, *Water Regulations 2008 (Cth)* and the 2006 Deed National Framework for Reporting on Performance of Urban Water Utilities under clause 75 the National Water Initiative that specifies water information which urban water utilities with greater than 10,000 connections must provide to the Bureau of Meteorology.

We require local water utilities to report:

- information to enable us to provide relevant indicators to the Bureau of Meteorology for inclusion in the Urban Water National Performance Report on behalf of utilities annually
- information to enable us to provide relevant indicators to the Australian Bureau of Statistics on behalf of utilities annually
- additional performance indicators specific to the NSW context required to monitor strategic planning outcomes and implementation, including local water utility levels of service, pricing, financial and workforce data, annually
- any information relevant to reviews of the department’s assessment of utility strategic planning, needed annually and during reviews outside of the annual cycle
- in accordance with any conditions placed on a section 60 approval.

We will collect the National Performance Report indicators for all local water utilities and rely on this indicator set, combined with the additional information listed, to monitor the performance of local water utilities.

If we need new information to be reported, we will consult with local water utilities to identify what information may be useful and how best to collect it while minimising additional burdens on local water utilities.

The reasons behind the department’s performance reporting requirements are given in Table 7.

Table 7. Rationale for information collected by the department

Category	Reason for collection	How data is used
Urban Water National Performance Report indicators Australian Bureau of Statistics data set	Act as the NSW data coordinator for local water utilities’ obligations to report to the Bureau of Meteorology’s Urban Water National Performance Report and the Australian Bureau of Statistics. National Performance Report indicators are a comprehensive set of indicators for monitoring the performance of local water utilities.	<ul style="list-style-type: none"> • Risk-based targeting of the department’s resources • Triggers proactive actions by department • An evidence base for assessment of strategic planning and section 60 applications • Performance benchmarking to identify relative strengths and areas of improvement of utilities

Category	Reason for collection	How data is used
Indicators specific to the NSW context: local water utility service levels, pricing, financial and workforce indicators	<p>Service levels, pricing, financial and workforce data supports the department's analysis of performance and risk.</p> <p>Levels of risk and resourcing are strongly correlated.</p> <p>Local water utility service levels, pricing, financial and workforce data is not sufficiently included in the National Performance Report indicators set.</p>	<ul style="list-style-type: none"> • Risk-based targeting of departmental resources • Triggers proactive actions by department • Actions by department to support the establishment of sustainable training arrangements to reduce risks
Strategic planning information	Monitor whether strategic planning outcomes are being achieved to a reasonable standard.	<ul style="list-style-type: none"> • Risk-based targeting of departmental resources • Triggers proactive actions by department
Section 60 information	Monitor whether local water utilities are complying with conditions of section 60 approvals	<ul style="list-style-type: none"> • Risk-based targeting of departmental resources • Triggers proactive actions by department

Note: At the time of designing this framework, the National Performance Report Indicators were under review by the Bureau of Meteorology.

8.3 How the department uses the information provided

The department commits to using the information it collects in 4 key ways, as set out in Table 8.

Table 8. Use cases for performance monitoring data

Use case	Explanation and process
Risk-based targeting of departmental resources	<p>The department targets the allocation of its regulatory, inspector, advisory, program and other resources based on risks.</p> <p>Information and analytics allow the department to make informed assessments regarding anticipated regulatory or advisory support required by individual utilities, and to promote efficient and effective resource allocation.</p>

Use case	Explanation and process
Proactive action by utility, other regulators, or department	<p>The department may initiate proactive or reactive actions to enable local water utilities or other regulators to better manage water security, water quality and environmental risks.</p> <p>Proactive actions include engaging with senior representatives from a local water utility (e.g. senior executive, general manager, council, Board or audit, risk and improvement committee) about performance to encourage planned, strategic responses from the utility.</p> <p>Proactive actions include the urgent escalations of issues identified in monitoring to a local water utility’s senior representatives or other regulators.</p> <p>Proactive actions also include engaging with the local water utility sector and its stakeholders to advocate for strategic responses that lift performance.</p>
Analysis of strategic planning and section 60 applications	<p>Information collected as part of performance and risk monitoring is used by the department in regulatory oversight of strategic planning and section 60 approval processes.</p> <p>This information provides an evidence-based perspective on the performance of the utility in the context of the NSW local water utility sector.</p>
Analysis and publishing of relevant data	<p>The department publishes data, analysis, and benchmarking of data trends at least once a year so that the department, other regulators, utilities managers, councillors, Board directors, and the community all have publicly available, transparent information on the performance of individual local water utilities in a way that is consistent and comparable.</p>

8.4 Avoiding duplication of local water utility reporting

We work closely with other regulators of local water utilities and are committed to avoiding duplication in reporting requirements. For example, we will rely on health information reported to NSW Health, on environmental information reported to the NSW Environment Protection Authority, financial information reported to the Office of Local Government, dam safety information reported to Dams Safety NSW and customer satisfaction information collected by the Independent Pricing and Regulatory Tribunal of NSW.

To avoid duplication and inconsistencies, we:

- access information reported by local water utilities to other regulators and government agencies
- share information reported by local water utilities with other regulators and government agencies.

This sharing and access will be subject to the limitations of any personal privacy considerations or due process requirements of compliance prosecutions being undertaken by a regulator.

8.5 The schedule and format of information required

To ensure the data collection process is as simple as possible, we will provide utilities with clear instructions on timing and the format of the data required.

This guidance will describe how the department plans to use and publish the data and any findings or assessments it draws from its analysis.

8.6 Proactive monitoring approach

The department has a proactive monitoring approach to changes in performance. This ensures changes in performance identified through analysis of information provided are communicated to senior representatives of the local water utilities, the community, and other regulators in a timely way.

This underpins the risk-based regulatory approach for strategic planning, section 60 assessments, and inspection scope and frequencies.

After analysing data, we may engage with an individual local water utility's senior representative about performance to encourage planned, strategic responses from the utility. Other proactive actions include engaging with the sector and its stakeholders to advocate for strategic responses that lift performance.

As part of this proactive response, we will publish in an easy-to-understand format analysis related to the risk profile, performance, benchmarking, and compliance history of local water utilities. This includes a simple performance dashboard where local water utilities can readily and easily see how they perform on key performance indicators.

Our analysis will:

- bring a 'whole-of-sector' perspective by providing utilities with regional-, state-, and national-level information to inform decisions
- facilitate collaboration between local water utilities and others to share experience and intelligence
- provide flexible, proportionate, and risk-based oversight, engagement, and regulation, based on the individual circumstances of local water utilities
- provide tailored guidance to local water utilities that builds capacity through collaboration and partnership
- set a clear foundation of best practice and minimum service level standards.

8.7 Continuous improvement

The department will periodically review its regulatory approach, policies, processes, systems, and activities, considering feedback from local water utilities, councils, other regulatory agencies, and staff. We will assess whether we are achieving our desired outcomes and quality objectives,

determine if our approach continues to reflect regulatory best practice, and improve our approach if and when necessary to meet the high expectations of the people of NSW.

As part of a commitment to continuous improvement, we will conduct a performance review of the implementation of this regulatory framework (and associated guidance materials) within 2 years from finalisation. This will be supported by a regular, periodic review of the full suite of relevant regulatory documents at least every 5 years.

Key questions

Q17. Are the criteria identified for considering whether to collect information for performance monitoring appropriate?

The department has identified criteria to be used when deciding whether we will collect information for performance monitoring.

- Are the criteria proposed appropriate?
- Are there any additional criteria that should be considered?

Q18. Is the proposed information required to be reported appropriate?

The department has proposed information required to be reported by local water utilities for performance, compliance, and risk monitoring.

- Is this information appropriate?
- Are there further edits that you would make?

Q19. Is the streamlined approach to performance indicators and benchmark data appropriate?

The department is proposing to streamline the performance indicators and benchmark data it collects. We intend to collect performance indicators that align with the Australian Government reporting requirements for urban water utilities (National Performance Report indicators and ABS requirements), as well as indicators relevant to the NSW context. We propose to access indicators collected by other NSW agencies, and not require local water utilities to report these directly to the department.

- Is this appropriate?
- What performance indicators relevant for the NSW context are not otherwise reported to Australian Government agencies or other NSW Government regulators and agencies?

Q20. What performance outputs would be most useful for local water utilities and other stakeholders?

The department proposes to analyse the data it collects and, where appropriate, provide the outputs of that analysis to local water utilities.

- What outputs would be appropriate to produce and release? What would be most valuable?
- Would it be valuable for the department to provide a 'one-stop-shop' for local water utility performance information? Would there be any costs to this approach?
- At what frequency should outputs be updated? For example, would a small set of indicators (e.g. 8 to 15 key indicators) collected on a more frequent basis (monthly or quarterly) be useful for local water utilities or other stakeholders?

9 Review of departmental decisions

To ensure fairness and equity, it is important that local water utilities affected by decisions have a mechanism to have a departmental decision about their regulation reviewed.

This section outlines the review process, its scope and rationale.

In addition to internal review through the department, local water utilities may also be able to seek judicial review of a decision by the minister under section 60 of the Local Government Act.

9.1 Asking for a review

Local water utilities can seek internal review of any decisions made by the department as a regulator. For the purposes of this framework, a regulatory decision includes any decision, direction, assessment, advice or request made as part of that decision. This includes all decisions made by the department in relation to overseeing local water utilities in their delivery of safe, secure, efficient, sustainable, and affordable water and sewerage services and management of risks to service provision under the Local Government Act and the Water Management Act.

When making a regulatory decision, we will document our reasons and provide these in a timely way to the local water utility. This will ensure decisions are clear and the local water utility is provided with information to decide whether to seek a review. The reasons behind a decision will be made available as a matter of course and will include any evidence or context that informed our position.

Internal review by the department does not guarantee that the decision will be overturned. In response to a review, we may change our regulatory decision and substitute new and/or altered recommendations and expectations for the local water utility or we may let the decision stand.

The review process seeks to ensure that local water utilities are provided with the opportunity to understand why a decision has been made, and to put forward reasons why it may be necessary for the decision to change.

9.2 Internal review pathway

We have developed the internal review process to provide an option that is quicker and less 'legalistic' for local water utilities seeking to have a decision reviewed under administrative law. The department's decisions can be tested through this internal process, without restricting the right of a local water utility to formally request an administrative law review of a decision at a later point.

The internal review allows local water utilities to formally request we reconsider our position. The process can be applied at the request of a local water utility when they do not understand, or disagree with, the department's position on a given matter.

The process for internal review of decisions is outlined in Table 9.

Table 9. The department's internal decision review framework

Step	Explanation and process
<p>1. Provision of rationale and evidence</p>	<p>The department, at the written request of a local water utility, will provide further rationale about why the initial decision was made. This may include an explanation of any key evidence, information, data, or documentation that was used to inform the initial decision.</p>
<p>2. Engagement regarding the decision</p>	<p>If the local water utility remains unsatisfied with the decision after being provided with additional reasons and detail by the department, it may request a formal meeting with the department. The purpose of this engagement is to allow the local water utility to ask questions about the decision, to understand the department's position, and to present information supporting an alternative decision.</p> <p>Following this meeting the department may request additional information from the local water utility.</p> <p>Based on this engagement process, the department may:</p> <ul style="list-style-type: none"> • change its regulatory decision and substitute new and/or altered recommendations and expectations for the local water utility or • not change its regulatory decision.
<p>3. Executive Director review</p>	<p>If the local water utility remains unsatisfied with the decision following the engagement stage, the decision will be escalated to an executive director level position at the department who has not had previous exposure to the decision for review and consideration. The local water utility may use this opportunity to provide additional evidence as appropriate.</p> <p>Based on this review process, the department may:</p> <ul style="list-style-type: none"> • change its regulatory decision and substitute new and/or altered recommendations and expectations for the local water utility or • not change its regulatory decision. <p>In communicating their decision regarding the review, the executive director will provide the local water utility with information about the decision as appropriate, regardless of whether it has changed, including an assessment of the evidence, information, data, or documentation that was used to inform their decision.</p>

Step	Explanation and process
4. CEO NSW Water Sector review	<p>If the local water utility remains unsatisfied with the department’s position after a review by an executive director (either due to no change in the initial decision, or a change that does not satisfy the utility’s concern), the decision will be escalated to the CEO NSW Water Sector (or equivalent deputy secretary level position) from the department for final consideration.</p> <p>If appropriate and useful, this consideration can involve engagement with relevant senior representatives of the local water utility, such as the general manager, with a view to discuss the decision and potential ways forward.</p> <p>The outcome of this review may be:</p> <ul style="list-style-type: none"> • change its regulatory decision and substitute new and/or altered recommendations and expectations for the local water utility or • not change its regulatory decision. <p>The department will provide high-level reasons for its position to either change or not change its decision at the CEO NSW Water Sector review stage. This will be accompanied by a notice indicating that no further internal review will be contemplated.</p>

Key consultation questions

Q21. Is the internal review approach appropriate?

The department proposes to conduct all reviews of decisions (other than formal administrative reviews) in-house and using department staff (including internal technical experts).

- Is this appropriate? Why? Why not?
- In what circumstances might external technical input be required?

10 Coordination between local water utility regulators

The department seeks to be a best-practice, risk-based regulator that clearly understands its role and avoids overlap with other regulators of local water utilities.

Local water utilities can expect to be the subject to regulatory attention only once on any given issue by the department or any other NSW Government regulatory agencies within their own regulatory frameworks. We will work collaboratively with other regulators to ensure local utilities are not re-prosecuted by different regulators over time on the same issue. Local water utilities can expect that information provided to one regulator will be available to and relied upon by its other regulators.

10.1 Regulatory roles and responsibilities

The department is one in a network of regulators that have different responsibilities to regulate local water utilities. Other agencies include:

- NSW Health
- NSW Environment Protection Authority
- Office of Local Government
- Natural Resources Access Regulator
- Dams Safety NSW
- Independent Pricing and Regulatory Tribunal of NSW.

The regulatory roles and responsibilities of each organisation within the sector, including what aspect of regulation each part leads, is outlined in Table 10.

In addition, the department and some of the other agencies may provide advisory or support services to local water utilities distinct from their regulatory responsibilities.

Table 10. Regulatory role and responsibilities

Regulator	Leads regulation for...	Regulatory role
Water division within Department of Planning and Environment	Water utility planning, operations, and infrastructure	Oversee and support local water utilities in their delivery of safe, secure, efficient, sustainable, and affordable water and sewerage services and management of risks to service provision by regulating and providing advice and support under the <i>NSW Local Government Act 1993</i> and the <i>NSW Water Management Act 2000</i>

Regulator	Leads regulation for...	Regulatory role
NSW Health	Public health, water quality	Protect public health by regulating drinking water suppliers, including local water utilities, and providing advice and support for the effective management of public health risks from water under the <i>NSW Public Health Act 2010</i>
NSW Environment Protection Authority	Environmental protection	<p>Protect the environment and human health via a suite of legislation that establishes a strong basis for environmental regulation that is outcomes-focused, proactive and contains appropriate compliance mechanisms</p> <p>The NSW EPA is a risk-based regulator that focuses and prioritises its activities to address the greatest risks. It regulates local water utilities that hold licences under the <i>NSW Protection of the Environment Operations Act 1997</i>.</p>
Office of Local Government	Council and local water utility governance	Oversee council and local water utility governance, financial management and reporting under the <i>NSW Local Government Act 1993</i>
Natural Resources Access Regulator	Surface water and groundwater access and extraction	<p>Enforce natural resources management legislation, including <i>NSW Natural Resources Access Regulator Act 2017</i>, <i>NSW Water Management Act 2000</i>, <i>NSW Water Act 1912</i>, and associated regulations</p> <p>Regulate works on waterfront land and manage water licenses and approvals of larger entities including water utilities. Current focus is on enforcing water management laws</p>
Dams Safety NSW	Safety of Dams	Prevent failure of declared dams through compliance monitoring of owners' management systems under <i>NSW Dams Safety Act 2015</i> and <i>Dams Safety Regulation 2019</i> .
Independent Pricing and Regulatory Tribunal of NSW	Pricing for some local water utilities	Set the maximum prices that Central Coast Council, Essential Energy and Water NSW for the Fish River Water Supply Scheme can charge for water and sewerage services under the <i>NSW Independent Pricing and Regulatory Tribunal Act 1992</i> .

10.2 Minimising duplication of regulatory effort

The department will make its best effort to minimise duplication and inconsistency with other local water utility regulators. This recognises that:

- the time and resources of local water utilities, their customers and communities are valuable
- local water utilities are entitled to expect certainty and consistency in their interactions with any government agencies they deal with.

We are committed to collaborating with other local water utility regulators to:

- provide a coordinated response to issues with the potential to significantly impact NSW communities
- consult on issues that may have implications for other agencies' regulatory areas, including where we communicate on these issues with local water utilities.

This collaboration will include:

- regular engagement to agree on leads and responsibilities
- ongoing information sharing (subject to privacy and other relevant laws) to minimise the need for information requests
- engagement on the scheduling of regulatory reviews, information requests, performance reporting, engagement points and other oversight activities to minimise the burden on individual local water utilities at any given time
- the exchange of insights regarding regional or statewide issues that may affect multiple local water utilities, and which require a coordinated response from government.

We are also committed to managing any potential disagreements over jurisdiction or responsibility between local water utility regulators entirely within NSW Government and without requiring the involvement of local water utilities.

Where there is conflict or disagreement between regulators over any issue relating to local water utilities, we commit to:

- agreeing a position with other regulators prior to communicating or meeting with local water utilities
- not airing disagreements with regulators in meetings with local water utilities
- escalating issues to senior decision-makers within the relevant regulators where matters cannot be easily resolved.

10.3 Raising concerns about regulatory duplication

From time to time, the combined activities of the department and other local water utility regulators may give rise to a perception of duplication of effort.

When this occurs, we request that local water utilities advise their departmental contact of that inconsistency and, if necessary, consider whether to lodge a complaint to the department.

When an instance of perceived or actual duplication is brought to our attention, we commit to:

- understanding the view of the local water utility that has raised the issue of duplication
- engaging with other relevant local water utility regulators to determine the existence and extent of any duplication.
- reviewing our own work to determine whether the work is necessary
- agreeing with other relevant local water utility regulators a strategy for managing the actual or perceived duplication both in the specific instance raised by the local water utility and in all instances going forward
- communicating in writing the outcome of this process to the local water utility that raised the issue of duplication
- meeting with the local water utility that raised the issue of duplication to discuss the response of the department and to obtain additional input and feedback.