

Stephen Palmer Consulting

Ms Erin Cini
Director Town Water Risk Reduction Program
Department of Planning and Environment
regional.town.water@dpie.nsw.gov.au

Consultation Draft: Regulatory Framework for local water utilities, March 2022

Dear Ms Cini,

Please find attached a submission in response to the Department's *Consultation Draft: Regulatory Framework for local water utilities*.

My comments on the Consultation Draft focus on the Department's proposed processes and relationship with the Local Water Utility sector in New South Wales, rather than an in-depth commentary on the proposed framework. There are far more skilled practitioners in the local water utility sector than me, who can make in-depth comments on the proposed framework.

In the Government's 2015-16 NSW Water Supply and Sewerage Performance Monitoring Report, the most recently published edition, the then Minister made the following comments:

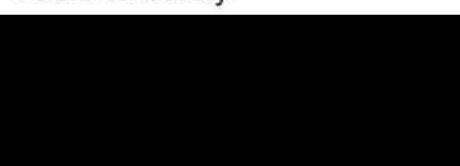
"I am pleased to note that the evidence shows the regional NSW local water utilities are continuing to perform well"; and

"DPI Water [now DPE] in consultation with stakeholders is undertaking a major review of regulation of the regional NSW local water utilities to ensure regulatory arrangements for this important sector are suitable for the challenges of the 21st century. The review will build on the success of the present arrangements, reflect the now mature regional NSW water utility environment, and work to further streamline regulation and reduce financial and regulatory burdens on the utilities."

My comments on this Consultation Draft of a new regulatory framework are made with the former Minister's remarks in mind.

Thank you for the opportunity to make a submission on this important Regulatory Framework.

Yours sincerely



Stephen Palmer
Director

29 April 2022

Stephen Palmer Consulting
Submission on Consultation Draft:
Regulatory Framework for Local Water Utilities, March 2022

General

In describing the proposed regulatory framework, the document identifies feedback from the stakeholders that the current approaches are “too prescriptive” and “did not allow sufficient flexibility”, yet the document seems to perpetuate a significant flaw in the professional relationship between influential regulation decision makers in the Department and local water utility practitioners.

In the former Minister’s statements quoted above, the local water utility sector is “*continuing to perform well*” and a “*now mature regional NSW water utility environment*”, however recognition and respect of these local water utility characteristics are frequently not borne out in dealings with the Department on regulatory issues. Despite the maturity and skills across the sector the Department too often displays a lack of trust and respect of local water utility practitioners. An example within the proposed framework is at Section 5.2, Phase 4, dot point 3 (page 38), that is “not approve these works”.

How can such a collaborative and consultative process as proposed get to a “not approve” situation?

By contrast, thankfully, in Section 6 (note the comment “*This section is not materially changed from the department’s current approach*”), page 44, paragraph 6 describes exactly how the Department/LWU officer relationship should exist. Your regionally based managers and their staff, in particular the Water and Sewerage Treatment Officers (formerly called Inspectors), are the soul of your business. They are the paramedics in the field giving timely practical advice to water and sewerage treatment managers and operators. They enjoy the trust and respect of the LWU sector.

Key to the success of the proposed Regulatory Framework must be the recognition of “*the now mature regional NSW water utility environment*”.

There is no one size fits all solution to the level of regulator support or guidance required across the NSW local water utility sector, however there is an underlying mindset that should be a foundation of every business interaction between DPE and individual local water utilities.

That mindset needs to recognise that every local water utility is working to provide safe, secure and cost-effective water supply and sewerage services to its consumers and that the Government regulators are providing the framework and resources to enable the delivery of the services in a collaborative manner.

The proposed regulatory framework, whereby the elements covered under the current Best Practice Management guidelines become regulatory as opposed to non-mandatory under S 409 (6) of the Local Government Act is a significant change. To implement such a change in the very limited consultative/implementation timeframe proposed is, if nothing else, ambitious.

S409 (6) relates to the management of a Council’s consolidated funding, not its strategic business planning. Linking the need for regulation of best practice management to the ability for Council to pay itself a dividend from the Water and

Sewerage fund miss understands the objective of a Council owned local water utility, that is to provide safe, secure and cost-effective water supply and sewerage services.

For the majority of local water utilities, especially the smaller (population base) ones, the ability to pay itself a dividend would only be possible if the water supply and sewerage service charges were increased, at the expense of being cost-effective to its consumers.

Local water utilities represent a mature and capable sector and deserve to be recognised as such. To deny this recognition, as is documented in DPE's own Performance Monitoring Reports, is an admission of failure on the Government in its relationship with the sector over several decades.

To quote Section 6: "*The [inspection] process is designed to build trust, foster relationships, and share information needed to build local water utility capacity*".

This is the key.

Subject specific comments

Strategic Business Planning

The aims, objectives and business benefits of a sound Strategic Business Plan are undisputed, however comments in the Consultation Draft appear to have produced a potentially confusing and time-consuming change. To state that “We [the Department] do not specify how local water utilities should undertake or document their strategic business planning...” is not considered a sensible move.

A more pragmatic approach could be that the Department, and (say) the Water Directorate, in partnership, explore the opportunity to develop a template for a Strategic Business Plan. This would have the potential benefits to DPE and the LWU that there is no guesswork from the LWU or its consultants as to what is required/acceptable to the Department; and it would streamline the review of the completed document by DPE and there would be State-wide consistency.

Under section 5 of the Discussion Draft, DPE advises that it will be developing how-to guidance, templates, case studies and tools to assist local water utilities in the preparation of any Section 60 applications. Such guidance, clear and concise, would have the potential to streamline the preparation of Strategic Business Plans and simplify the requirements and expectations of IWCM planning.

In relation to Phase 2, paragraph 4, (page 25), is there a role for DPE to take the lead and work with other regulators to develop a coherent perspective? Could this be achieved by issuing an Operating License to LWUs, or JOs whereby the License contains the local water utility's deliverables and obligations under the various regulator frameworks?

Section 60

Referring to the former Minister's comments, published in May 2017, the processes outlined in Section 5 of the Discussion Draft appear to be a long way from might be expected in a new regulatory framework designed to "reflect the now mature regional NSW water utility environment, and work to further streamline regulation."

As drafted, Section 5 presents a confusing and contradictory description to navigating the Section 60 process.

Before offering comments on the proposed process, I would like to explore the comment on page 35 of the consultation draft, paragraph 4:

"Advisory technical and other guidance is provided without charge but cannot be considered binding on the department's formal Section 60 determination role."

So, what is the point of an LWU seeking advisory guidance?

What about a change in the system, whereby the Department charges for the technical advice and guidance in return for LWUs having some degree of comfort in the advice and guidance being binding, and timely?

Local Government currently applies fees to anyone lodging a Development Application, so paying a fee for a "binding" service may well be not only acceptable to Local Government, but also be more cost effective in terms of design dollars spent and time in early design phases than getting non-binding advice and guidance that cannot be relied upon.

While it is anticipated areas of confusion in the Discussion Draft will be addressed in the yet to be published Template Application Form, how-to guidance, templates, case studies and tools [see page 43], the following comments are based on the content of the Discussion Draft.

Early engagement with DPE is clearly ideal, but the documented process does not instil confidence.

While the concept of a 60 day (business or calendar days?) "clock" has some appeal to local water utilities, design & construct contractors and project managers endeavouring to achieve delivery timeframes, the potential number of and reasons for stopping the clock leaves a high degree of uncertainty.

Uncertainty, that may be summed up the Section 5 of the Discussion Draft.

Uncertainty in the mind of applicants, for example section 5.3, dot point 3, page 39:

". 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".

Clear and concise?

Or in the minds of DPE, for example section 5.2 page 36:

"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"

Followed by, at section 5.2, Phase 2, page 37:

"Local water utilities bear the risk associated with submitting a formal application at later stages of planning and development."

And then at section 5.4. page 41:

"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 to include additional design details before requesting a Section 60 assessment. However, only the material requested will be assessed by the Department".

While it is anticipated that the pros and cons of submitting early or waiting to submit at 75% design stage will be clarified in the how-to guidance, templates, case studies and tools, it is reassuring that DPE has a *"flexible and proportionate approach to regulation"*.

It is appreciated that a flexible and proportionate approach to regulation enables DPE to focus on potentially higher risk and maybe less well resourced LWUs, however the focus of attention is often perceived as being steeped in criticism rather than strategic advice.

A change to this mindset would be welcomed.