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Department of Planning and Environment

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# Summary of feedback on the draft regulatory framework for local water utilities

July 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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# Overview

This report provides a summary of the feedback received on the Department of Planning and Environment's [Consultation draft: Regulatory framework for local water utilities \(PDF 869 KB\)](#), which was open for public consultation in March 2022.

Many people and organisations across the local water utility sector have partnered and collaborated within the department's Town Water Risk Reduction Program to design an improved regulatory framework for local water utilities.

The draft regulatory framework document was developed in collaboration with members of the Town Water Risk Reduction Program's:

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

The department did not ask these groups for their endorsement. Rather, it consulted with the whole sector on drafts informed by the frank inputs of these 3 groups. In publishing the draft framework, we sought feedback to ensure the framework meets the needs of all stakeholders.

More than 40 people or organisations participated in the engagement. The engagement included a webinar (stream the [webinar video](#)), survey and written submissions. We considered all submission and survey responses.

This document outlines the feedback we received and how we are addressing the feedback in the new regulatory and assurance framework for local water utilities.

This regulatory and assurance framework applies to local water utilities in regional NSW from 1 July 2022. It covers:

- local government councils exercising water supply and sewerage functions under Division 2 Part 3 Chapter 6 of the NSW [Local Government Act 1993](#) (Local Government Act)<sup>1</sup>
- utilities exercising water supply and sewerage functions under the NSW [Water Management Act 2000](#) (Water Management Act)<sup>2</sup>
- guidelines for managing the provision of water supply and sewerage services by councils under section 409(6) of the Local Government Act.

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<sup>1</sup> 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](http://www.industry.nsw.gov.au/water/water-utilities/local-water-utilities)

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

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## Submissions and surveys received

We received 37 submissions and survey responses from stakeholders across the local water utility sector.

We received 18 public submissions, from:

- Bathurst Regional Council
- Bega Valley Shire Council
- Cabonne Council
- Central Coast Council
- Central NSW Joint Organisation
- Central Tablelands Water
- Common Thread Consulting
- Goldenfields Water
- Hunter H2O
- MidCoast Council
- Mr Michael Smit and Mr Adam Jones (individuals)
- Namoi Joint Organisation
- NSW Health
- Orana Water Utilities Alliance
- Parkes Shire Council
- Public Interest Advocacy Centre
- Stephen Palmer Consulting
- Water Directorate.

We also received 7 confidential submissions.

We received 12 responses to our survey, some public and some confidential, some from individuals and others from organisations such as:

- Carrathool Shire Council
- Hay Shire Council
- Local Government NSW
- Shoalhaven City Council
- Tweed Shire Council.

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## A risk-based and outcomes-focused regulatory approach

There was wide support for the intent, structure and content of the draft as it reflects sector expectations of regulation and assurance. Stakeholders expressed broad support for the direction of the framework. We had positive feedback about:

- the process to design the framework
- our approach to building a stronger sector and improving culture, including in relation to.
  - changing to outcomes-focused regulation for strategic planning
  - clarifying the regulatory requirements for infrastructure subject to a section 60 approval
  - bringing forward the assessment of section 60 approvals to an early design phase of infrastructure projects
  - committing to timelines for our assessments and approvals
  - providing for reviews of the department's decisions
  - removing duplication in reporting of performance information
  - setting out our approach to cooperate with other regulators.
- the framework's commitment to transparency, which will create a more consistent approach.

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## Clarifying our role

We heard strong support for the regulatory role of the department. There was broad acknowledgement that it is reasonable for the department to play a leading role in managing local water utility risks through oversight and assurance even though department does not have legislative powers.

However, 5 submissions opposed a regulatory oversight role for the department, arguing that regulation of local water utilities could be undertaken through the Integrated Planning and Reporting (IP&R) framework of the Local Government Act.

Our view is that the IP&R framework is not designed to act as a standalone regulatory framework for managing local water utility sector risks to the degree necessary to meet all the strategic planning outcomes of the framework. We are working with the sector to integrate strategic planning with the IP&R framework. In April, the department released for consultation a draft guidance on leveraging the IP&R framework for local water utility strategic planning. This document is being finalised and will be published by 1 July 2022.

Several stakeholders expressed concern about describing the department's role in relation to local water utility strategic planning as a 'regulatory role' because the department does not have any legislative powers. However, consistent with previous feedback from consultation on the regulatory roadmap, most stakeholders consider that strategic planning is key to managing local water utility risks and that the department has a key oversight responsibility. Most stakeholders consider it reasonable that the department sets clear expectations about strategic planning and has an assurance role. We have amended the framework to respond to this feedback (see the section 'The department's regulatory role').

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## Successfully implementing the framework

Stakeholders expressed some concerns about the department's ability and readiness to implement the new framework by 1 July 2022.

We are addressing implementation risks by:

- designing the framework to 'hardwire' changes in our approach, including accountability and transparency measures, quality assurance processes and a process for review of departmental decisions where needed
- publishing clear guidance and templates, forms and exemplar case studies to help local water utilities meet regulatory expectations
- defining detailed internal processes for regulatory assessments to support implementation of the framework
- involving the department's Water Utilities team, who are responsible for implementing the framework, in all steps of the design process
- delivering a learning and development package for the Water Utilities team on risk-based regulation that is tailored to the new framework. This training is focused on capacity and capability development and includes on-the-job management tools to consolidate learning. Subsequent training modules will be rolled out through July and August
- authorising an interim structure so it is clear who holds responsibilities for assessment and decision-making under the framework ahead of a broader realignment of the Water Utilities team that will be done over the coming months
- ongoing culture change supported by organisational design over the longer term.

This approach addresses specific implementation risks identified in some submissions including:

- risks of leaving too much discretion to the departmental officers who might perpetuate 'old ways of working'
- risks for local water utilities currently undertaking strategic planning funded under the Safe and Secure Water Program.

The new regulatory and assurance framework will begin on 1 July 2022. The new approach to approvals under section 60 of the Local Government Act and section 292(1) of the Water Management Act will be ready to start from 1 July. For each of the approximately 40 utilities that are part way through their strategic planning, a clear transition path will be agreed to ensure that no utility is adversely affected.

Following general feedback from the sector, strategic planning components will be phased in by 1 December 2022 to allow local water utilities currently in the process of undertaking strategic planning time to identify the most appropriate transition path to the new regulatory framework and to amend funding deeds as required.



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## Continual improvement

The department will periodically review its regulatory and assurance approach, policies, processes, systems, and activities. We will consider 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 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 the regulatory and assurance 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.

# Vision and objectives of the local water utility sector

Section 1 of the draft regulatory framework highlights the vision and objectives of the local water utility sector and is guided by the collective vision of all sector stakeholders. It also outlines the role of local water utilities.

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## What success looks like

Local water utilities, regulators and customers have a shared understanding of the vision and objectives of the local water utility sector. The vision and objectives are clearly articulated.

We partnered with the sector through 2021 to develop the [Roadmap to an improved regulatory framework for local water utilities \(PDF 350 KB\)](#). In that document, we set out the key objectives. We developed the vision for the local water utility sector in collaboration with our Stakeholder Advisory Panel and working groups. The shared vision will be clearly articulated.

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## What we have heard

We received feedback from 18 stakeholders through submissions and surveys on the vision and objectives of the local water utility sector (section 1 of the draft framework).

The feedback was broadly supportive, commending the vision statement and objectives of the framework. The vision and objectives align with the expectations of regional NSW.

Numerous stakeholders commented that the objectives reflect a triple-bottom-line approach, with customer needs and expectations in mind.

Minor drafting changes were put forward. One stakeholder suggested that local water utilities have responsibilities beyond direct customers. Their responsibilities extend to consumers and the community. Another stakeholder suggested we include a more complete list of legislation that governs the activities of local water utilities.

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## Updates to the regulatory and assurance framework

In response to feedback on the vision and objectives of the local water utility sector outlined in the draft regulatory framework, we have:

- expanded the sector objective about customers' needs, expectations and preferences to include 'customers and community' (section 1.2)
- removed 'where possible' from the sector objective about customers (section 1.2)

- added the various other Acts that govern the actions of local water utilities (section 1.3).

We decided not to make some suggested amendments:

- We are not including the word 'sustainable' before economic development in the sector objectives. While we have maintained 'sustainable water and sewerage services' in the vision for the local water utility sector, it is not appropriate for the sector objectives to constrain the type of economic development that local water utilities are to contribute to.
- We are not removing the word 'continue' from the sector objectives. Doing so would imply that the sector was not already working towards and achieving these objectives.

# The department's regulatory role

Section 2 of the draft regulatory framework provides an overview of the department's role in overseeing local water utilities in their delivery of safe, secure, sustainable, and affordable services and management of water service risks.

In the new regulatory and assurance framework, this section is renamed 'The department's role'.

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## What success looks like

Regulatory expectations are clear and coordinated between water, public health, environmental and local government regulation so that utilities have clear information on expectations and sufficient information, skills and support to meet those expectations.

Water, public health, environmental and local government regulators commit to participate in council and local water utility processes and projects early so that councils and local water utilities know what they need to do as early as possible. Regulators have clear roles and responsibilities, including who takes the lead on issues, and communicate and coordinate effectively with each other and local water utilities within the broader strategic framework for water management in NSW. Regulators have good relationships and share knowledge with each utility.

Local water utilities rightly expect that the department is clear in all communications when it acts in all its roles (policy and strategy, advisory, regulation and assurance, and funding). We allocate our resources to deliver the greatest benefit or to focus on the biggest risks to public health, customers or the environment.

We have the resources and skills to be an effective regulator. We strive to continuously improve and learn and collaborate with the local water utilities sector to understand and address current and future challenges.

We partnered with the sector in 2021 to develop the [Roadmap to an improved regulatory framework for local water utilities \(PDF 350 KB\)](#). In that document, we first set out the department's roles and regulatory objectives and principles. The draft regulatory framework articulated these in more detail, and they will be further refined based on the feedback received.

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## What we have heard

We received feedback from 28 stakeholders through submissions and surveys on the department's regulatory role (section 2 of the draft framework). Some comments did not reference this section of the draft regulatory framework specifically but were included in comments relating to other sections (for example, section 3 – Strategic planning oversight).

We heard support for the regulatory role of the department across most submissions. There was broad acknowledgement that it is reasonable for the department to play a leading role in managing local water utility risks through oversight and assurance.

However, some submissions questioned our regulatory oversight role, suggesting that instead the regulation of local water utilities could be undertaken through the Integrated Planning and Reporting (IP&R) framework of the Local Government Act. This is not possible because the IP&R framework is not designed to act as a standalone regulatory framework.

Several stakeholders expressed concern about describing the department's role in relation to local water utility strategic planning as a regulatory role. We do not have any legislative powers. However, consistent with previous feedback from consultation on the regulatory roadmap, stakeholders accepted that strategic planning is key to managing local water utility risks. Most stakeholders accepted that it is reasonable for clear expectations to be set about strategic planning, and that the department should have an oversight role.

Stakeholders suggested that the regulatory framework needs to more clearly emphasise the separation of the department's accountabilities in relation to its regulation and assurance, advisory and funding roles.

The regulatory principles were broadly supported but some stakeholders suggested they should be given greater visibility in the framework and should better emphasise collaboration with the local water utility sector.

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## Updates to the regulatory and assurance framework

In response to feedback on the department's regulatory role we have made the following changes.

We have clarified the department's roles in the local water utility sector across policy and strategy, advisory, regulation and assurance, and funding. We have provided more detail and diagrams to set out these roles clearly to ensure a shared understanding for all stakeholders. We have also renamed the section 'The department's role'.

We have emphasised our understanding of our assurance role for strategic planning and clarified our understanding that the department does not directly regulate activities related to strategic planning conducted by local water utilities. However, we have emphasised that we seek to use the assurance framework to highlight the importance of effective strategic planning by local water utilities. Similarly, we have emphasised that our assurance role is focussed on helping the community, councillors, council audit risk and improvement committees, council general managers and council staff to improve their understanding of water management risks and accountability in decision making.

We have also:

- reframed the 'regulatory principles' in the draft framework as 'guiding principles' that are relevant to all the department's roles
- made changes to the 'guiding principles' in response to feedback received, including emphasising the key principle of collaboration and meaningful engagement with the community to ensure local water utility decisions support their needs

- clarified the department's role as the 'primary regulator' of local water utilities in response to feedback in several submissions that the department should take a lead regulator role, and consistent with the language of the NSW Water Strategy.

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## Other improvements

In our view, the existing IP&R framework is not designed to act as a standalone regulatory framework. It is not suitable for managing local water utility sector risks to the degree necessary to meet all the strategic planning outcomes of the draft regulatory framework. We are working with the sector to integrate strategic planning with the IP&R framework. We propose to:

- publish guidance about using the IP&R framework for local water utility strategic planning to meet the expectations set out in the regulatory and assurance framework. Sector feedback on the draft guidance is being reviewed and the final guidance will be available from 1 July 2022
- continue to explore and support the use of the IP&R framework for local water utility strategic planning over the next IP&R cycle (2022–25), including by implementing a pilot process with interested local water utilities and joint organisations.

We are continuing to progress actions in the department's [Roadmap to an improved regulatory framework for local water utilities \(PDF 350 KB\)](#). By October 2022, we will:

- improve the way we provide our enabling and support activities, making them more effective and targeted. This may include taking account of the challenges and risks faced by the local water utility and its organisational maturity (Action 4.3)
- ensure we maintain or increase our local presence in regional NSW for both our advice and support functions and our regulatory functions (Action 4.4)
- communicate to the sector how we allocate resources to deliver the greatest benefit, and/or to focus on the biggest risks to public health, customers or the environment (Action 4.5).

# Strategic planning oversight

Section 3 of the draft regulatory framework establishes the outcomes effective, evidence-based strategic planning should achieve and outlines how to assess whether a local water utility's strategic planning achieves these outcomes to a reasonable standard.

In the new regulatory and assurance framework, this section is renamed 'Strategic planning assurance'.

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## What success looks like

All local water utilities are leading robust, evidence-based strategic planning of their water services so that the utility and its customers can have confidence that key risks are identified and managed, challenges anticipated and that the expectations of their customers and regulators are consistently achieved.

Local water utilities' strategic planning is fit for purpose, actively used for decision-making and integrated with councils' strategic planning for its other services and functions as relevant.

Local water utilities should apply strategic planning to the principles of integrated water cycle management to optimise the multiple benefits of water in urban settings. Integrated water cycle management aims to manage the entire urban water cycle by integrating water, sewerage and stormwater services to contribute to the full suite of water security, public health, environmental and urban amenity outcomes that the community wants and values.

Local water utilities' strategic planning should be recognised by the department and the government in decision-making and overall strategic planning, including in the NSW Water Strategy and regional water strategies. With both local water utilities and the department committed to strengthening the links between local-, regional- and state-level planning, data and models can be shared between levels of government.

Local water utilities should charge cost-reflective, equitable, efficient and affordable prices that ensure the utility's financial sustainability, allow appropriate investment in infrastructure and promote efficient water use.

There should be clear communication to local water utilities of the department's regulatory objectives and performance expectations. There should be a transparent process to confirm that these expectations are applied in local water utilities' strategic planning.

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## What we have heard

We received feedback from 34 stakeholders through submissions and surveys on the department's strategic planning oversight role (section 3 of the draft framework).

Most stakeholders supported in principle the department's oversight role in strategic planning and the design of the strategic planning oversight function. However, a group of stakeholders questioned the expression of the department's strategic planning oversight role as regulation because there is no legislative basis and the department does not have compliance powers.

Some stakeholders identified potentially confusing expressions in the draft framework that implied that gazetting the whole regulatory framework under s409(6) of the Local Government Act was intended to create a legislated regulatory role for the department in strategic planning. They therefore strongly opposed gazetting of the framework.

We apologise for any confusion and clearly acknowledge that we do not have a legislated regulatory role for strategic planning (except where a local water utility pays a dividend from surplus).

A few stakeholders raised concerns about the risk that an outcomes-focused approach might leave too much discretion to the departmental officers.

Other stakeholders welcomed the department providing outcomes-based strategic planning oversight as the 'right balance between prescriptiveness and flexibility and between detail and outline'. Others went further and argued for a 'truly outcomes-focussed approach' that only considered success factors such as provision of 'good services' or 'risks adequately managed', noting that the proposed oversight still has a primary focus on the outcomes being the documentation of sound strategic planning.

Many stakeholders provided constructive feedback about improving individual strategic planning outcomes as well as the reasonable standard test. One suggestion was to include an additional outcome in section 3.2 that expects local water utilities to consider other important strategies for their region (such as regional water strategies), the challenges, priorities and evidence base presented in these strategies, and how their strategic planning fits into this context.

Many stakeholders supported an approach where councils and their local water utilities have the option of using the IP&R framework for strategic planning for water and sewerage services, with the department providing guidance on how to achieve it.

On the assessment process and results, many stakeholders suggested that the department consider having multiple, more granular levels of achievement for individual outcomes as well as the overall assessment result (like the IP&R framework's standards of 'good, better, best'). This would:

- move beyond pass/fail, promote continuous improvement and reward excellence
- provide a level of achievement appropriate for smaller, poorly resourced local water utilities
- avoid an adversarial regulator-utility relationship and risk-averse 'compliance' approaches by local water utilities.

Some stakeholders raised concerns over the reputational risks associated with the 'naming and shaming' approach of making public the department's assessment result.

Some stakeholders expressed concern that the department should base its assessments only on information submitted by the local water utilities.

Several stakeholders responded to our key questions about what factors may indicate that a local water utility is no longer achieving strategic planning outcomes to a reasonable standard, and about



how the department should arrive at an overall assessment result. We will consider this feedback when designing our assessment processes.

Some stakeholders responded to the request to identify areas where further guidance was required, suggesting the following subject matter areas be covered:

- how to meet regulatory expectations for each 12 outcomes – in a general sense the required outcomes in the framework are not detailed to allow local water utilities to determine how to undertake their own strategic planning without further guidance documentation
- templates for strategic planning to allow for consistency in the departmental assessment
- a template for a regulatory risk register to record identified risk and their management
- case studies and examples of utilities that are considered to meet certain outcomes to a high standard to help build capability across the regulated utilities
- data management (knowing what information to collect and how to organise it, ensure maintenance of corporate knowledge)
- regional alliances of councils and opportunities to ‘integrate’ water cycle management at the catchment and regional scale, as well as a support body to the service provider for water, sewerage, stormwater, rainwater, recycled water, land use planning, community education and engagement
- community consultation and engagement to support local water utility strategic planning and business operations that meet community needs
- demand and sewer load analysis
- water security analysis, noting that:
  - existing secure yield guidance for local water utilities is out of date and inconsistent with water security modelling undertaken in regional water strategies. Guidance needs to take into consideration the modern approach adopted in the regional water strategies and the increased availability of stochastic climate data
  - guidance needs to include drought contingency planning – this is typically not adequately considered and needs to be considered in conjunction with water security assessments
  - guidance needs to move beyond the 5/10/10 security criterion and adopt an approach that considers service levels and risk
  - regional water strategy water security modelling is available and can be provided to local water utilities (instead of duplicating analysis)
  - guidance needs to include contingency planning when the primary source is at risk of failing
- salinity management, especially for inland operations that do not have the option of ocean discharge, including dealing with brine and resultant salt from desalination processes and identifying sources of salt in municipal effluent (including liquid trade waste) and best practice (upstream) options to minimise salt entry to effluent streams.

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## Updates to the regulatory and assurance framework

In response to feedback on strategic planning oversight, we have made the following changes.

We acknowledge more explicitly that the department is not empowered under legislation to regulate local water utility strategic planning or to enforce compliance. Rather, we have designed an assurance role for the department to facilitate effective strategic planning by local water utilities so they can proactively address customer needs and key risks. The role will better enable the department to meet its full suite of legislative responsibilities in respect of councils.

We have designed an improved strategic planning assurance function that is more flexible and contemporary. It enables utilities to address strategic challenges when they present themselves and allows the department to assess how effectively this has been done. Providing early assurance will increase certainty for any subsequent functions and for stakeholders that rely on effective strategic planning.

We are maintaining the proposed outcomes-focussed approach, noting that an outcomes-focussed approach will require professional judgement by departmental assessors. The overwhelming feedback across various Town Water Risk Reduction Program engagement activities and during collaboration to design the new regulatory and assurance framework indicated that local water utilities should be able to undertake strategic planning and meet expected outcomes in a way that work best for them. This requires taking an outcomes-focused approach. Therefore, we do not support a prescriptive approach to strategic planning assurance.

We believe that concerns over the discretion afforded departmental officers will be addressed by:

- designing into the assurance role strong accountability and transparency mechanisms, such as making decisions in writing and with reasons, recording and reporting on regulatory decisions and other quality assurance mechanisms, assessment timelines and ‘stop-the-clock’ mechanisms, and the option to review departmental decisions
- publishing guidance on regulatory and assurance expectations that can be applied in the assessment process to provide more certainty
- building and maintaining capability and driving cultural change in the department to ensure staff understand and can make regulatory assessments and decisions
- ensuring adequate resourcing and skills are in place to perform the assurance function effectively
- implementing a robust internal quality assurance system.

We agree that an expectation to achieve effective strategic planning needs to acknowledge that many strategic challenges are outside of the control of individual local water utilities and that support would be needed to enable local water utilities to achieve good strategic planning outcomes. The department’s strategic planning assurance role will work in tandem with our separate advisory and support role. We provide guidance, advice, and support to local water utilities to help them put in place effective, evidence-based strategic planning. We have more clearly articulated how these broader roles of the department on policy, strategy and support and advice will ensure we work in partnership with local water utilities on these strategic challenges and enable their consideration in local water utility strategic planning.

To reflect feedback on the strategic planning outcomes, we have made several changes to section 3.2. Importantly, we have added to the outcome on understanding service needs the expectation for local water utilities to consider other important strategies for their region (such as regional water strategies).

We have not made significant changes to the section on assessment process and results.

We acknowledge the concerns raised around the potential to misuse 'naming and shaming'. However, the assurance function has been specifically designed to make transparent to local water utilities, their customers and other stakeholders the effectiveness of a utility's strategic planning and ability to manage key risks now and into the future, and in the event of significant shocks.

We have provided some clarification as to what information can be considered in the assessment process. Where the department is aware of other information that is not provided by the local water utility in its submission, it will advise the utility and consider the information in the assessment subject to sharing it with and requesting comment from the local water utility.

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## Other improvements

In addition to responding to feedback in the regulatory and assurance framework, we propose that when developing further guidance for strategic planning, we will consider the specific feedback we received from stakeholders about the types of guidance that is useful and the content.

As noted earlier in this document, we are committed to working with the sector, including local water utilities, joint organisations and the Office of Local Government, to consider how strategic planning for local water utilities can be better integrated into the IP&R framework. We propose to:

- publish guidance about using the IP&R framework for local water utility strategic planning to meet the expectations set out in the regulatory and assurance framework. Sector feedback on the draft guidance is being reviewed and the final guidance will be available from 1 July 2022.
- explore and support the use of the IP&R framework for local water utility strategic planning over the next IP&R cycle (2022–25), including by implementing a pilot process with interested local water utilities and joint organisations.

# Assessing and approving dividend payments

Section 4 of the draft regulatory framework outlines the requirements for councils that are paying a dividend under section 409(5) of the Local Government Act from its water supply and sewerage business surplus to its council. The section applies to councils only and is intended to be gazetted in accordance with s.409(6) of the Local Government Act.

The eligibility criteria and methodology for calculating dividend payments proposed in the draft framework was not materially changed from the Best-Practice Management of Water Supply and Sewerage Guidelines (August 2007).

In the new regulatory and assurance framework, this section is renamed 'Guidelines for council dividend payments for water supply or sewerage services'.

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## What success looks like

Council-owned local water utilities are financially sustainable. Local water utilities charge cost-reflective, equitable, efficient and affordable prices that ensure the utility's financial sustainability, allow appropriate investment in infrastructure and promote efficient water use.

Council's pricing and financial management should be consistent with the principles of competitive neutrality, earn a reasonable rate of return, and where appropriate pay a dividend from the surplus of these businesses to council's general business.

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## What we have heard

We received feedback from 11 stakeholders through submissions and surveys on assessing and approving dividend payments.

Stakeholders expressed broad support for the department setting requirements and restrictions for dividend payments from a council's water supply and sewerage business surplus to its council. However, some local water utility stakeholders consider that councils should not be able to pay a dividend from surplus, with any surplus instead remaining in the water and/or sewer fund to reduce pressure on future price increases.

Several stakeholders noted that only 9 of 89 council-owned local water utilities have paid a dividend in the last 6 reporting years and proposed that the cap on dividends and costs of meeting the eligibility requirements may be a disincentive to paying a dividend. Some stakeholders noted that many small utilities were unlikely to ever be in a position to pay a dividend.

We heard strong support for a future review of the approach to eligibility and calculation of a dividend, including considering:

- the eligibility criteria for dividend payments
- options to link the value or proportion of dividend available to performance outcomes
- indexing the value of the dividend
- reviewing the cap on dividend payments more frequently
- removing the cap on dividends
- excluding developer charges income from the dividend calculation methodology since they are a form of capital contribution and should not be included as an ‘operating surplus’
- balancing the cap on dividend payments and the compliance costs of paying a dividend with the need to implement controls to manage financial sustainability risks.

Some stakeholders suggested immediate increases to the cap on the dividend from surplus. The ‘\$30 less the dividend for tax-equivalents’ has remained unchanged since the provision for paying a dividend from the surplus of sewer and water funds was first introduced in August 2007.

Stakeholders suggest the department should immediately increase this in line with inflation since 2007, and that indexing for dividends be provided for in the future.

Stakeholders noted that we had omitted information about the connection between dividend and the tax-equivalent regime and ring-fencing of accounts and suggested we include more detail about the existing eligibility criteria and methodology.

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## Updates to the regulatory and assurance framework

In response to feedback on dividend payments, we have:

- clarified that the section applies to councils only and has been gazetted in accordance with s.409(6) of the Local Government Act
- clarified that the dividend is in 2 parts: a dividend calculated for tax-equivalents and a dividend calculated from the surplus
- provided information about the connection between dividends and the tax-equivalent regime and ring-fencing
- clarified the eligibility requirements for a council to make a dividend payment from a surplus of the council’s water and/or sewerage business
- clarified the methodology for the calculation of surplus and maximum dividend
- clarified that the department does not have an approval role for dividend payments, and instead the department’s role is to assess information provided by councils to provide advice to council and/or the minister of any substantial omissions or the appropriateness of payment of a dividend
- included information about the expectations for NSW council-owned water utilities regarding ‘competitive neutrality’
- decided not to increase the cap of ‘\$30 less the dividend for tax-equivalents’ at this time, and instead will undertake a more comprehensive review of the approach to eligibility and calculation of a dividend (see below).

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## Other improvements

In addition to responding to feedback in the regulatory and assurance framework, we propose to commence a review of the dividend eligibility and methodology, with changes to be implemented by 1 July 2023. We will collaborate with the local water utility sector to develop the scope of the review and to undertake the review.

# Assessing and approving proposed works

Section 5 of the draft regulatory framework sets out conditions that apply to all applications related to section 60 of the Local Government Act or section 292(1)(a) of the Water Management Act. The department 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.

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## What success looks like

Local water utilities' officers and their decision-makers, customers and regulators have confidence in water and sewerage infrastructure investments knowing that there was a transparent, independent assessment process of the design and that reasonable alternatives, including non-built options, to manage risks and meet customers' expectations and opportunities for innovation were considered before the investment decision was locked in.

Local water utilities are responsible for ensuring that the design, construction and operation of their infrastructure is adequate to protect public health, public safety, customers and the environment and aligned with its customers' needs and expectations.

The department is responsible for managing an independent, transparent due diligence or assurance process for water and sewerage infrastructure. The process should give all parties confidence that water and sewerage infrastructure investments have undergone a rigorous process and are informed by robust design, meet local needs and take account risks in procurement, construction and operations phases as well as opportunities for innovation.

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## What we have heard

We received feedback from 17 stakeholders through submissions and surveys on assessing and approving proposed works

Stakeholders expressed broad support for early submissions for approvals, setting out the matters that will be considered, the clear and timely process for assessment, and inclusion of a review of decisions. Several stakeholders pointed out that no other jurisdictions have a regulatory requirement for approval of water and sewage works and suggested that there are no clear benefits for councils.

Application at an early design phase for approvals is generally supported as it reduces risks and provides certainty for the progress to construction. However, a small number of stakeholders expressed that submission at an early design phase may not be possible for some projects where a council uses a design and construction procurement strategy. They did note that the regulatory framework allows utilities to submit later, if desired.

Stakeholders supported the proposed assessment process. Several stakeholders requested we clarify our role in providing support and advisory functions, particularly prior to making an application (Phase 1 of the assessment process). Specific suggestions included that departmental staff should be involved in an advisory role in HAZOP reviews.

The 'stop the clock' provisions were welcomed, however some stakeholders expressed concern that they might be overused.

There were several responses to the proposed use of conditions for approvals. Some submissions suggested additional conditions that could be applied relating to performance. Other submissions questioned the application or wording of the proposed standard conditions.

Several submissions requested additional information about how the processes of Water Infrastructure NSW or other funding bodies would interact with the assessment and approvals process.

Further clarification was requested in relation to the expectations of the preliminary water safety design assessment, which must be developed with NSW Health and submitted with an application for proposed works.

Some stakeholders responded to the request to identify areas where further guidance was required, suggesting the following subject matter areas be covered:

- definitions of works that are in the scope for approvals
- standard templates and checklists for applications
- recycled water.

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## Updates to the regulatory and assurance framework

In response to feedback on assessing and approving proposed works in the draft regulatory framework, we have:

- added consideration of approvals for water management and other associated works under section 292(1)(a) of the Water Management Act
- added an additional section on compliance and enforcement options (see section 5.8 in the new regulatory and assurance framework). These options are available to the minister and the department under the Local Government Act and the Water Management Act for approvals of works. Compliance and enforcement options are used only as a last resort
- added a requirement for a preliminary risk assessment for approvals of recycled water works



- to address the issue that submission at an early design stage may not be appropriate for all projects:
  - recommend early engagement, however we have removed the reference to ‘early design stage’ in recognition that this may not be applicable for individual or specific project plans
  - added that the timing of an application submission is at the discretion of the council, depending on when the requested documentation is available
- limited the standard conditions to:
  - consistency with design
  - consistency with standards
- clarified that conditions may be imposed to manage project-specific risks, and we will provide further information and examples in guidance documents
- provided further clarification about the expectations of the preliminary water safety design assessment.

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## Other improvements

In addition to responding to feedback in the regulatory and assurance framework, when developing further guidance for the approval process, we will consider the specific feedback we received from stakeholders about the types of guidance that is useful. We will include:

- definitions of works that are in the scope for approvals, including for recycled water
- standard templates and checklists for submission
- worked case studies for typical project types, including different procurement approaches
- water safety design assessment developed with NSW Health
- information about how Water Infrastructure NSW’s or other funding bodies’ processes interact with the approvals process.

# Inspecting water and sewage treatment works

Section 6 of the draft regulatory framework sets out how the department undertakes regular inspections of the safety, operation and maintenance of water treatment works and sewage treatment works owned and managed by councils in regional NSW.

Key outcomes of the inspections are recommendations to councils for improvements to safety, operations and maintenance of treatment works throughout NSW. We tailor the scope and frequency of inspections to the requirements of each treatment works using a risk-based approach. We also provide staff mentoring for council operators as well as technical assistance in resolving operational matters before they become a problem.

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## What success looks like

Local water utilities' officers and their decision-makers, customers and regulators have confidence in the ability of water and sewerage infrastructure to manage risks and meet customers' expectations.

Local water utilities ensure that the operation of their infrastructure is adequate to protect public health, public safety, customers and the environment.

The department continues to provide technical support for local water utilities, including during emergencies and incidents.

The department manages a program of inspections that:

- supports councils to best manage the operation, maintenance and resourcing of water and sewage treatment works
- provides assistance and advice to councils to avoid escalation of potential issues
- builds trust, fosters relationships, and shares information needed to build council capacity.

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## What we have heard

We received feedback from 10 stakeholders through submissions and surveys on inspecting water and sewerage treatment works.

We heard that stakeholders highly value the inspection program and see this as one of the key roles of the department in supporting local water utilities. There was strong support for the continuation of the program and the continued production of inspection reports.

We heard that inspection reports could be improved, particularly in the assessment and presentation of data.

We heard concerns around the use of inspection reports to directly inform other regulatory agencies. Stakeholders were concerned that the inspection program engagement with local water utilities could be deterred if the activity was perceived as a regulatory inspection on behalf of other regulators. However, stakeholders did support the use of inspection reports to inform other regulators when agreed to and supported by the utility. Stakeholders noted the opportunity for the inspection report to better provide information to local water utilities that can be used to inform other regulators.

We heard that the officers involved in the inspection program could further support incident and emergency management for local water utilities, drawing on their unique understanding of water and wastewater system operations to inform incident and emergency planning.

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## Updates to the regulatory and assurance framework

In response to feedback on inspecting water and sewage treatment, we have:

- clarified that the inspection program exists under the Local Government Act and only applies to council-owned local water utilities
- clarified that inspection reports will continue to be presented to councils following an inspection, and that councils may use inspection reports as evidence of operational performance and risk management in their engagement with other local water utility regulators.

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## Other improvements

In addition to responding to feedback in the regulatory and assurance framework, we propose to:

- provide further guidance and clarity to councils on the objectives and benefits of the inspection program and how to communicate results of inspections to senior management within council
- review of the content and format of inspection reports to better support councils in their engagement with other local water utility regulators
- review how operational data and water sampling data is assessed, stored and reported in inspection reports
- review how the department can draw on the expertise of the inspectors to better inform incident and emergency management
- support department staff with relevant and contemporary professional development.

# Concurrence for approvals to discharge liquid trade waste

Section 7 of the draft regulatory framework sets out the department's role in approvals to discharge 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.

In the draft framework, this section was not materially changed from the department's current approach set out in the [Liquid Trade Waste Management Guidelines for councils in regional NSW \(PDF 15 MB\)](#).

In the new regulatory and assurance framework, this section is renamed 'Concurrence for approvals to discharge liquid trade waste'.

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## What success looks like

Trade waste management requirements are risk-based.

Improved sewerage system performance with reduced frequency of sewage odour complaints, reduced frequency of sewer chokes, and protection of sewerage infrastructure, worker health and safety, and the environment.

Plants should be able to meet council's due diligence obligations and achieve improved environmental outcomes, such as improved compliance with sewage treatment works licences and more options for water recycling and reuse of biosolids.

There should be full cost recovery by the introduction of commercial pricing of sewerage and liquid trade waste and removal of cross-subsidies. This should result in reduced annual sewerage bills, as the improved sewerage system performance will free up system capacity. This will enable council to service population growth and new commercial development without needing to augment the existing sewerage infrastructure.

There should be an efficient approval process, together with recognition by industry of the economic benefits of consistently complying with their conditions of approval.

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## What we have heard

We received feedback from 7 stakeholders through submissions and surveys on concurrence for approvals to discharge liquid trade waste.

Stakeholders acknowledged that the [Liquid Trade Waste Management Guidelines for councils in regional NSW \(PDF 15 MB\)](#) were recently reviewed and implemented by the department.

We heard from stakeholders about ways we could improve the trade waste guidelines. This included:

- developing a simpler methodology for small local water utilities
- increasing flexibility for councils to negotiate with businesses to set acceptable concentrations for specific substances to ensure a level playing field for those businesses in the Sydney Water and Hunter Water operating areas (which are not subject to the trade waste guidelines) and other regions of NSW
- timelines for concurrence for approvals to discharge liquid trade waste to be the same as for other decisions by the department in the framework (60 working days)
- removing developer charges from the guidelines.

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## Updates to the regulatory and assurance framework

We are not making any changes to the section on concurrence for approvals to discharge liquid trade waste. This is because we reviewed and implemented the [Liquid Trade Waste Management Guidelines for councils in regional NSW \(PDF 15 MB\)](#) in 2021 in collaboration with the local water utility sector.

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## Other improvements

We will document the feedback provided on this section of the draft so that it can be incorporated into the next periodic review of the trade waste guidelines (expected within 5 years).

# Performance monitoring and reporting

Our role is to identify with utilities the information that will be of most use, analyse it when provided/collected, and use it to make regulatory and other decisions. We also share the data and analysis in a timely manner with local water utilities for their use in strategic planning and risk management.

Information will be collected from or reported by 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.

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## What success looks like

Performance monitoring and reporting provides local water utilities, and their customers and regulators with appropriate, comprehensive and robust information on the risks and performance of the utility over time and relative to other utilities. This informs good decision-making as well as regulatory settings.

Information has the right level of data quality for its intended purpose and should be publicly available, timely and useful to assess risk, performance and compliance and assist in analysing trends and comparing a utility's performance against others in the sector.

Local water utilities should only have to provide information once, which is then used by multiple regulators and agencies as well as being publicly available.

The department should be clear how it uses the provided information and proactively respond to changes in performance revealed by that data.

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## What we have heard

We received feedback from 16 stakeholders through submissions and surveys on performance monitoring.

There was general support for the approach taken in the draft regulatory framework, including:

- the roles of the department and local water utilities in ensuring the performance monitoring process is efficient and effective
- the criteria for information that needs to be reported
- incorporation of the National Performance Monitoring Framework indicators together with NSW-specific indicators for public monitoring and regulatory reporting purposes.

There were limited suggestions made for specific indicators. Feedback was more focussed on the framework. One submission supported greater emphasis on monitoring strategic planning.

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## Updates to the regulatory and assurance framework

In response to feedback on performance monitoring, we have made the following changes:

- NSW-specific indicators for the purposes of public reporting and regulatory monitoring have been compiled by the Town Water Risk Reduction Program's Performance Monitoring Focus Group and added to the National Performance Framework indicator set.
- To support performance monitoring and risk management through access to regular and current data, local water utilities can opt-in to reporting on a smaller set of key performance indicators on a quarterly basis, with analysis of the data provided in a timely manner back to local water utilities and published.

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## Other improvements

We are continuing to progress actions in the department's [Roadmap to an improved regulatory framework for local water utilities \(PDF 350 KB\)](#), and by:

- July 2022, we will consult with the local water utilities sector on potential new measures and requirements to track the effectiveness of the proposed new approach to strategic planning to identify what data might be needed and how to collect it (Action 3.4)
- July 2022, we will develop a monitoring and evaluation framework to monitor our performance as a regulator and regularly review our processes (Action 3.7)
- October 2022, we will investigate and test analytical tools that meet the needs of local water utilities to undertake their own comparison analysis of performance, risks and maturity (Action 3.5)
- October 2022, we will investigate options for an integrated approach to local water utility reporting to NSW Government agencies (Action 3.8).

# 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 of the framework 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.

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## What success looks like

The department is responsible for and effective in managing an independent, transparent due diligence or assurance process for water and sewerage infrastructure.

We will explain our decisions when we make them. We will be answerable for our decisions, including providing mechanisms for our decisions to be reviewed.

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.

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## What we have heard

We received feedback from 14 stakeholders through submissions and surveys on the review of departmental decisions.

We received broad support for the introduction of an internal review process. One stakeholder acknowledged it was a 'good step forward'.

We heard that we needed to provide more clarity about what is required as the justification or cause for review of decisions.

We heard a suggestion that the department include an option for an independent technical review of decisions. This suggestion seemed to reflect a desire to avoid the review of the decision returning to the same subject matter experts.

One stakeholder suggested that the Land and Environment Court be given a role to hear disputes.

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## Updates to the regulatory and assurance framework

In response to feedback on the review of departmental decisions, we:

- have clarified what is required as the justification or cause for review of a departmental decision



- will incorporate an internal peer review and other internal governance mechanisms in our processes and quality assurance framework. We have made this change in the relevant sections of the regulatory and assurance framework
- will ensure the internal review of department decisions is timely.

We note there is no existing Land and Environment Court jurisdiction for the review of department decisions under the Local Government Act or Water Management Act.

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## Other improvements

In addition to responding to feedback in the regulatory and assurance framework, we have designed the framework to ensure robust decision making. This includes:

- establishing clear, transparent and accountable regulatory and assurance processes for our assessments and/or approvals
- ensuring our assessment processes are timely, with the introduction of a 60-working-day 'clock' and publishing our performance against the clock
- committing to publishing our decisions and reasons for decisions
- implementing a quality assurance framework.

# Coordination between local water utility regulators

The local water utility sector provides the essential water and sewage services that underpin NSW communities. The NSW Government's local water utility regulators help local water utilities to meet local water utility sector objectives.

A key NSW Government priority is to improve the way that NSW Government regulatory agencies work together and with local water utilities.

In the new regulatory and assurance framework, this section is renamed 'Co-operation between local water utility regulators'.

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## What success looks like

Local water utilities, regulators and customers understand the objectives of the local water utility sector and their regulators' objectives.

Regulators have clear roles and responsibilities, including who takes the lead on issues, and communicate and coordinate effectively with each other and local water utilities within the broader strategic framework for water management in NSW. Regulators have good relationships and share knowledge with each utility.

Local water utilities can expect NSW Government regulatory agencies to coordinate their regulatory efforts and work collaboratively. Local water utilities can expect that, where agreed by the local water utility, information provided to one regulator will be available to and relied upon by its other regulators.

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## What we have heard

We received feedback from 9 stakeholders through submissions and surveys on coordination between local water utility regulators.

We heard that the sector supports increased collaboration between regulators and improved coordination of regulatory approaches.

We heard that water utilities want the department to drive a coordinated and collaborative approach to regulation across all regulators. This would include the department providing guidance to other regulators on how regulatory activities can be coordinated.

We heard that water utilities are seeking ongoing engagement with regulators, both centrally and within regional groupings.

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## Updates to the regulatory and assurance framework

In response to feedback on coordination between local water utility regulators, we have:

- clarified that individual regulators will continue to lead their interactions with local water utilities
- clarified that the department will work to drive coordination and collaboration across regulators to improve outcomes and reduce duplication
- removed the section on disagreements between regulators, as this issue will be covered in separate documents.

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## Other improvements

In addition to responding to feedback in the regulatory and assurance framework, we propose to:

- continue to convene the local water utility regulators forum, with members from the department's Water division, Office of Local Government, NSW Health, Environment Protection Authority, Natural Resources Access Regulator, Dams Safety NSW and the Independent Pricing and Regulatory Tribunal of NSW
- pilot a regional approach to regulator collaboration in the Hunter/New England region.

# Other matters

This section provides details of feedback we received on matters that are out of scope for the draft regulatory framework.

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## What we have heard

We received some feedback that was not within the scope of the draft regulatory framework.

Several stakeholders raised what was described as ‘unfinished business’ in addressing the powers and duties of local water utilities and regulators due to shortcomings in the Local Government Act. There were also calls to establish minimum levels of service to underpin the regulation of local water utility performance.

Some stakeholders noted that the biggest factor impacting on the most disadvantaged and remote communities was the absence of explicit community service obligation funding that would help these communities achieve strategic outcomes. In these stakeholders’ views, these issues were only addressed because of major issues such as drought, fires and floods and tended to be branded by government as a local failure.

Stakeholders provided feedback about confusion between roles and responsibilities in project delivery and support, particularly between the department, Water Infrastructure NSW and Public Works Advisory. The potential for confusion was identified in relation to the Safe and Secure Water Program and the roles and responsibilities for NSW Government support during incidents and emergencies.

Some stakeholders identified an opportunity for the department to do more to support local water utilities in managing water security and drought emergency risks, including providing a coordinated approach to secure yield modelling. This included supporting and implementing regional governance arrangements, including facilitating a coordinated drought response and implementation of regional water strategies. Key activities, such as drought planning, should be done by department at the regional level for the utilities, including managing the cross regional collaboration needed to maximise planning opportunities.

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## How we will we address feedback

Within the Town Water Risk Reduction Program, we are not proposing any legislative change. However, we will engage with the local water utilities sector for the remainder of the program to identify future opportunities to improve the legislative and policy settings for local water utilities.

We are committed to working with the sector to explore funding models for local water utilities, including a needs-based community service obligation (CSO) funding model.

We want to get the solution right and that's why we are taking the time to take a 2-stage approach. Stage 1 is focussing on gathering information about the financial needs and capacity of diverse local utilities to meet their service obligations in their local circumstances.

This evidence base will inform stage 2, which will look at alternate funding models that are fit for purpose to help local water utilities to meet service expectations.

The NSW Government's policy position is that there shall be no forced amalgamations and that councils will continue as the owners of their water and sewerage assets. Continuation of this policy position is a critical assumption of this investigation.

We will work with Water Infrastructure NSW and Public Works Advisory to improve clarity about roles and responsibilities between agencies and communicate this to the local water utility sector. We will also publish information about how Water Infrastructure NSW's or other funding bodies' processes interact with the approvals process.

We will continue to consider opportunities to improve our support for local water utilities in managing water security and drought emergency risk. The department is providing local water utilities with access to its climate risk data on a trial basis to test the data. This trial includes the provision of data to Rous County Council and Namoi Joint Organisation.

The trial is contributing to the design, development and enhancement of public-facing guidance for local water utilities that are undertaking water security planning. This guidance will enable local water utilities to best use the climate and water availability data when it is published for all water systems.

Climate risk analysis for local water utilities systems is being conducted for the Lachlan, Macquarie and Namoi regions. Councils are providing advice on the assumptions being used to analyse water security risks. The final analysis will be shared with all councils.

We are continuing to work on a data sharing platform so we can publicly share our climate risk analysis. A version of the data sharing platform is being piloted.