

Department of Planning and Environment

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Regulatory and assurance 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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This document was developed in collaboration with the Town Water Risk Reduction Program's sector stakeholders, and incorporates feedback received through the public consultation process.

Front cover photograph

Carcoar water filtration plant, supplied by Central Tablelands Water

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Foreword

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**)¹
- water supply authorities exercising water supply and sewerage functions under the NSW [Water Management Act 2000](#) (**Water Management Act**)²
- guidelines for managing the provision of water supply and sewerage services by councils under section 409(6) of the Local Government Act.³

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

The NSW Department of Planning and Environment (the department), along with other local water utility regulators, oversees and supports local water utilities in their delivery of water supply and sewerage services for healthy and resilient communities, businesses, and the environment, now and into the future.

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

We are amending our regulation, assurance, and oversight roles in collaboration with the sector as reform is required. Improved regulatory settings and approaches are crucial to allow local water utilities and their NSW Government regulators to identify risks and effectively and efficiently manage them. This new regulatory and assurance framework empowers and enables local water utilities to address risks and strategic challenges effectively and efficiently, based on locally developed plans and management systems. Our advisory and support role is not substantially affected by the new regulatory and assurance framework. The department's Town Water Risk Reduction Program and its Water Utilities team has worked in partnership with the local water utility sector to produce this framework.

The new framework will take effect from 1 July 2022. This framework contributes to the implementation of relevant NSW Government commitments under the National Water Initiative,

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

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

³ This relates to content covered in Sections 3 and 4 of this document, and applies to councils only.

National Competition Policy, and the NSW Water Strategy. Local water utilities that are currently preparing an Integrated Water Cycle Management (IWCM) Strategy will not be disadvantaged by any of the changes, as there will be a transition period for these utilities to 1 December 2022. The department will work with each utility to develop an appropriate individual transition plan, including where funding agreements are in place.

Once the Minister for Lands and Water (with the agreement of the Minister for Local Government) has published a notice in the NSW Government Gazette, sections 3 and 4 of the regulatory and assurance framework replace the 2007 Best-Practice Management of Water Supply and Sewerage Guidelines for dividend payments under section 409 of the Local Government Act, effective 1 July 2022. Local water utilities not making dividend payments are encouraged, but not compelled, to use the department's assurance framework and experience and capacity to support effective strategic planning, as outlined in section 3.

The department recognises that this framework represents a significant change to how the activities of local water utilities have been reviewed and regulated in the past. The department seeks to optimise the impact of this change on local water utilities through strengthening our partnership with them.

We will support the new framework by instituting a stronger partnership approach and culture, continuing to give advice and support, and taking a collaborative approach to problem-solving. We will proactively engage with local water utilities, other regulators, and the community to identify solutions to support the vision and objectives for the local water utility sector (section 1). This advisory and support role will be transparent in nature, and exercised distinctly from the department's broader regulatory, assurance, and oversight functions.

We are also aware that to support successful implementation of this new framework, the department needs to change our own culture and ways of working to operate in a manner consistent with the guiding principles outlined in this document at section 2.2. To support this, we are implementing new accountability, transparency, and quality assurance mechanisms as appropriate, to build trust and confidence in how we work.

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

The department acknowledges it is not expressly empowered under legislation to regulate strategic planning or to enforce compliance related to the strategic planning of local water utilities. However, the department seeks to use this framework to highlight the importance of effective strategic planning by local water utilities. Appropriate, effective, strategic planning by local water utilities represents a critical component of the department achieving all its statutory and other objectives.

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

1 Vision and objectives of the local water utility sector

1.1 Local water utility sector vision

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

Our shared vision is:

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

1.2 Local water utility sector objectives

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

The sector objectives are to continue to ensure:

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

1.3 The role of local water utilities

The role of local water utilities is to deliver safe, secure, efficient, and affordable water and sewerage services to customers and communities, providing public health outcomes, and supporting economic development, liveability, and the environment.

Local water utilities are governed in NSW by the *Local Government Act 1993* and the *Water Management Act 2000*, as well as the:

- *Public Health Act 2010*
- *Protection of the Environment Operations Act 1997*
- *Environmental Planning and Assessment Act 1979*
- *Dams Safety Act 2015*
- *Work Health and Safety Act 2011*
- *Water Act 2007 (Cth)*,

and any other relevant and applicable legislative and regulatory instruments.

2 The department's role

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

The [NSW Water Strategy](#) identifies the department as the primary regulator for regional local water utilities under the Local Government Act, as well as under the Water Management Act. The department works closely with other regulators to support and regulate these utilities.

2.1 Oversight of local water utilities

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

- sets policy
- regulates, and makes regulatory decisions
- provides oversight and assurance
- monitors and reports on performance.

The department performs a variety of different roles (listed in section 2.4 below) to manage sector-wide and utility-specific risks. This is supported by the sector, which broadly acknowledges that it is reasonable for the department to play a leading role in ensuring local water utilities are managing risks, and that we do this by providing oversight and assurance. This regulatory and assurance framework has been developed in partnership with the sector.

2.2 Guiding principles

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

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

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

We will prioritise according to risk:

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

We will work collaboratively with the sector, be fair, and accept accountability:

- The department will work in partnership with the local water utility sector to ensure that its approach to regulation, oversight, and advice is relevant and targeted.
- The department will seek information and input from local water utilities before making key decisions and explain its decisions once it makes them. The department will be answerable for its decisions, including providing mechanisms for its decisions to be reviewed.
- The department will set clear timelines for its processes and keep local water utilities updated on how their matters with it are progressing. We will publicly report on how we are meeting our timelines.

We will be transparent:

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

We will work collaboratively with other regulators:

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

We will actively seek feedback and opportunities to improve:

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

2.3 Why the department oversees local water utilities

2.3.1 Ensuring utilities are managing key risks

The department's regulatory and assurance roles seek to ensure utilities are managing key areas of risk for:

- water security (including continuity of service)
- water quality
- the environment

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

2.3.2 Overarching regulatory and assurance objectives

In ensuring local water utilities manage risks, the department's overarching regulatory and assurance objectives are:

- driving the supply of safe and secure water and sewerage services
- supporting the protection of public health
- supporting the protection of the environment
- promoting the principles of Integrated Water Cycle Management to support sustainability and liveability
- promoting resilient infrastructure and fostering innovation
- promoting meaningful engagement with communities so that local water utility decisions meet their needs
- protecting the interests of current and future customers and the community.

The department achieves these regulatory and assurance objectives by expecting and enabling local water utilities to:

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

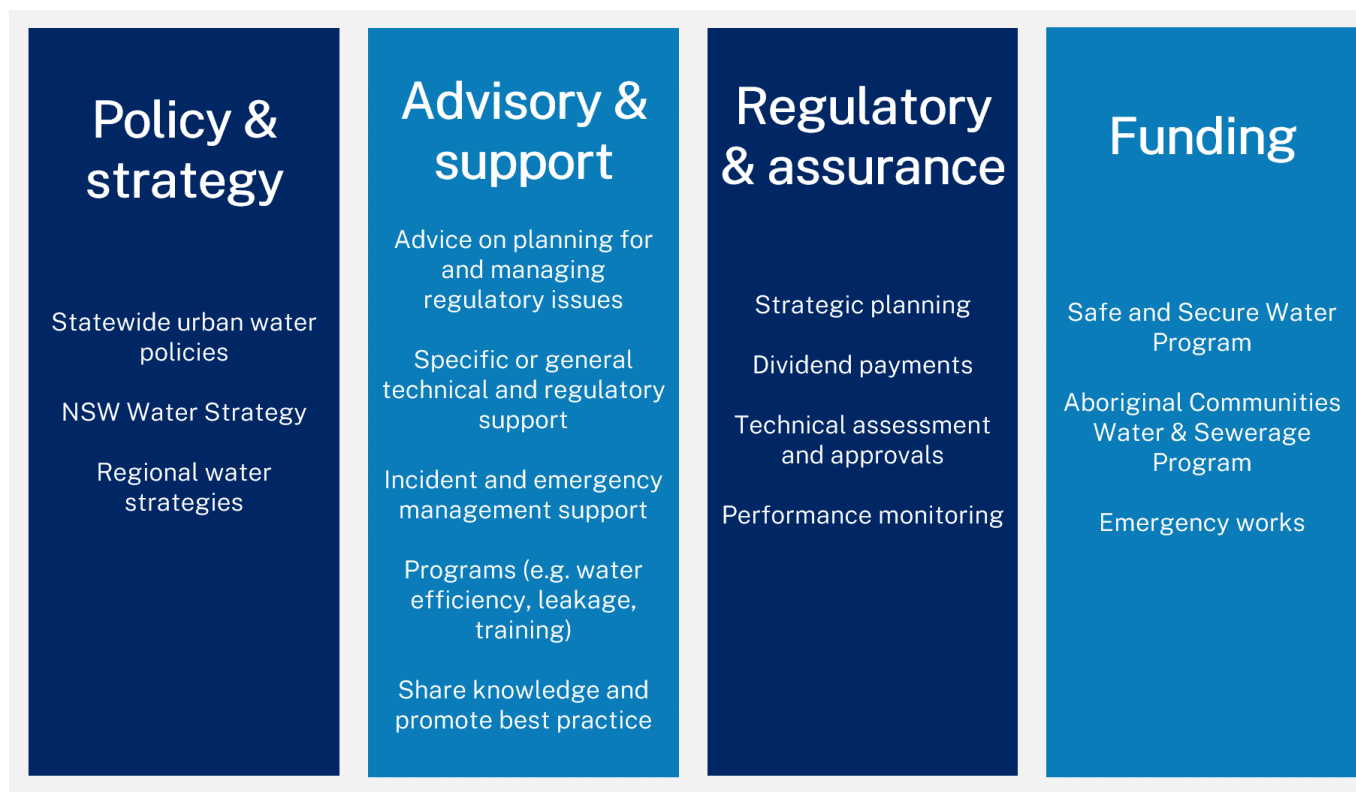
2.4 The roles of the department

As outlined in section 2.1, the department may engage with local water utilities in a variety of different capacities. These roles (depicted in Figure 1) include:

- setting of statewide policy, and state and regional strategies (see section 2.4.1)
- giving advice (see section 2.4.2)
- providing regulation and assurance (see section 2.4.3)
- funding (see section 2.4.4).

The department performs these roles to ensure local water utilities are managing potential areas of risk appropriately.

Figure 1. The roles of the department



These 4 roles operate in a distinct manner, but will naturally interact and intersect. For example, the department may give advice and support in helping a utility prepare a section 60 application, before turning to its regulatory role of considering the formal application.

2.4.1 The department’s role setting statewide policy and strategies

The department is responsible for the NSW Water Strategy, which takes a strategic and integrated approach to looking after the state’s water. This is the first 20-year water strategy for all of NSW, and seeks to improve the security, reliability, quality, and resilience of our water resources over the long-term. It sets the priorities and outlines the implementation plan to delivering on these outcomes.

The NSW Water Strategy sets the overarching vision for 12 regional and 2 metropolitan water strategies, tailored to the individual needs of each region in NSW. Together, the strategies will improve the resilience of NSW’s water services and resources.

2.4.2 The department’s advisory and support role

The department has an advisory and support role, assisting local water utilities manage and reduce risks. Our staff act as trusted advisors to our stakeholders, working in partnership with local water utilities to facilitate outcomes by giving free, independent, and impartial advice and support.

The advice and support the department gives, over and above and separate to its regulatory and assurance role (outlined in section 2.4.3), includes:

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

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

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

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

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

2.4.3 The department's regulatory and assurance roles

The department has formal regulatory roles. These are outlined in more detail throughout this framework. They are:

- providing oversight of utility's dividend payments (applicable to councils only under section 409(6) of the Local Government Act) (section 4 of this framework)
- giving approvals for applications under section 60 of the Local Government Act and section 292(1)(a) of the Water Management Act (section 5)
- inspecting water and sewerage treatment works for the purposes of informing further action (section 6)
- concurrence to the discharge of liquid trade waste (section 7).

The department also performs an assurance role for strategic planning (section 3 of this framework).

The department performs these roles to manage sector-wide and utility-specific risks. These roles reflect the department's diverse expertise and independence. This is supported by the sector, which broadly acknowledges that it is reasonable for the department to play a leading role in managing risks by providing oversight and assurance.

In performing these roles, the department is committed to driving continuous improvement (both across utilities, and for its own role as a regulator, advisor, and supporter). In doing so, the department acknowledges that, in instances where it does not have legislated regulatory authority, it cannot bind or direct utilities, and there are no compliance requirements or enforcement measures that the department can use.

The department's consideration of the effectiveness of strategic planning done by local water utilities is important to:

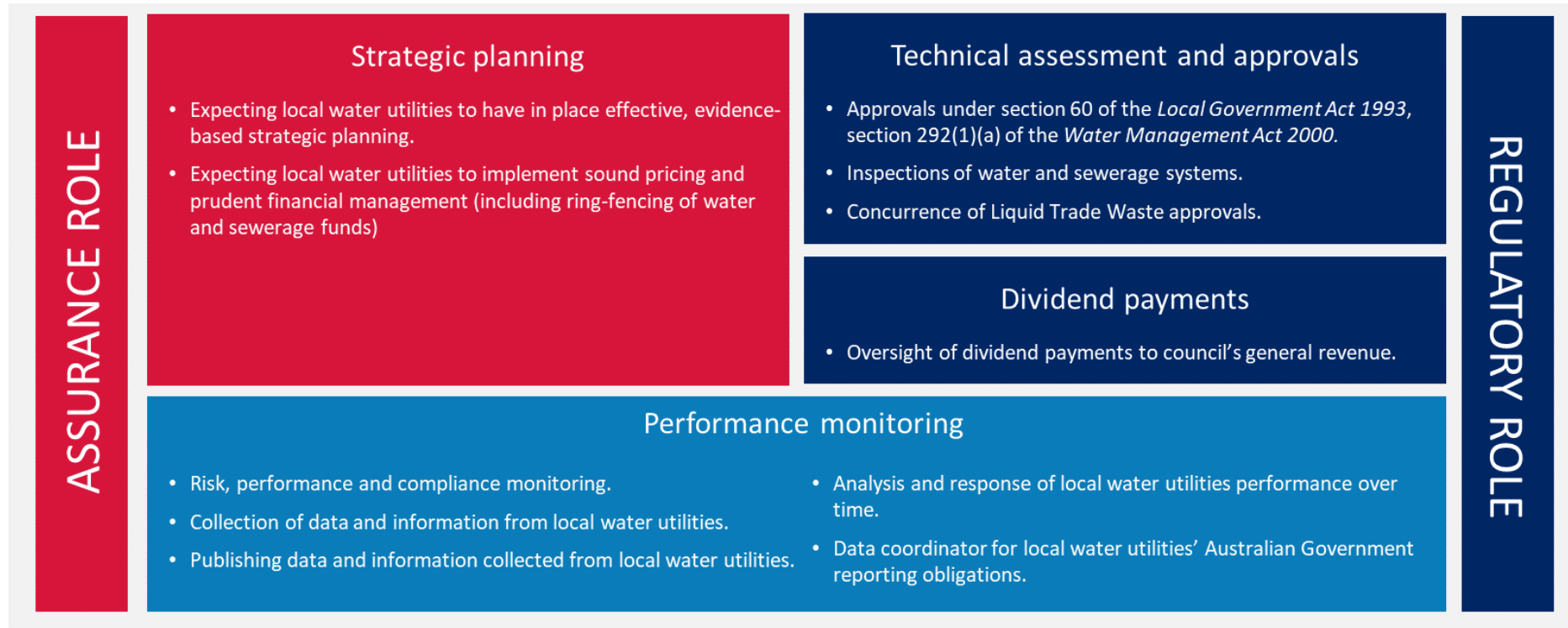
- inform the department's regulatory roles
- inform the policy, strategy and funding roles of the department
- ensure communities, decision-makers and other local water utility stakeholders have appropriate insight about:
 - the effectiveness of the utility's strategic planning
 - the utility's ability to deliver safe, secure, accessible, and affordable water supply and sewerage services to customers
 - the utility's ability to manage key risks now and into the future, and in the event of significant shocks
- enable the department to give enough advice and support to local water utilities.

While it is optional, we encourage utilities to use the department's assurance function so that additional perspectives, knowledge, and expertise are incorporated into activities such as strategic planning.

Performance monitoring and reporting (outlined in section 8 of this framework) is used to target regulatory effort and inform the assessments and activities we do under our regulatory and assurance roles.

Figure 2 summarises the department's regulatory and assurance roles.

Figure 2. The department has 3 core areas of responsibility to provide regulation and assurance for regional water supply and sewerage services



In performing its regulatory and assurance roles, the department will:

- set expectations for strategic planning and pricing, and assess whether they are being met in accordance with its regulatory objectives and principles
- approve (or not) construction or extension of water treatment works
- approve (or not) the provision of sewage from its area to be discharged, treated, or supplied to any person, this includes the treatment and supply of recycled water
- provide oversight of utility's dividend payments (this is relevant to councils only)
- liaise with local water utilities to coordinate and support the process of engagement and regulation, including giving general advice on how to comply with specific stages and requests in the relevant processes
- produce clear, concise, and accessible guidance that gives more detail about the expectations of local water utilities (within the boundaries of its regulatory and oversight objectives and principles, that is, outcomes-focused, and risk-based), as well as 'how to' guidance, templates, case studies and tools that help local water utilities understand and meet expectations, where required
- work with local water utilities to resolve any actual or perceived overlap between regulatory and assurance functions and requirements managed by the department and those managed by other regulators
- work with other regulators to assist local water utilities manage water quality, water security, environmental and financial sustainability risks (as outlined in more detail in section 10 of this framework)
- conduct performance and risk monitoring to inform regulatory assessments and activities, drive strategic and operational improvements, and identify performance trends over time.

2.4.4 The department's funding role

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

The department also manages the Aboriginal Communities Water and Sewerage Program.

As described in section 2.4.2, during times of drought, flood or other water supply and sewerage emergencies, the department gives technical and/or financial assistance to help prepare or revise drought management plans, manage depleted supplies, implement emergency capital works, or cart water where appropriate and feasible.

Where funding may be given, the department has a role in considering if the investment is prudent and offers value for money. It will work closely with relevant utilities and regulators as appropriate.

2.5 Risk-based regulation and assurance

The department takes a risk-based approach to regulation and assurance of local water utilities. This means we target our efforts for oversight, support and intervention based on analysis of the risk profile for each local water utility, and across the sector.

In applying a risk-based approach to regulation and assurance, the department will:

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

In line with a risk-based and flexible approach, the department will support its regulatory and assurance objectives by giving information to support capability building. The department may give information in response to a request from a local water utility to help it comply with a specific regulatory matter, or a more general request for support to ensure regulatory objectives can be met.

The department will support implementation of this framework by giving advice and guidance to local water utilities. The department will publish guidance material that gives more detail on expectations, as well as templates, forms, and case studies to help local water utilities understand and meet expectations.

2.6 Other regulators

The department is identified in the [NSW Water Strategy](#) as the primary regulator for regional local water utilities under the Local Government Act, as well as under the Water Management Act. The department works closely with other regulators to support and regulate these utilities.

In addition to the department, other NSW Government regulatory agencies are responsible for overseeing local water utilities within their own regulatory frameworks. The department works collaboratively with other regulatory agencies to ensure we provide efficient and effective support to local water utilities.

NSW Health, the NSW Environment Protection Authority, the Office of Local Government, the Natural Resources Access Regulator, Dams Safety NSW, and the Independent Pricing and Regulatory Tribunal of NSW all have specific responsibilities for overseeing and supporting local water utilities within their own regulatory frameworks.

Section 10 gives more information about coordination with local water utility regulators.

3 Strategic planning assurance

Councils making a dividend payment

This section has been published in the NSW Government Gazette in accordance with s.409(6) of the *Local Government Act 1993*. Councils making a dividend payment from a surplus of their water and/or sewerage business must meet the expectations set out in this section and section 4.

Local water utilities can best meet the needs of their customers, and manage key risks, when their decisions and activities are based on effective, evidence-based strategic planning. Strategic planning is crucial to identifying and managing key risks to:

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

The department is committed that all local water utilities should do effective, evidence-based strategic planning. This will ensure utilities deliver safe, secure, accessible, and affordable water supply and sewerage services to customers and can manage key risks now and into the future, and in the event of significant shocks. Local water utilities remain responsible for conducting strategic planning.

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

The department's assurance role gives assurance of effective, evidence-based strategic planning and effective management of key risks to service provision.

Under this assurance role, the department establishes what outcomes it expects effective, evidence-based strategic planning to achieve (see section 3.2) and assesses whether a local water utility's strategic planning achieves these outcomes to a reasonable standard (see sections 3.3 and 3.4).

From time to time, the department may request information from utilities to complete this assessment. While it cannot compel utilities to comply with these requests, the department expects that most utilities will, given the mutual benefits associated with the department's ability to

accurately assess the strategic planning done by local water utilities and make informed suggestions about their activities.

We then communicate the result of our assessments publicly so that the utility, its community, financiers, regulators, and other stakeholders are assured that effective, evidence-based strategic planning is in place (see section 3.5). Publishing the result of assessments is also a key incentive tool available to the department. In addition, we will write to general managers, councils, or boards about the result.

The department acknowledges it is not expressly empowered under legislation to regulate strategic planning or to enforce compliance. The department seeks to provide assurance of the effectiveness of strategic planning conducted by local water utilities to ensure that utilities address customer needs and key risk proactively. This also allows the department to meet its full suite of legislative responsibilities for local water utilities.

The department's review of the effectiveness of strategic planning done by local water utilities is important to:

- inform the department's regulatory roles
- inform the policy, strategy and funding roles of the department
- ensure communities, decision-makers and other local water utility stakeholders have appropriate insight about the effectiveness of the utility's strategic planning and ability to deliver safe, secure, accessible, and affordable water supply and sewerage services to customers and manage key risks now and into the future, and in the event of significant shocks
- enable the department to give adequate advice and support to local water utilities.

Before council takes a dividend payment under s 409(5) of the Local Government Act, its local water utilities must have in place effective, evidence-based strategic planning in accordance with this section. This section has been gazetted in accordance with that provision.

The department's strategic planning assurance role will work in tandem with our separate advisory and support role. As outlined in section 2, we give guidance, advice, and support to local water utilities to help them have in place effective, evidence-based strategic planning.

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

To enable local water utilities to meet the expectations set out in the assurance framework, we will produce:

- Guidance that gives more detail on the expectations for achieving strategic planning outcome to a reasonable standard. The purpose of this guidance is to make expectations clear and enable the department to assess if the outcome is achieved to a reasonable standard.
- Optional 'how-to' guidance, which demonstrates how strategic planning outcomes can be achieved to a reasonable standard using the Integrated Planning and Reporting Framework for council under the *Local Government Act 1993* (NSW)

- Optional templates, case studies and tools to support utilities in achieving the strategic planning outcomes to a reasonable standard.

Gaps in a local utility's strategic planning may expose regional communities to risks. The department will proactively support utilities to identify any gaps. Where gaps are identified, we will help local water utilities by giving appropriate advice and guidance in a collaborative way. This will help local water utilities reduce risks and strengthen their strategic planning over time.

3.1 Local water utilities decide how to achieve effective, evidence-based strategic planning

While the department sets expectations for the outcomes that strategic planning needs to achieve to be effective and evidence-based, utilities can decide what approach to take to meet them. Generally, the department will not specify the approaches, processes, and tools that a utility should use for strategic planning. Local water utilities are responsible for developing and implementing their own strategic planning. There is no single best-practice way for this work to be delivered, although the department will give 'how to' guidance, templates, case studies and tools to facilitate a streamlined process. Our overall priority is to ensure strategic planning outcomes (outlined in Section 3.2) are achieved to a reasonable standard.

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

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

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

3.2 Strategic planning outcomes

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

Understanding service needs

- What are customers' needs, values, and preferences?
- What current and future demands are placed on water supply and sewerage systems?
- How will the local water utility consider and address objectives, priorities and evidence of other relevant state or regional strategic planning, including the NSW Water Strategy and regional water strategies?

Understanding water security

- What is the local water utility's access to current and potential water supply sources?
- How will the local water utility address current and future risks around continuity and reliability of access to water supply sources?

Understanding water quality

- How will the local water utility address current and future water quality risks in its supply systems?
- How will the local water utility meet relevant regulatory standards, such as on drinking water quality management?

Understanding environmental impacts

- How will the local water utility address current and future environmental impact risks in its sewerage systems?
- How will the local water utility meet relevant regulatory standards, such as licence requirements set by the environmental regulator?

Understanding system capacity, capability and efficiency

- What is the capacity and capability of systems to deliver water (and future capacity and capability needs)?
- What is the capacity and capability of its systems to collect and treat sewerage (and future capacity and capability needs)?
- How will the local water utility consider water efficiency in its systems?

Understanding other key risks and challenges:

- How will the local water utility address other key risks in its systems now and into the future?
- How will the local water utility meet relevant regulatory standards (for example, such as on dam safety)?
- How has the local water utility considered climate risks?
- How is the local water utility planning for drought?
- How is the local water utility planning and preparing for incidents, emergencies, and extreme events and ensuring continuity of service?

Understanding solutions to deliver services

- How are options for delivering services and managing risks analysed?
- How are supply and demand side options for water supply identified and evaluated?
- How are assets managed over their life cycle to ensure service levels are met?

- How are the preparedness and resilience management during extreme events considered?

Understanding resourcing needs

- What resourcing is needed to deliver services and manage risks?
- What are the life-cycle costs of managing assets?
- What are the technical and operational skills needed to deliver services and manage risks?
- How does the local water utility do workforce planning?

Understanding revenue sources

- What are the revenue sources available to fund the delivery of services?
- What is the customers' ability to pay for services?
- What is the customers' willingness to pay for services?

Make and implement sound strategic decisions

- Based on its understanding of, and adequate consideration of, service needs, risks, and resources, how does the utility set service levels and efficient revenue requirements for providing services over an adequate forward period to capture asset lifecycle?
- How are customers engaged in decision-making and informed of choices between service levels, risks, and cost?
- How does the local water utility ensure its long-term financial sustainability, including managing unexpected financial shocks in future periods without having to introduce substantial or socially destabilising revenue or expenditure adjustments??
- How does the utility implement service levels and monitor, and report on, performance to understand if it is meeting service levels and managing risks?

Implement sound pricing and prudent financial management

- How does the utility set and structure its water supply and sewerage pricing to recover its revenue requirement, promote efficient use of water, and achieve equitable and affordable pricing and intergenerational equity?
- How does the utility implement a cost-reflective and consumption-based tariff structure, long-term stable price path and intergenerational equity?
- How does the utility set appropriate developer charges to recover the infrastructure cost of servicing growth?
- How does the utility consider payment of tax equivalents and dividends?
- How does the utility consider affordable access to essential water services for all customers?
- How does the utility 'ring-fence' the water supply and sewer business fund from council's general-purpose fund?

Promote integrated water cycle management

- How are urban water cycle outcomes including water security, public health, environmental and urban amenity and liveability identified, achieved and funded?

- How does the utility consider opportunities and methods to increase resource efficiency and recovery in urban water management?
- How is the local water utility supporting customers to increase water literacy and support water efficiency measures?

3.3 Achieving outcomes to a reasonable standard

The department will assess whether a local water utility’s strategic planning achieves the outcomes described in section 3.2 to a reasonable standard.

The department will consider that a reasonable standard for each outcome is met if the utility considers and addresses an outcome in a way that is:

- **sufficient** – underpinned by evidence-based analysis that supports the conclusions reached
- **appropriate** – underpinned by relevant departmental guidance and industry standard approaches to conduct planning and reach conclusions
- **robust** – underpinned by evidence that draws on appropriate sources, and recognises and rebuts potential alternative interpretations.

The considerations we will apply to the reasonable standard test and how these may be addressed are set out in more detail in Table 1. Importantly, ‘sufficient’, ‘appropriate’, and ‘robust’ are 3 separate but interlinked characteristics we assess when considering whether strategic planning outcomes are achieved to a reasonable standard, rather than tiered levels of assessment outcome (see **Error! Reference source not found.**).

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

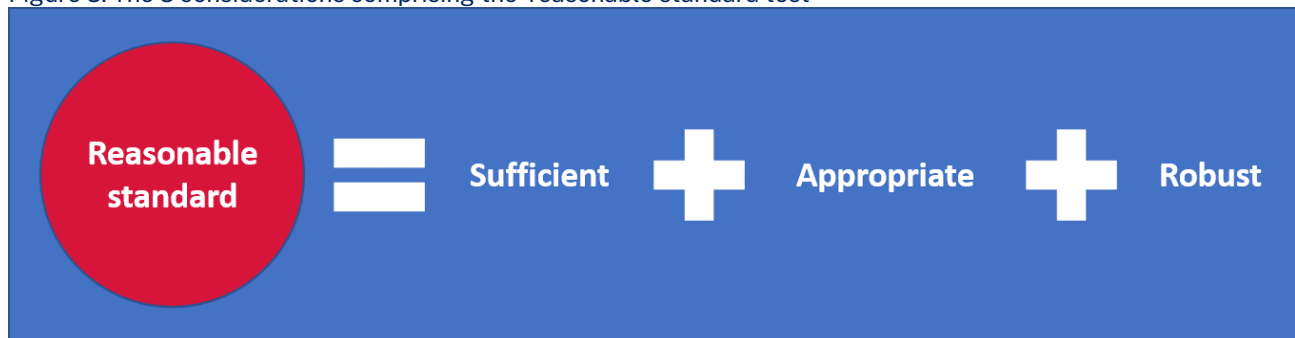


Table 1. Assessment of the 3 considerations of reasonable standard

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

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

The department will produce guidance that gives more detail on the expectations for achieving strategic planning outcome to a reasonable standard.

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

3.4 Strategic planning assurance – assessment process and result

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

- if the strategic planning the local water utility does achieves each outcome to a reasonable standard
- based on its assessment of outcomes, whether the local water utility has in place effective, evidence-based strategic planning

- if we wish to make any recommendations to the utility, and if so, what these are.

The department will maintain an up-to-date public register of its assessment results.

The department acknowledges that, apart from issuing a direction to a council before the council may take any further dividend payments under section 409 of the Local Government Act, it does not have the legislative or regulatory authority to impose enforcement or compliance measures for the outcomes of its assessment of strategic planning.

3.4.1 Maintaining currency of assessment result

Local water utilities may request an initial assessment of the effectiveness of their strategic planning. They may also request a re-assessment at any time, to get an assessment result and maintain its currency. Initial and requested assessments will be conducted in line with the process outlined in section 3.4.2.

Local water utilities may also opt to participate in an annual 'check-in' process to ensure their assessment result remains current. This process is outlined in section 3.4.3.

The department may request an assessment at any time if it becomes aware of significant factors that suggest the local water utility may no longer have in place effective strategic planning. This assessment will be conducted in line with the process outlined in section 3.4.2.

Assessments consider whether the strategic planning a utility does is effective and evidence-based, including for the overall assessment and the assessment of individual strategic planning outcomes.

The department publishes assessment results on its website and will update these in accordance with the outcome of any assessment. Assessment results will reflect if a local water utility opts out of the annual check-in process or assessments requested by the department.

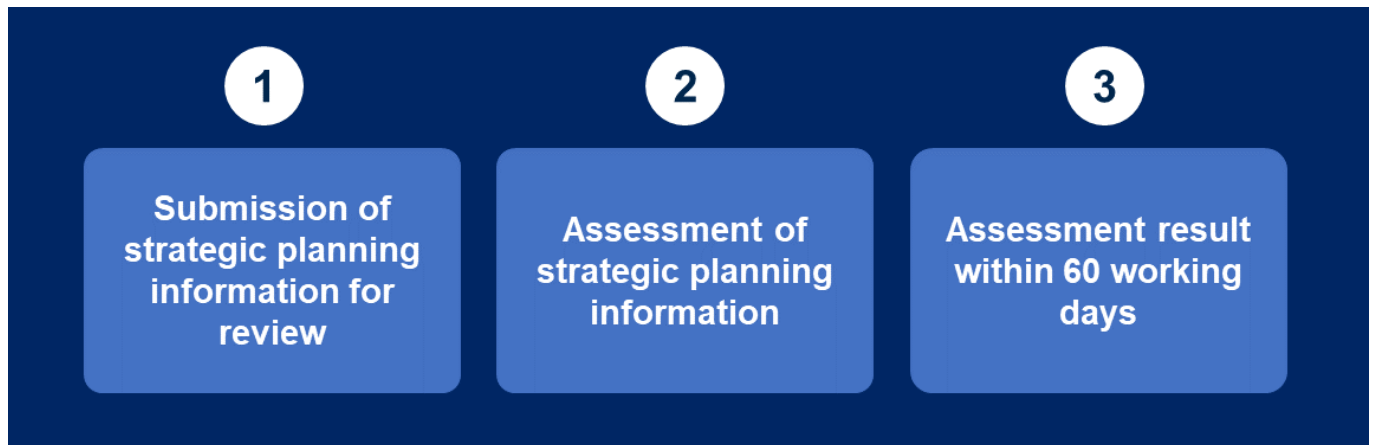
The department will also work with local water utilities to support the ongoing achievement of strategic planning outcomes to a reasonable standard. This work will include meetings and performance monitoring as required.

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

3.4.2 Strategic planning assessment process

The assessment process that applies to both an initial assessment or requested re-assessment is outlined at Figure 4 and explored in more detail below.

Figure 4. Strategic planning assessment process



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

If we need additional information for our assessment, we will request it in writing, update the public register status and ‘stop the clock’ until the local water utility supplies the information.

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

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

We encourage local water utilities to liaise with us before submitting their strategic planning information for assessment. We can give informal advice to help utilities supply information that is fit-for-purpose and includes all required information.

The department will accept a range of information as evidence. There is no expectation that a single comprehensive document will detail the local water utility’s ‘strategic plan’. Rather, our emphasis is on ensuring effective, evidence-based strategic planning that best integrates with a local water utility’s frameworks.

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

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

Phase 2 – Assessment of strategic planning information

We will consider the information the utility supplies, and other information on the performance of local water utilities that is available to the department, and make an assessment. If necessary, we may request additional information in writing to the utility.

All assessments will consider the strategic planning outcomes expected by the department and if the outcomes are achieved to a reasonable standard.

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.

Where any additional information is requested from a utility we will 'stop the clock' on the decision period until we receive the information. This will be reflected on the public register. Additional information given to the department is assessed as part of the application.

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

Subject to a threshold test related to factors such as cost, risk, and complexity of an approval or related project, decisions may be subject to an internal peer-review process. Where this process is triggered, the initial decision-maker must give another departmental staff member the opportunity to review the submission and decision. The department will give detailed guidance on factors that will trigger a peer review. This peer-review process is distinct from the formal decision-review process detailed in section 9.

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

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

Phase 3 - Assessment result within 60 working days

Once we have analysed the strategic planning information supplied, we will assess it and give our reasons to the local water utility in writing.

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

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

3.4.3 Annual 'check-in' process

We expect local water utilities to monitor any changes to their key assumptions, objectives or context that would trigger the need to update any part of their strategic planning. The department is available to give support and advice to ensure that strategic planning continues to be effective and evidence-based.

Local water utilities may opt to do an annual 'check-in' process to support this monitoring, report to the department on key changes in their strategic planning, and maintain currency of the assessment result. The process is outlined in Table 2.

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

Table 2. Annual review process

Step	Description
1. Templated annual return	<p>The department will send the local water utility a templated annual return that helps us and the utility understand whether strategic planning should be reassessed and potentially updated.</p> <p>The annual return will ask local water utilities to consider:</p> <ol style="list-style-type: none"> 1. Are the key assumptions and information underpinning strategic planning still current, effective, and appropriate? 2. Are there any new strategic or operational events that need investigation or major changes? 3. Are there any new strategic directions set by council or the Board, including within the IP&R framework? 4. If the answer is 'yes' to any of questions 1 to 3, does the local water utility intend to update any of its strategic planning documentation in the next year? If not, why not? 5. Has any relevant strategic planning information been updated in the last year? 6. How has the local water utility implemented any recommendations made by the department?
2. Analyse responses	<p>The department will collate annual return information and analyse them to identify where strategic planning may need updating, where the current assessment may need revision and any trends across a region or the local water utility sector.</p>
3. Proactively engage	<p>The department will apply risk-based principles to identify local water utilities that may benefit from engagement on strategic planning issues. The department will then schedule meetings as required.</p>

Step	Description
4. Communicate annual ‘check-in’ outcome	<p>Based on the annual return information and any further discussions, the department will communicate its view on any gaps or risk profile issues to each local water utility for formal reporting to the council or Board. This will enable timely input into the organisation’s overall strategic planning work.</p> <p>After we assess any strategic planning information supplied, the department will make an assessment in writing.</p> <p>Where the department considers changing its assessment result, it will notify the utility of its intention and give the utility the opportunity to respond.</p> <p>The department will consider the response and include its consideration in the reasons for the assessment.</p> <p>Final assessment decisions will be made by a senior executive within the department. The assessment will include written reasons. Where necessary, the department will give recommendations or guidance for potential improvements.</p>

3.4.4 Review of departmental decisions

Section 9 of this document outlines the process, scope, and rationale of the internal review mechanism that water utilities may use to have departmental decisions reviewed.

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

- matters outside those set out in this regulatory and assurance framework
- information that was irrelevant and/or misinterpreted by the department
- information that was not provided as part of the assessment
- information that was not requested to be provided by the local water utility
- information that was not provided by other local water utility regulators in response to the application.

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

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

3.5 Publishing and public reporting

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

This will include:

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

The register will identify:

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

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

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

In publishing this information, the department acknowledges that it does not have the legislative or regulatory authority to conduct enforcement or compliance measures for the outcomes or publishing of its assessment of strategic planning. Any publishing will occur as part of the department’s assurance role.

3.6 Regionally based local water utility strategic planning

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

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

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

A regional town water strategy could include:

- identification of local and regional cross-boundary options and development of effective and efficient regional solutions to address water security risks
- identification, assessment, and development of regional cross-boundary options for drinking water treatment, sewage treatment and reuse

- assessment of how regional cross-boundary solutions can be integrated into each local water utility's own strategic planning, including governance, asset ownership and ongoing management and pricing arrangements. Regional, catchment-based data collection or analysis could inform individual a local water utility's strategic planning, especially water security analysis
- identification, assessment, and development of options and processes to integrate with priorities identified in regional water strategies
- development of regional contingency and emergency response planning, including water restriction rules, and resource sharing.

On request, the department can assess if a regional town water strategy meets the criteria of sufficient, appropriate, and robust input to achieve the strategic planning outcomes (see section 3.2) covered by the regional town water strategy, using the same process outlined in this section.

4 Guidelines for council dividend payments for water supply or sewerage services

This section applies to councils only and has been published in the NSW Government Gazette in accordance with s.409(6) of the *Local Government Act 1993*.

Under section 409(5) of the Local Government Act, a council may pay an annual dividend from its water supply and sewerage business surplus to its council. A dividend is a return on investment paid to the 'shareholder', which in this case is the council responsible for managing and investing in the local water utility's water supply and sewerage functions. Such dividends may be paid for each business at the end of the financial year after meeting these Guidelines (see section 409(7)(a) of the Local Government Act).

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

NSW Local Government has adopted the principle of 'competitive neutrality' in its business activities as part of the National Competition Policy, which is being applied throughout Australia at all levels of government. The framework for its application is set out in the June 1996 NSW Government Policy statement titled 'Application of National Competition Policy to Local Government', which should be read in conjunction with the department's 'The Pricing & Costing for Council Businesses – A Guide to Competitive Neutrality' (July 1997).

These documents set competitive expectations of council-owned water utilities depending on revenues. Specifically, a Category 1 utility, with water revenues greater than \$2 million, should separate its accounts, implement a complaints-handling mechanism, and set prices so annual cost recovery by a council's water supply or sewerage business includes taxes or tax-equivalents (excluding income tax).

The dividend comprises 2 parts: a dividend calculated for tax-equivalents, and a dividend calculated from the surplus.

This section sets out the requirements that a council must meet to pay a dividend.

4.1 Dividend for tax-equivalents

All council-owned water supply or sewerage businesses must make a dividend payment for the amount calculated as the annual tax-equivalent payment.

The tax-equivalents are reported in council's water supply and sewerage businesses' special-purpose financial statements (SPFS) in their annual financial reports.

The upper limit for tax-equivalent dividend payments from each of a council's water supply or sewerage businesses is set at \$3/assessment.

The council may apply the dividend for tax-equivalents for any purpose under the Local Government Act or any other act, including local community and charitable purposes.

To ensure ongoing commercial viability, prices should be set so annual cost recovery by a council's water supply or sewerage business includes taxes or tax-equivalents (excluding income tax).

4.2 Dividend from surplus

Before taking a dividend payment from a surplus of the council's water supply and/or sewerage business, a council must:

1. calculate any dividend payment in accordance with the methodology in section 4.2

The methodology for the calculation of surplus and payment of dividend from a surplus of the water supply and/or sewerage business is set out in section 4.3 of these Guidelines.

2. be able to demonstrate there is a surplus

The council must demonstrate there is a surplus in the council's water supply and/or sewerage business.

3. demonstrate full cost-recovery pricing and developer charges

The council must demonstrate full cost-recovery pricing and cost-reflective pricing including developer charges in place for the water supply and/or sewerage business.

4. have in place effective, evidence-based strategic planning in accordance with section 3 of this regulatory and assurance framework

The council must have in place effective, evidence-based strategic planning, as set out in section 3 of this regulatory and assurance framework.

5. demonstrate financial reports are a true and accurate reflection of the business

The council must demonstrate with an unqualified financial audit report of the special-purpose financial statements for the water supply and/or sewerage business, that the water supply and/or sewerage special-purpose financial reports are a true and accurate reflection of the business.

6. demonstrate that the overhead reallocation charge is a fair and reasonable cost

The council must demonstrate with an independent audit report of cost allocation of the water and/or sewerage business, that the overhead reallocation charge to the water supply and/or sewerage businesses is a fair and reasonable cost.

4.3 Calculation of surplus and maximum dividend

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

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

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

4.4 Provision of information to the department

Following council indicating in an open meeting of the council as required by s.409(7) of the Local Government Act that section 4.2 and 4.3 of these Guidelines and any direction under s 409(6)(b) of the Local Government Act have been complied with, a council should give to the department:

- council's minutes resolving achievement of required outcome (as per section 4.2) and its decision of payment of dividend, including the amount of dividend
- statement of compliance and statement of dividend payment
- dividend payment form with its calculation of maximum dividend
- council's special-purpose financial statements for the dividend year
- unqualified independent financial audit report for water supply and/or sewerage business(es)
- independent audit report verifying that overhead reallocation charges are fair and reasonable.

The department will access the local water utility's current strategic planning assessment and pricing outcomes to confirm the council has in place effective, evidence-based local water utility strategic planning, in accordance with this regulatory and assurance framework.

The department will assess the information supplied and give advice to council and/or the minister of any non-compliance with these Guidelines.

5 Assessing and approving proposed works

Under section 60 of the Local Government Act and section 292(1)(a) of the Water Management Act, the Minister for Lands and Water is responsible for approving local water utility works, including:

- construction or extension of water treatment works by a council (section 60(b) of the Local Government Act)
- provision of sewage from its area to be discharged, treated, or supplied to any person by a council (section 60(c) of the Local Government Act)
- construction, maintenance, and operation of water management works and other associated works (including water treatment works and sewage works) by a water supply authority (section 292(1)(a) of the Water Management Act).

In this section, sewage and water management works include works for producing recycled water from sewage.

The Minister for Lands and Water has delegated the responsibility for assessing and approving of applications made under section 60 of the Local Government Act and section 292(1)(a) of the Water Management Act to the department.

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

In addition to our regulatory role, we give technical and other advice to local water utilities proactively and whenever requested by the utility. We will always seek to clearly distinguish between our regulatory role and advisory and support role. We give advisory, technical, and other guidance without charge. However, this guidance cannot be considered binding on the department's exercise of approval functions under section 60 of the Local Government Act and section 292(1)(a) of the Water Management Act.

The processes outlined in this section are designed to apply to all applications related to section 60 of the Local Government Act or section 292(1)(a) of the Water Management Act.

However, we may, at our discretion, consider alternative assessment processes to expedite applications being made for section 60 of the Local Government Act or section 292(1)(a) of the Water Management Act. This is under emergency circumstances where rapid infrastructure approval and construction are required.

5.1 Works that need approval under section 60 of the Local Government Act or section 292(1)(a) of the Water Management Act

Table 3 gives a list of works that need approval under section 60 of the Local Government Act or section 292(1)(a) of the Water Management Act.

Table 3. Works that require approval under section 60 of the Local Government Act and section 292 (1)(a) Water Management Act

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

Work type	Works that need approval	Works that do not need approval
<p>Water management works and other associated works</p> <p>Section 292 Water Management Act</p>	<ul style="list-style-type: none"> • New water treatment plant • Augmentation of a water treatment plant • Replacement of a water treatment plant • Adding new treatment processes • New sewage treatment plant or water recycling plant • Augmentation of a sewage treatment plant with or without recycling capability • New sewage collection network • New network for supplying recycled water • New discharge of treated sewage to the environment 	<ul style="list-style-type: none"> • Replacement of treatment unit in a water treatment plant • Construction or extension of water supply network • Construction of raw water supply pipelines • Replacement of treatment unit in a sewage or recycled water treatment plant • Minor extension of sewage collection network

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

5.2 Matters considered before granting approval

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

An approval under section 60 of the Local Government Act or section 292(1)(a) of the Water Management Act may be granted if certain matters have been satisfied. These include:

- provision of relevant documents in council’s possession, such as plans and specifications of the construction or extension in question, and documents and data that are relevant to the construction or extension in question
- provision of any documents or information the minister needs to be satisfied of the council’s competency to carry out the construction or extension in question
- more documents and information as required by the minister, including those for any inspections of the work and the site of the work that that the minister directed the council to carry out.

These matters will form the basis of all assessment processes and criteria (outlined below). When preparing their applications, local water utilities should always consider these criteria, as well as the matters above. The criteria the department will apply to assess an application include, if the proposed works:

- **are fit for purpose**
 - Are the proposed works identified in the local water utility's strategic planning?
 - Does the local water utility have in place effective, evidence-based strategic planning in accordance with section 3 of this framework?
 - Is there another strategic justification for the works?
 - Have technical options for the works been considered adequately?
 - Does the scope of the works meet the intent of the project?
- **can manage risks**
 - What technical or operational risks are the works intended to overcome or mitigate?
 - Have these risks been considered as part of the design of the proposed works?
 - Will the proposed works manage these risks?
- **can meet public health and environmental standards**
 - Are the proposed works able to meet the Australian Drinking Water Guidelines, Australian Guidelines for Water Recycling, and other relevant health regulations and standards?
 - Are the proposed works able to meet relevant environmental regulations and standards?
- **can meet relevant regulations**
 - Are the proposed works capable of adhering to relevant industry standards and regulations related to the design and construction of infrastructure and the management of water supply and sewerage services?
- **are aligned to the competency of the local water utility**
 - Is the local water utility itself competent to carry out the proposed project or has it engaged another party who has the capability or competency to do so?

For applications under section 292 of the Water Management Act, we will consider whether the proposed works are consistent with water sharing plans, water management principles, and the objects under the Water Management Act.

We will not consider cost-effectiveness when assessing applications under section 60 of the Local Government Act or section 292(1)(a) of the Water Management Act. We expect local water utilities to consider cost-effectiveness in all decisions, including those for infrastructure investment. We consider cost-effectiveness in the context of the strategic planning assessment (outlined in section 3 of this framework).

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

5.3 Information to be submitted with an application

The department primarily bases its assessment on the suite of documents that accompany the application, and any subsequent requests for information from the local water utility or other regulators. The timing for the submission of an application is at the discretion of the council when the requested documentation is available. This will vary depending on the individual project plan.

The department strongly encourages early engagement and application to ensure that any issues can be resolved before work progresses.

Local water utilities must supply the information set out in Table 4 with their application.

Table 4. Material to be provided for section 60 and section 292(1)(a) assessment and approval

Material	Detailed description
Works description	<p>Documentation outlining the intended objective, nature, scope, and purpose of the proposed works.</p> <p>Include links to the existing strategic planning of the local water utility or other justification for the works. Documentation should contain sufficient detail to enable the department to assess whether the proposed works or disposal represents an appropriate solution.</p> <p>Describe the planned process for design and construction.</p>
Risk assessment	<p>Where relevant:</p> <ul style="list-style-type: none"> • Preliminary drinking water safety design assessment. This should assess: <ul style="list-style-type: none"> - The capability of the treatment process to manage all identified risks to drinking water quality, including microbial risk. - Ability to monitor critical control points according to the Australian Drinking Water Guidelines and the requirements of the <i>Public Health Act 2010</i>. • Preliminary recycled water risk assessment that follows the Australian Guidelines for Water Recycling.
Early design for works	<p>Technical drawings and other design materials, completed to at least the level of detail that would be expected at an early design stage of works, including:</p> <ul style="list-style-type: none"> • a plan of the works including a list of all inclusions and exclusions in the works and how it will be delivered, costed, and programmed • operational philosophy • process flow diagram, concept piping and instrumentation diagram, general arrangement overview, site layout and electrical line drawing • site and infrastructure plans (and any other relevant site plans) • descriptions of any relevant existing infrastructure (which may include existing reticulation pipework, storages, or treatment systems) • description of the process, including a summary of the source water or sewage characterisation and the treated water or sewage targets
Documented experience	<p>Documented previous experience with design and construction of water treatment infrastructure and/or having access to qualified and experienced technical resources, who have competence in water infrastructure</p> <p>Describe the intended approach to procurement</p>

Material	Detailed description
<p>Confirmation of environmental planning assessment</p>	<p>If the particular water treatment works or sewerage works require environmental impact assessment under Division 5.1 of the NSW <i>Environmental Planning and Assessment Act 1979</i>, the local water utility must provide with the application for approval under section 60 of the Local Government Act or section 292(1)(a) of the Water Management Act, either:</p> <ul style="list-style-type: none"> • review of environmental factors to demonstrate that the duty under section 5.5 of the Environmental Planning and Assessment Act has been discharged. The review of environmental factors must comply with the Planning Secretary's Guidelines for Division 5.1 assessments (PDF 5.40 MB), or • environmental impact statement to demonstrate that the duty under section 5.7 of the Environmental Planning and Assessment Act has been discharged. The local water utility may refer to the department's State Significant Infrastructure Guidelines (PDF 664 KB) on environmental impact statement preparation and processes.

Some local water utilities may choose to progress design efforts to a more advanced stage (for example to a 75% design stage) to include additional design details before requesting an assessment under section 60 of the Local Government Act or section 292(1)(a) of the Water Management Act.

5.4 When applications should be submitted

Applications can be submitted once all required information is available. We encourage local water utilities to apply for assessment and approval at the earliest stage in their project where all required documentation is available. This provides certainty to progress the project to detailed design and avoids unnecessary costs for customers and the community.

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

5.5 Approvals will follow a clear, documented, and timely process

Before commencing any works, it is the responsibility of a local water utility to apply to the department for assessment and approval of works under section 60 of the Local Government Act or section 292(1)(a) of the Water Management Act.

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

Figure 5 shows the steps in the assessment and approval process.

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

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



Figure 5. Approvals process for section 60 of the Local Government Act and section 292(1)(a) of the Water Management Act

Phase 1 – Initial engagement before making a submission

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

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

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

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

When it wishes to seek approval for works, a local water utility must make a written application to the department using our application form requesting approval under section 60 of the Local Government Act or section 292(1)(a) of the Water Management Act.

Local water utilities can apply at any time. However, they should have sufficiently detailed documentation to allow the department to decide before applying. The relevant documentations for the purposes of an application are outlined at section 5.43 of this document. Local water utilities should submit applications early to give us enough time to make an assessment – the ‘clock’ time is 60 working days. Local water utilities bear the risk associated with submitting a formal application at the later stages of planning and development.

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

The application needs to address the works proposed, why the works are proposed, and how the works will meet the local water utility's strategic goals, including meeting their customers' needs.

This submission should include all relevant materials and supporting documentation.

Phase 3 – Assessment of the application

We will assess the application and all material supplied and make a decision. All applications will be assessed against the matters that must be considered before granting approval. If necessary, we may request additional information in writing to the utility.

We may use internal resources or commission an independent expert or an independent expert panel to do all or part of the assessment and make recommendations to the department.

If we are aware of other relevant information that has not been provided in the submission, we will provide the local water utility with the opportunity to comment before considering that information in the assessment.

We will seek input from other regulators of the local water utility with the intention of agreeing on design outcomes that fulfill all relevant regulatory requirements. Where other regulators require additional information, we will communicate this request in writing. Other regulators are responsible for overseeing and supporting local water utilities within their own regulatory frameworks.

Where any additional information is requested from a utility we will 'stop the clock' on the decision period until we receive the information. This will be reflected on the public register. Additional information given to the department is assessed as part of the application.

Subject to a threshold test related to factors such as cost, risk, and complexity of an approval or related project, decisions may be subject to an internal peer-review process. Where this process is triggered, the initial decision-maker must give another departmental staff member the opportunity to review the submission and decision. This peer-review process is distinct from the formal decision-review process detailed in section 9.

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

Phase 4 – Approval within 60 working days

A senior executive in the department with the appropriate delegation will make decisions within 60 working days. The department will communicate the decision to the utility in writing and include reasons reflecting the matters that must be addressed before the department grants approval.

We will either:

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

Where consideration of an application for approval under section 60 of the Local Government Act or section 292(1)(a) of the Water Management Act requires assessment under Part 5 of the NSW

Environmental Planning and Assessment Act 1979, the 60-working-day timeline may be extended with written notice to the local water utility.

We will publish the decision (including conditions, as appropriate), our reasons and any approval instrument on our website.

As described in section 9 of this framework, local water utilities can request internal review of applications under section 60 of the Local Government Act or section 292(1)(a) of the Water Management Act. Decisions may also be subject to review under administrative law.

As part of implementing this regulatory and assurance framework, the department will embed a quality assurance framework. This will assess and monitor its performance against several metrics, and be used to inform improvement opportunities and initiatives. Our adherence to giving approval within the 60-day timeframe is one such measure. We will publish performance results publicly each year, analysis trends and take proactive measures to respond to results and trends.

Review of decisions

Section 9 of this document outlines the process, scope, and rationale of the internal review mechanism that water utilities may use to have departmental decisions reviewed. Consistent with the intent and process of section 9 of this framework, a local water utility can seek a review of the department's decision if it believes that, in making the decision, the department made a mistake or considered:

- matters outside those that must be considered before granting approval
- information that was misinterpreted by the department
- information that was not given with the application
- information that the department did not ask the local water utility to supply
- information that other local water utility regulators did not give in the assessment of the application.

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

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

Phase 5 – Monitoring compliance with conditions

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

5.6 Conditions on approvals and requests for more information

The department may approve an application under section 60 of the Local Government Act or section 292(1)(a) of the Water Management Act, subject to conditions. A local water utility must

comply with any conditions of approval when completing works. We can use conditions to give direction for, and oversight of, any works for which approval is sought.

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

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

- **Consistency with design** – will be a condition that a local water utility only construct drinking water treatment works that are consistent with those approved, or that it allows for sewage to be discharged, treated or supplied in a way that is broadly consistent with the way that was approved. Some degree of variation is acceptable to ensure that the practical realities associated with design and construction, or treatment and discharge, are accounted for.
- **Consistency with standards** – Local water utilities must always adhere to any relevant legal, regulatory, industry or technical standards in completing the works (including environmental planning requirements where relevant).

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

The department under delegation from the minister, may request additional information, including information to ensure any conditions imposed are being complied with by relying on powers under sections 61 of the Local Government Act and 138 of the Local Government Regulation, and for sewerage works by a water supply authority, section 301A of the Water Management Act and 121 of the Water Management Regulation.

5.7 Publishing and public reporting

The department will maintain a register. On our website, we will publish our decisions about applications made under section 60 of the Local Government Act or section 292(1)(a) of the Water Management Act.

We will publish on our website our performance against our committed ‘clock’ of 60 working days for the assessment and approval of applications made under section 60 of the Local Government Act or section 292(1)(a) of the Water Management Act.

5.8 Compliance and enforcement options

Several compliance and enforcement 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.

Compliance and enforcement options under the Local Government Act include:

- directions for the proper safety, maintenance, and working of water treatment and sewage treatment works (s.61)

- directions during emergencies (s.62)
- entry, inspections, and investigations powers (s.65 and Part 2 of Chapter 8; see also section 6 of this framework)
- notices to comply with a direction (s.63)
- any action to carry out directions if council does not comply (s.63)
- appointment of an administrator (s.66)
- revocation of an approval (c.138(3) of the Local Government (General) Regulation 2021)
- penalties for false or misleading information in relation to an application (s.665)
- start of legal proceedings where there has been a breach of the Local Government Act (s.674).

Compliance and enforcement options under the Water Management Act are similar to those available under the Local Government Act. Some additional compliance and enforcement mechanisms include:

- compliance audits (s.326A)
- stop-work orders for the unlawful construction or use of a water management work (s.327)
- removal of unlawful water management works (s.329)
- temporary stop-work order to protect public interest (s.330)
- direction to prepare a report about the progress of complying with any directions issued under the Water Management Act (s.334).

6 Inspecting water and sewage treatment works

This section applies to councils only.

Under section 65 of the Local Government Act, the department regularly inspects the safety, operation and maintenance of water treatment works and sewage treatment works owned and managed by councils in regional NSW.

These inspections confirm for the Minister for Lands and Water and the council that treatment works are being operated safely and appropriately. If they are not, the minister can exercise power under section 61 of the Local Government Act to direct the council to take the necessary measures to ensure the proper safety, maintenance and working of water treatment and sewage treatment works.

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

We also give staff mentoring for council operators as well as technical assistance in resolving operational matters before they become a problem.

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

Collaboration is an important part of the inspection process. We give help and advice to councils to avoid escalation of potential issues. The process is designed to build trust, foster relationships, and share information needed to build council capacity. Compliance and enforcement options are used only as a last resort.

6.1 Inspection function

The department's regulatory role is to ensure council water treatment works and sewerage treatment works are being operated safely and appropriately.

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

In addition to our regulatory role, we have a separate advisory role where we give advice to and to advocate on behalf of councils. Within the inspection function, this role includes:

- giving advice to councils in their water and sewerage operations regarding the protection of public health and the environment

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

6.2 Scope of inspections

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

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

Table 5. Assessment of onsite inspection and performance

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

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

The scope of the inspection also includes preparing an inspection report to document findings and any recommended actions. Reports are presented to council for review and action. Councils may use inspection reports as evidence of operational performance and risk management in their engagement with other local water utility regulators.

6.3 Risk assessment to inform inspection frequency

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

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

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

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

Risks	Considerations
Performance risk	<ul style="list-style-type: none"> • Recent water quality test results • Council operations, capacity, and capability • Recent incidents

Risks	Considerations
Operating environment risk	<ul style="list-style-type: none"> • Assets and asset condition • Variability of raw water quality and quantity • Seasonal variability of sewage quality and quantity loading • System condition • Safety
Process risks (specifically CCP and OCP)	<ul style="list-style-type: none"> • How well the plant operates within the CCP/OCP/licence parameters
Special case risk	<ul style="list-style-type: none"> • Various scenarios such as temporary augmentations, emergencies, and breakdowns

7 Concurrence for approvals to discharge liquid trade waste

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

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

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

Councils are responsible for approving liquid trade waste discharges to their sewerage systems under 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 as nominated by the Secretary.

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

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

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

- preparation and implementation of a sound liquid trade waste regulation policy, assessment of each liquid trade waste application, and determination of appropriate conditions of approval. Conditions must be consistent with council's strategic planning
- preparation and implementation of a sound development servicing plan with commercial sewerage developer charges to ensure new development pays a fair share of the cost of the required infrastructure
- full cost recovery with appropriate sewer usage charges and liquid trade waste fees and charges to give the necessary pricing signals to dischargers. These charges must include non-compliance trade waste usage charges and non-compliance excess mass charges to give the necessary incentives for dischargers to consistently comply with their conditions of approval

- monitoring, mentoring, and coaching of dischargers to achieve cleaner production and assist them to comply with their conditions of approval
- enforcement, including appropriate use of penalty notices in the NSW legislation. Orders may also be issued under the Local Government Act (see section 2.8.3 of the Liquid Trade Waste Management Guidelines)
- disconnection of a liquid trade waste service in the event of persistent failure to comply with council's conditions of approval (see section 2.8.5 of the Liquid Trade Waste Management Guidelines).

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

8 Performance monitoring and reporting

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

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

- target regulatory effort and inform risk-based approach to regulation and assurance of local water utilities (section 2.5)
- take proactive action to drive improvements in risk management and performance, and help local water utilities achieve their regulatory objectives, including by proactively engaging with local water utilities and by helping other regulators to do the same
- inform our responses to applications for local water utilities to develop new infrastructure
- identify performance trends over time and strengthen local water utilities' responses to those changes and ours
- publish information to facilitate local water utilities' understanding of their performance, including compared to other local water utilities, and opportunities to improve
- give information to customers and the community about the performance of local water utilities.

8.1 Roles in performance monitoring

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

Our role is to 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 and sharing it in a timely manner with local water utilities for their use in strategic planning and risk management. Our role also includes:

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

- acting as the NSW data coordinator for local water utilities' obligations to report information to the Bureau of Meteorology's Urban Water National Performance Report⁴ and the Australian Bureau of Statistics.

The role of local water utilities in performance monitoring is to supply all the necessary information as identified by the department in section 8.2. Utilities are also responsible for drawing on analysed outputs to benchmark their own activities and to make strategic decisions in response.

The department is committed to taking a proportionate approach to regulation, assurance, and oversight. This includes monitoring our success as a regulator and partner. We have committed to the following actions:

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

8.2 Information that needs to be reported

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

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

⁴ As required under the *Water Act 2007 (Cth)*, *Water Regulations 2008 (Cth)* and the 2006 Deed National Framework for Reporting on Performance of Urban Water Utilities under clause 75 the National Water Initiative that specifies water information which urban water utilities with greater than 10,000 connections must give to the Bureau of Meteorology.

We require local water utilities to report:

- information to enable us to provide relevant indicators to the Bureau of Meteorology for inclusion in the Urban Water National Performance Report on behalf of utilities annually
- information to enable us to provide relevant indicators to the Australian Bureau of Statistics on behalf of utilities annually
- additional performance indicators specific to the NSW context required to monitor strategic planning outcomes and implementation, including local water utility levels of service, pricing, financial and workforce data, annually
- any information relevant to reviews of the department’s assessment of utility strategic planning, needed annually and during reviews outside of the annual cycle
- in accordance with any conditions placed on an approval made under section 60 of the Local Government Act or section 292(1)(a) of the Water Management Act.

We will collect the National Performance Report indicators for all local water utilities and rely on this indicator set, combined with the additional information listed, to monitor the performance of local water utilities. The list of indicators collected will be maintained and publicly available on the website.

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

Table 7 gives the specific types of data used to support the department’s performance monitoring role, along with an explanation for why the data is collected, and how it will be used.

Table 7. Rationale for information collected by the department

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

Strategic planning information	Monitor whether strategic planning outcomes are being achieved to a reasonable standard.	<ul style="list-style-type: none"> • Risk-based targeting of departmental resources • Triggers proactive actions by department

8.3 How the department uses the information provided

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

Table 8. Use cases for performance monitoring data

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

Use case	Explanation and process
Proactive action by utility, other regulators, or department	<p>The department may initiate proactive or reactive actions to enable local water utilities or other regulators to better manage water security, water quality and environmental risks.</p> <p>Proactive actions include engaging with senior representatives from a local water utility (for example, senior executive, general manager, council, Board or audit, risk and improvement committee) about performance to encourage planned, strategic responses from the utility.</p> <p>Proactive actions include the urgent escalation of issues identified in monitoring to a local water utility’s senior representatives or other regulators.</p> <p>Proactive actions also include engaging with the local water utility sector and its stakeholders to advocate for strategic responses that lift performance.</p>
Risk and performance monitoring	<p>Information collected as part of performance and risk monitoring is used by the department in assurance of strategic planning and regulatory oversight of works that need approval under section 60 of the Local Government Act or section 292(1) of the Water Management Act.</p> <p>This information provides an evidence-based perspective on the performance of the utility in the context of the NSW local water utility sector.</p>
Analysis and publishing of relevant data	<p>The department publishes data, analysis, and benchmarking of data trends at least once a year so that the department, other regulators, utilities managers, councillors, Board directors, and the community all have publicly available, transparent information on the performance of individual local water utilities in a way that is consistent and comparable.</p>

8.4 Avoiding duplication of local water utility reporting

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

To avoid duplication and inconsistencies, we:

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

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

8.5 The schedule and format of information required

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

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

8.6 Proactive monitoring approach

The department has a proactive monitoring approach to changes in performance. This ensures that when we identify changes in performance through analysing information we have received, we communicate this promptly to senior representatives of the local water utilities, the community, and other regulators.

This underpins the department's risk-based approach to regulation and oversight.

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

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

Our analysis will:

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

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. We will analyse the data we receive, return it to local water utilities, and publish it promptly.

8.7 Continuous improvement

The department will periodically review its regulatory approach, policies, processes, systems, and activities, considering feedback from local water utilities, councils, other regulatory agencies, and staff. We will assess whether we are achieving our desired outcomes and quality objectives, determine if our approach continues to reflect regulatory best practice, and improve our approach as necessary to meet the high expectations of the people of NSW.

As part of a commitment to continuous improvement, we will conduct a performance review of the implementation of this regulatory 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.

9 Review of departmental decisions

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

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

In addition to internal review through the department, local water utilities may also be able to seek a review of a decision of the Minister under section 60 of the Local Government Act or section 292(1)(a) of the Water Management Act in a court or tribunal.

9.1 Asking for a review

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

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

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

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

9.2 Internal review pathway

We have developed the internal review to give local water utilities a quicker and less formal avenue to have an administrative decision reviewed. Local water utilities may still be able to seek a review of a decision of the Minister under section 60 of the Local Government Act or section 292(1)(a) of the Water Management Act in a court or tribunal.

The internal review allows local water utilities to formally request we reconsider our position. The process can be applied at the request of a local water utility when they do not understand, or disagree with, the department's position on a given matter. The department's review and decision process will be based on the specific circumstances of the case, including the cost, complexity, risk

profile, risk mitigation, and distribution of responsibility. If necessary, the department may source external service providers (that is, an independent water engineering expert) to deliver non-binding third-party technical recommendations to provide a ‘peer review’ to help facilitate the decision-review process.

Consistent with standard probity processes, any decision subject to review will not be returned to the original decision-maker for consideration. Information may be sought from the initial assessor and decision-maker as part of the review process to ensure the review process incorporates all relevant considerations and materials.

The department will manage the review process promptly, based on the specific circumstances of each review.

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

Table 9. The department’s internal decision review framework

Step	Explanation and process
1. Provision of rationale and evidence	<p>The department, at the written request of a local water utility, will give further rationale about why the initial decision was made. This may include an explanation of any key evidence, information, data, or documentation that was used to inform the initial decision.</p>
2. Engagement regarding the decision	<p>If the local water utility remains unsatisfied with the decision after the department gives additional reasons and detail, it may request a formal meeting with the department. When requesting a meeting, the utility must give information about its desired outcome, as well as the suggested evidence-base or justification for the appeal. The department may request additional information, or dismiss the request, if it is insufficiently substantiated.</p> <p>This meeting will be Chaired by the Director with delegated decision-making responsibility.</p> <p>The purpose of this engagement is to allow the local water utility to ask questions about the decision, to understand the department’s position, and to present information to substantiate and support an alternative decision.</p> <p>Following this meeting the department may request additional information from the local water utility, and/or if necessary seek further advice from an independent reviewer. The department may also provide additional information to the local water utility.</p> <p>Based on this engagement process, the department may:</p> <ul style="list-style-type: none"> • change its regulatory decision and substitute new and/or altered recommendations and expectations for the local water utility <li style="padding-left: 20px;">or • not change its regulatory decision.

Step	Explanation and process
3. Chief Operating Officer review	<p>If the local water utility remains unsatisfied with the decision following the engagement stage, the decision will be escalated to the Chief Operating Officer or another Executive Director level position at the department who was not involved in the original decision. . The local water utility may use this opportunity to give additional evidence as appropriate.</p> <p>Based on this review process, the department may:</p> <ul style="list-style-type: none"> • change its regulatory decision and substitute new and/or altered recommendations and expectations for the local water utility or • not change its regulatory decision. <p>In communicating their decision regarding the review, the executive director will give the local water utility information about the decision as appropriate, regardless of whether it has changed, including an assessment of the evidence, information, data, or documentation that was used to inform their decision.</p>
4. CEO NSW Water Sector review	<p>If the local water utility remains unsatisfied with the department’s position after a review by the Chief Operating Officer (or equivalent) either due to no change in the initial decision, or a change that does not satisfy the utility’s concern), the decision will be escalated to the CEO NSW Water Sector (or equivalent deputy secretary level position) from the department for final consideration.</p> <p>If appropriate and useful, this consideration can involve engagement with relevant senior representatives of the local water utility, such as the general manager, with a view to discuss the decision and potential ways forward.</p> <p>The outcome of this review may be that the department:</p> <ul style="list-style-type: none"> • changes its regulatory decision and substitute new and/or altered recommendations and expectations for the local water utility or • does not change its regulatory decision. <p>The department will give high-level reasons for its position to either change or not change its decision at the CEO NSW Water Sector review stage. This will be accompanied by a notice indicating that no further internal review will be contemplated.</p>

10 Co-operation between local water utility regulators

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

The department is identified in the [NSW Water Strategy](#) as the primary regulator for regional local water utilities under the Local Government Act, as well as under the Water Management Act,.

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 given to one regulator will be available to and can be relied upon by its other regulators.

10.1 Regulatory roles and responsibilities

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

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

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

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

Table 10. Regulatory role and responsibilities

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

10.2 Minimising duplication of regulatory effort

The department will coordinate and collaborate with local water utility regulators to minimise regulatory duplication and inconsistency. This recognises that:

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

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

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

This collaboration will include:

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

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

10.3 Raising concerns about regulatory duplication

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

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

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

- understanding the view of the local water utility that has raised the issue of duplication
- engaging with other relevant local water utility regulators to determine the existence and extent of any duplication.
- reviewing our own work to determine whether the work is necessary

- agreeing with other relevant local water utility regulators a strategy for managing the actual or perceived duplication both in the specific instance raised by the local water utility and in all instances going forward
- communicating in writing the outcome of this process to the local water utility that raised the issue of duplication
- meeting with the local water utility that raised the issue of duplication to discuss the response of the department and to obtain additional input and feedback.