



---

# Central Coast Council's Response to DPIE Draft Regulatory Framework for Local Water Utilities

<b>Approved by:</b>	Jamie Loader, Director Water and Sewer
<b>Date of approval:</b>	28 April 2022
<b>Internal Reference No:</b>	D15139041

28/04/2022

---

# Contents

Contents.....	2
Executive Summary.....	3
Introduction.....	4
Section 3: Strategic Planning oversight.....	5
Section 4: Assessment and approving dividend payments.....	10
Section 5: The department assesses and approves proposed works.....	12
Section 6: Inspecting water and sewerage works.....	14
Section 8: Performance monitoring and reporting.....	15
Section 9: Review of departmental decisions.....	18
Other Considerations.....	18
Central Coast Council Regulatory Framework.....	18
Categorisation of Central Coast Council.....	20
Coordination between local water utility regulators.....	20
Concurrence for approvals to discharge liquid trade waste.....	21

## Executive Summary

Central Coast Council (Council) provides its feedback to the Consultation Draft of the Regulatory Framework for Local Water Utilities prepared by NSW Department of Planning and Environment (Department).

Council is in general agreement with most of the proposed changes to Strategic Planning, Assessment and Approval, Inspection and Advising, and Performance Monitoring and Reporting aspects. Council appreciates the proposed Review of Departmental Decisions. Specific feedback comments for the structured questions in the Consultation Draft are presented in this document.

Council wishes to highlight that it does not fall within a 'one size fits all' framework that may be better suited to other NSW local government utilities.

Council is governed by both the LG Act and, as a substantial water supply authority, the Water Management Act 2000 (NSW) (WM Act). It is the only council subject to both acts, creating a needlessly complex and restrictive regulatory environment. In particular, the LG Act imposes restrictions on the operation of its water business other water businesses do not face (e.g., 'restriction of reserves'). Moreover, the WM Act also imposes economic regulation, a burden other council water business's do not experience. The NSW Government should remove one of these regulatory burdens if it wishes the ratepayers of the Central Coast to benefit from an innovative, prudent and efficient water business.

This regulatory environment severely restricts the options available to Council to allocate its cash reserves to capital expenditure upgrades that are most needed. Dual regulation also restricts the council in its endeavours to repay debt accrued in its restricted funds. If the council's water business were to be treated like other economically regulated water businesses, it could sensibly allocate capital to prioritised areas of need and repay debt.

This dual restriction makes it difficult for the council to manage its restricted water fund loan, while surplus cash in the restricted wastewater fund is unable to be allocated to debt retirement.

## Introduction

Central Coast Council (Council) is the largest local government council that manages a water utility in terms of connected properties in New South Wales and is the second largest in Australia. Council has the largest asset base of all council managed water utilities in NSW and the third largest in Australia.

The role of local water utilities is to deliver safe, secure, efficient, and affordable water and sewerage services, ensuring public health, and supporting economic development, liveability and the environment. These utilities are generally governed by the NSW Local Government Act and the NSW Water Management Act. However, Council is unique in its regulatory setting, being the only NSW council that has its water and sewerage services legislated by additional regulations (IPART Act, Water Management Regulations, etc.) that sometimes contradict each other.

NSW Department of Planning and Environment (Department) is responsible for overseeing and supporting local water utilities in their delivery of water and sewerage services and management of service risks. The Department undertakes a range of activities, which include, *inter alia*, policy development, regulation implementation, performance monitoring, technical advice, funding, training, and benchmarking.

In 2007, then Department of Water and Energy released the Best-Practice Management of Water Supply and Sewerage Guidelines under section 409(6) of the Local Government Act. These guidelines encouraged continuing improvement in performance and identified six criteria for best-practice management of water supply and sewerage.

In March 2022, NSW Department of Planning and Environment invited stakeholders to review its Consultation Draft of the Regulatory Framework for Local Water Utilities. This Draft was prepared in collaboration with utility and water industry professionals. Under the Department's Town Water Risk Reduction Program two working groups (a) Strategic Planning WG, and (b) Technical Assessments and Approvals WG were formed to collaborate with the Department to design improvements to its regulatory approach.

The proposed Framework intends to incorporate processes that are cost effective, risk-based, evidence-based, outcome-focused, time-bound, accountable, collaborative, responsive, transparent and fit-for-purpose. 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.

Council provides its general review comments in this document according to the formal submission template provided by the Department.

## Section 3: Strategic Planning oversight

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

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

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

Council welcomes the adoption of the strategic planning outcomes in the place of a 'one size fits all' checklist approach. The proposed outcomes will address most of the key risks faced by water utilities which will vary in scale, complexity, and access to resources across different regions. As stated earlier, Council's Water and Sewer service is treated as a water supply authority and as a local government water utility. Council's pricing and revenue are governed by IPART using the Building Block Methodology (BBM).

When reviewing the proposed outcomes within the perspective of the recently prepared Draft Central Coast Water Security Plan and Council's recent IPART pricing submission, the below items could provide greater focus:

- How society's liveability desires/expectations related to water and sewerage management are considered as part of defining service needs.
- How the utility proposes to provide an ongoing, emergency 'enduring supply' source to its customers in the event of a 'mega drought' scenario.
- How the utilities within a broader region can work together (eg Hunter Water and Central Coast Council)
- How the current and future service areas of the utility's products are defined in consideration of public and environmental health outcomes.
- How the utility assesses the non-financial societal and environmental benefits of various options/portfolios through Cost Benefit Analysis. These might include liveability outcomes, willingness to pay to avoid stricter water restrictions, greenhouse gas emissions, lost biodiversity or impact on river/ocean health.
- How different revenue sources match the funding of the above monetised benefits, in consideration of the parties who receive the benefits (directly and indirectly).
- How circular economy principals are incorporated into Integrated Water Cycle Management planning and decision making.
- Regional based strategic planning with neighbouring utilities and the relationships built between utilities for shared assets or shared benefits for the community / customer.

## 2. 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?

The proposed consideration of a reasonable standard is supported, as it is required to strike the balance between providing the Department with the ability to measure and assess a utility's planning, while still not being overly prescriptive and allowing for adaptability to reflect the range in scale and complexity of issues being addressed by the various regulated utilities.

Central Coast Council, with its unique regulatory setting among the NSW councils, believes that when it comes to Council the 'Appropriate' consideration (*underpinned by relevant departmental guidance and industry standard approaches to conduct planning and reach conclusions*) should also consider practices being undertaken by its neighbouring Water Supply Authorities (Hunter Water and Sydney Water) in addition to those applied under the regional local water utility framework.

## 3. 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?

Water resource planning requires decision making within deep uncertainty which is managed through the adoption of adaptive planning principals. As utilities undertake greater levels of adaptive planning approaches, the ability to set defined lists of future actions (time and scale) and place the plan 'on the shelf' diminishes. There is a regular need for review of the identified assumptions and risks within the plan that may trigger the need to transition to a different pathway.

This would require the identification and monitoring of signals and signposts that indicate the plan's base assumptions are changing or a risk is materialising. This requires an ongoing process that could be incorporated into the Department's proposed 'annual check-in'. This may

Review of Consultation draft: Regulatory framework for local water utilities take the form of a Monitoring Evaluation Reporting and Improvement (MERI) process or other process described within the field of adaptive planning.

#### **4. 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.

The decision to change from a threshold-based assessment to a quality rating approach needs to consider what the purpose of providing a rating would be for the Department and other stakeholders. A risk assessment of 'unintended consequences' should also be undertaken in light of other industries/regulators that may have implemented a similar approach.

The Department's proposed reasonable standard approach that tests *Sufficient*, *Appropriate* and *Robust* recognises the differences in scale, complexity and risk between the various regulated utilities that would be difficult to assess within a rating approach. The concept of providing case studies and examples of utilities that are considered to meet certain outcomes to a high standard is supported to help build capability across the regulated utilities.

#### **5. 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?

The requirement to demonstrate a reasonable standard of strategic planning for the outcomes relevant to a proposed grant application would assist in the Department assessing a funding application's prudence and efficiency and prioritising funding. Emergency funding applications would however require greater flexibility.

## **6. 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.

Advice on the preferred level and timing of engagement with the Department for the preparation of the strategic planning documents is sought to ensure each utility can gain confidence in their approach while the broader framework is undergoing review. This would include discussion around the use of interim milestone documents such as technical memos and the current 'Issues Paper' approach to allow a staged review of the planning activities over the life of the project.

## **7. 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).

In consideration of the recent preparation of the Draft Central Coast Water Security Plan, the following items require consideration and documentation of the Department's position:

- The ability for utilities within a broader regional water strategy area (e.g. Hunter Water and Central Coast Council) to undertake joint modelling and yield assessment practices that may differ from the Regional Water Security methodologies.
- The requirement to consider how the utility would provide an enduring supply during a severe and prolonged drought (mega drought) that exceeds the observations from the current instrumental record.
- The minimum level of service expectations for a prolonged emergency supply.
- Ongoing provision of best available regional hydrology data sources to assist yield modelling and climate change risk assessments.



## **8. 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)?

While it is not exactly clear how the draft regulatory framework would integrate with the IP&R Framework, Council supports the notion and is interested in understanding this more. Initial feedback is that, if implemented well, it could avoid duplication of work or processes, with the ability to align timeframes to the IP&R cycle. However, as Council is a Water Supply Authority and IPART determines regulatory fees and charges, the pricing review process is not in alignment with the IP&R Framework and the annual planning and budgeting cycles. Council wishes to ensure that processes regulating local water utilities should be appropriately balanced for consolidated regulations for the Council.

It is noted in the Consultation Draft that the Department will produce additional guidance about the opportunities to integrate with the IP&R Framework. Council would welcome this additional information with the expectation that it would provide clarity on the how. As this information is released, Council would be eager to review and provide further feedback to ensure successful implementation.

## **9. 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.

## Review of Consultation draft: Regulatory framework for local water utilities

Central Coast Council is currently preparing its IWCM strategic planning documentation for submission to the Department by 30 June 2024 in line with the relevant provisions within the Water Management Act (General) Regulation. Council has submitted its Draft Central Coast Water Security Plan (CCWSP) to the Department for 'in principle' approval as the first phase of the broader IWCM project. Preparation of the CCWSP was aligned with the preparation of the Lower Hunter Water Security Plan (LHWSP) to ensure a regional approach to water resource planning was achieved and existing/potential joint infrastructure options were appropriately and consistently assessed by both planning processes.

Council is now preparing the remaining elements of the IWCM framework following a gap analysis undertaken by Public Works Advisory. This will focus on treatment and network master planning and a review of un-serviced areas within the Central Coast. It is intended to prepare an Issues Paper in light of the previous gap analysis and the Department's proposed strategic planning key outcomes. This would support Council's application for partial funding under the Safe and Secure Water Program, and the ability for Council to discuss the methodology during the Issues Paper preparation and review process would be welcomed.

## Section 4: Assessment and approving dividend payments

### **10. 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.

Council accepts the eligibility criteria for local water utilities to make a dividend payment and calculation of surplus and maximum dividend payable as being sound and reasonable.

The challenge Council faces is that, as a LWU under section 409.6 of the Local Government Act, Council can pay a dividend if it has passed Best Practice. However, the IPART Act section 15(c) also allows payment of a dividend to the government for State Owned Corporations (SOCs) (70% Net profit After Tax (NPAT)). This section of the IPART Act does not apply to Council as we are not a SOC. There is no equivalent section in the IPART Act to address dividend payments for non-SOCs.

Under IPART regulation, if Council does not spend its IPART operating allowance, the underspend will be recovered in the next pricing determination as part of the Efficiency Carryover Mechanism (ECM) resulting in a reduction to Council's revenue.

Review of Consultation draft: Regulatory framework for local water utilities  
IPART-regulated income sees that Council only recovers revenue for expenditure that is prudent and efficient. It is not designed to allow Council to profit. The only way for Council to receive a dividend from the Water and Sewer business would be to build a dividend into the pricing submission and seek approval from IPART.

This dual regulation and approval poses some difficulty for Council, particularly in relation to approval timing; the DPIE approval process is annual whereas Council's IPART submission occurs every 4 years (or the length of determination period as set by IPART).

Council's Water and Sewer business does not currently pay dividends to Council. Primarily as Council's IWCM is not due for completion until June 2024 and not having sufficient surplus to enable the calculation and payment of a dividend.

As the only Water Supply Authority that is also part of a council in NSW, Council's Water and Sewer regulated revenue is determined by IPART based on an expenditure review. As part of the building blocks to determine the Notional Revenue Requirement (NRR) the below method is used:

- Return of Assets, regulatory depreciation, is based on the Regulated Asset Base (RAB) and asset lives for existing and new assets.
- Return on Assets, opportunity cost of capital invested to provide regulated services, is based on the Regulated Asset Base (RAB) and Weighted Average Cost of Capital (WACC).

The RAB has a lower value when compared to the Fixed Asset Register (FAR), which is the current value of Council assets. This is due to IPART's Line in the Sand (LIS) calculation which was undertaken in 2000. IPART set the initial RAB in 2000 using a discounted cash flow valuation method. The initial RAB did not represent the aggregation of the accounting value of physical assets. As the RAB at this point estimated the value of the business as a whole, it is not possible to identify which specific (pre-line-in-the-sand) assets contributed to that RAB and in what proportion.

This differs from the accounting depreciation (calculated based on physical assets) and borrowing costs (based on loans entered into) reported in the financial statements, which is based on the Office of Local Government Code of Accounting Practice and Financial Reporting (The Code). The Code is intended to facilitate the practical and effective implementation of the Australian Accounting Standards for NSW councils

The impact of the difference is that, generally, depreciation calculated on the physical assets and actual borrowing costs are more than the allowance from IPART's building block method, which results in an operating deficit in the water and sewer businesses unless Council underspends its operating allowance.

## 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?**

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?

Central Coast Council and the former Wyong Shire Council have had successful interactions with the Department's Technical Assessment Team when undertaking an early engagement approach. Previous water and sewage treatment projects involved engagement at the 'optioneering' phase through the provision of technical memos and design basis documents (for information). An 'in principle' approval of the subsequent concept design was then sought prior to proceeding to a preliminary detailed design for the formal approval.

Early engagement manages the risk of proceeding with an unsuitable technical concept that may require additional rework to amend at detail design stage. Commencing delivery of Design and Construct (D&C)/Design Development and Construct Contracts (DD&C) without an upfront 'in principle' approval adds significant risk to a project.

The draft approach described in Table 4 of the Consultation document suggests formal application can be made at the concept design stage which is welcomed by Council as it allows greater de-risking of regulator intervention after a D&C or DD&C contract has been entered into. Informal review of earlier optioneering and concept development would also continue to be encouraged to raise any early 'red flags' with a proposed technical solution and gain insights of other similar projects implemented by other regulated utilities.

Early identification of when other regulators will be consulted through a 'stop the clock' process would be welcomed to ensure the utility can undertake early engagement to support the Section 60 process.

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

## Review of Consultation draft: Regulatory framework for local water utilities

In addition to the regulatory framework, the department intends to produce clear, concise, and accessible guidance providing more detail about 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.

The criteria described in Section 5.3 appear suitable and an early engagement process supplemented by technical memos/design basis documentation should assist in identifying data gaps and expectations for the subsequent concept designs.

The Draft proposes that Department will provide a decision on a utility's application for a section 60 approval within 60 days of receiving a completed application. 'A completed application' needs to be better defined. In any case, a prompt written response through a transparent process, preferably through a consultative process, would be appreciated by utilities.

### **13. 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?

The proposed conditions appear suitable and should be structured to allow a Section 60 approval process to be obtained at a concept design phase if relevant to reduce the risk of regulator intervention after detailed design or award of delivery contracts. The conditions also need to provide some flexibility for innovation by the delivery contractor provided the key project outcomes are met and associated risks are managed.

This might involve instances where the Department undertakes the role of technical advisor (not evaluation panel member) during the review of an expression of interest or early tenderer/contractor involvement for a design and construct contract. It would not, however, be considered appropriate for the Department's representatives to be part of the formal tender evaluation panel.

The department may also consider integrating approval conditions during the project closure phase (post commissioning and hand over) so it can be aware of the actual performance of the commissioned infrastructure and better integrate lessons learnt across future similar projects by other regulated utilities.

## 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?**

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?

The current approach of regular inspections with respect to safety, operation and maintenance of water and sewage treatment systems is generally acceptable. Council understands the powers of the Minister to exercise under section 61 of the Local Government Act to direct the utility to carry out any necessary corrective action. Furthermore, unlike other NSW local government water utilities, Council's water and sewer activities are regulated by the Water Management Act, and a number of other Acts and Regulations as well.

Council welcomes the Department's inspection-related activities, such as staff mentoring for operators, and technical assistance and advice for the utility to resolve operational matters. However, this process needs to be structured by the Department to result in more productive and efficient outcomes.

The Draft acknowledges that collaboration is an important part of the inspection process, and the process is designed to share information needed for capacity building. Engagement and collaboration approaches with the inspection site visits would benefit both parties. Council proposes that ideally the local appropriate Water and Sewer Manager needs to be consulted first on the observations prior to communicating with the General Manager with the inspection report.

### **15. How should the department integrate 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?

## Review of Consultation draft: Regulatory framework for local water utilities

The current approach to sharing inspection reports with other regulators is *ad hoc*, with no assurance that inspection reports and improvement actions identified are communicated to regulators in all instances.

The scope of the current inspection process includes discussion with water utility staff on existing and potential operational issues at the time of the inspection. Inspections incorporate physical review of asset condition and maintenance and the general operations of the facilities. If the Department proposes to share the results of inspections with other regulators and integrate regulatory activities, the scope of inspections, reporting format and advising process should be structured to fit the purpose.

It may be appropriate for the Department to encourage local water utilities to include inspection reports and improvement actions undertaken in annual returns to regulators (e.g. NSW Health, NSW EPA, IPART).

### **16. 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?

Council proposes that results of inspection reports are not made openly available, especially of those with a technical context, as they may not be readily understood by all stakeholders. Local water utilities need time to assess and rectify any issues which arise from inspections.

Publication of results may lead to enquiries from the public and media, as well as demands to immediately rectify issues to deliver the outcomes, further increasing the administrative burden on local water utilities or the Department. This may result in shifting resources from mitigation of higher risk issues.

Council will be required to report its performance measures stipulated by IPART to the stakeholders and public in the coming price determination period. Performance against these metrics is a more suitable approach for public reporting.

## Section 8: Performance monitoring and reporting

### **17. 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.

Review of Consultation draft: Regulatory framework for local water utilities

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

The proposed criteria appears appropriate, however, performance monitoring data is valuable for benchmarking purposes only if every water utility is adequately skilled and resourced to provide data of the same degree of quality and analysis of the same rigour. Alternatively, a water utility may be given the opportunity to provide a quality grading for each performance measure provided so that the relative quality can be assessed when benchmarking.

In the case of Council, IPART has placed key performance indicators and accountability measures on the utility (similar to the process undertaken by utilities such as Hunter Water and Sydney Water) that require Council to report to both IPART and the community.

## **18. Is the proposed information requirement 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?

The proposed information requirements to be reported are appropriate.

Performance measures should be linked to NSW or Commonwealth policies or plans where appropriate. For example, energy use and greenhouse gas emission data should assist the NSW Government to assess performance against its Net Zero Plan.

A manual of definitions of performance measures should be developed to ensure that all local water utilities have a clear understanding of the data reporting requirements and report the same data, particularly for indicators specific to the NSW context. This is particularly important when data is used for benchmarking purposes and to make risk-based decisions.

It is ambitious to propose a monitoring and evaluation framework to be published in mid-2022, based on the protracted consultation process that WSAA went through when considering changes to performance measures to be adopted by the Bureau of Meteorology's Urban Water National Performance Report.

## **19. 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



Review of Consultation draft: Regulatory framework for local water utilities 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?

The streamlined approach to performance indicators and benchmark data is appropriate.

As identified, wherever possible it is important that performance measures be developed that align with existing measures implemented by other regulators, particularly NSW Health, NSW EPA, Office of Local Government and IPART. This will avoid the need for additional data gathering or data processing due to slight changes (units, timeframes etc). Data sharing arrangements between agencies should be encouraged but need to be transparent so that reporting duplication can be avoided where possible, or additional data sharing opportunities identified.

If the Department proposes to streamline the performance indicators with other regulators and integrate regulatory activities, the performance indicators and reporting format need to be structured to fit the purpose. In Council's view, streamlining the performance indicators and benchmark data within the Department alone is not adequate. Ideally, the Department should work with all other regulators (NSW Health, NSW EPA, etc.) to standardise performance indicators and benchmarking to meet all regulatory requirements through state-wide consultation.

Whilst Council reports National Pollutant Inventory data to NSW EPA, not all water utilities have reporting obligations under this scheme so it would not be appropriate to include these measures under this regulatory framework review.

## **20. 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?

The performance indicators currently reported by the Department on the LWU Performance Monitoring Data and Reports website (<https://www.industry.nsw.gov.au/water/water-utilities/lwu-performance-monitoring-data>) provide a very good overview of financial, operational, safety, environmental and health performance for each of the water utilities, whilst also providing the opportunity to benchmark performance. It is encouraged that this reporting format be retained.

More frequent indicators would only be suitable if they aligned with current reporting obligations with other regulatory agencies. Increasing the frequency of reporting should only be considered if it represented minimal administrative burden on both the water utilities and the Department. It should be noted that annual reporting is the norm for most regulatory agencies. Full industry consultation would be necessary if an increased frequency of reporting is proposed.

## Section 9: Review of departmental decisions

### **21. 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?

Council welcomes the Department's intention to provide clear, transparent and prompt response by documenting all its reasons in a timely manner for the local water utility, to ensure that the utility to digest the information and to decide whether to seek a review. The process with multiple steps to go through in-house and the Department officers, up to Executive Director and CEO NSW Water Sector, is appreciated. Council seeks to incorporate an option for the Department to appropriately procure external service providers to deliver non-binding third-party technical recommendations along any step in Table 9 of the Consultation Draft.

## Other Considerations

### **Central Coast Council's Regulatory Framework**

Central Coast Council is the largest council-managed water utility by connected properties in New South Wales, and the second largest in Australia. It also has the largest asset base (WDV) of all council-managed water utilities in NSW, and the third largest Australia-wide (source 2020/21 NPR Report).

## Review of Consultation draft: Regulatory framework for local water utilities

Council is unique in its regulatory setting, being the only council that has its water and sewer legislated by numerous acts and regulations that often contradict each other and place Council in a difficult position. These acts and regulations are:

- Local Government Act (LGA)
- Water Management Act (WMA)
- IPART Act
- Water Management Regulations (WMR) – specifically for the Best Practice Principles

The issue warrants review due to the recent Council financial crisis and its impacts. This is especially relevant in the ability to move funds between the water & sewer funds and the complexity in legislation that creates barriers in other areas of the Water & Sewer businesses.

The overarching need is to establish change that:

- Simplifies the legislative framework
- Provides the appropriate powers, autonomy, and licence functions
- Provides the basis to run a prudent and efficient business
- Removes barriers regarding restricted funds in relation to the LGA
- Ability to allocate cash reserves to capital expenditure where it is required and
- Simplify borrowing

### **Local government regulatory framework**

Central Coast Council is governed by the provisions of the LG Act and the relevant associated regulations, including the Local Government (General) Regulation 2005 (NSW) (LGR). The LG Act provides, among other things, the legal framework for the management and operation of the Council and the responsibilities and powers of the Council, and persons involved in the operation of the organisation.

The LG Act also sets out the principles of sound financial management that apply to the Council, which indicate the way finances should be management and overseen by the Council. The management and reporting on financial management by the Council is governed by the Local Government Code of Accounting Practice and Financial Reporting (Code), which was formed under the LGR.

The local government regulatory framework controls, amongst other things, the expenditure of capital and operational funds by the Council.

### **Water management regulatory framework**

Central Coast Council is governed by the provisions of the WMA and the Water Management (General) Regulation 2018 (NSW) (WMR). The Council is a declared 'water supply authority' under the WMA, and as such is subject to the obligations, requirements and restrictions set down by the WMA and WMR.

## Review of Consultation draft: Regulatory framework for local water utilities

The WMA provides the regulatory framework for a Water Supply Authority, including the Council, to levy service charges and impose fees and other charges in relation to the supply and management of water and water infrastructure within its area of management. This includes, but is not limited to:

- water service charges
- sewerage service charges
- drainage service charges

### **IPART Regulation**

As a Water Supply Authority, Council is subject to the IPART Act. The IPART Act empowers IPART to regulate the management of government monopoly services, including conducting investigations and making determinations in relation to the pricing for a government monopoly service.

The service charges, fees and other charges imposed by Council in relation to its management and supply of water within the local government area are subject to the governance of the IPART Act, and the prices are set by pricing determinations issued by IPART.

IPART has acknowledged this situation and the complexity it creates:

*The Council operates under a complex and unique regulatory framework for its water, wastewater and stormwater services. It is the only council for which we regulate prices for these services. And unlike other water utilities that we regulate (e.g. Sydney Water and Hunter Water), it does not have an operating licence that sets performance standards, compliance requirements or a customer contract. Central Coast Council is both a council under the Local Government Act 1993 (NSW), and a water supply authority under the Water Management Act 2000 (NSW).*

### **Categorisation of Central Coast Council**

Council believes that its regulatory compliance requirements should strike a balance between the procedures and practices being undertaken by its neighbouring Water Supply Authorities (Hunter Water and Sydney Water) and those applied to regional local water utilities. Some examples include implementation of Liquid Trade Waste Guidelines, ability to issue infringement notices associated with Water Management Act, and declaration of Water Restrictions.

### **Coordination between local water utility regulators**

Council's water and sewerage services are regulated under various legislations and regulations, including Local Government Act, Water Management Act, IPART Act, and Water Management Regulations. Besides Department of Planning and Environment, Council's regulators include NSW Health, NSW EPA, Office of Local Government, Dams Safety NSW and IPART. This requires Council

Review of Consultation draft: Regulatory framework for local water utilities to undertake a significant amount of reporting and compliance activities in which some are duplicated or conflicting. Council feels this workload could be reduced with the Department working with and all regulators associated with water and sewage services to avoid duplication and contradictions, and to establish performance indicators and benchmarking to meet all regulatory requirements through state-wide consultation.

Council supports better coordination between regulators. There is currently a disconnect between regulators which can leave regulated businesses vulnerable to conflicting requirements. For Council, it can sometime be uncertain how IPART will assess expenditure that is related to the delivery of government policy.

### **Concurrence for approvals to discharge liquid trade waste**

Council finds that when considering the Department's stipulations surrounding industrial discharges to the sewage system, the acceptable concentrations for certain substances are more stringent for Council than the acceptable concentrations by Hunter Water and Sydney Water. Council's Category 3 customers point out, time and again, that such disparity is a significant disadvantage for them in a competitive marketplace. Council would appreciate a suitable process to negotiate with businesses to set acceptable concentrations for specific substances to ensure level playing field for these businesses in the Central Coast local government area, Sydney and Hunter regions, and secure concurrence for approval to discharge liquid trade waste.