

CENTRAL COAST COUNCIL LOCAL WATER UTILITY – LEGISLATIVE AMENDMENTS TO IMPROVE REGULATORY ARRANGEMENTS’

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

Over the years, the regulatory framework for the provision of Central Coast Council’s (Council’s) water supply and sewerage services has resulted in duplication and uncertainty. This is because council water supply and sewerage services are generally provided and regulated under the *Local Government Act 1993* (Local Government Act). However, uniquely:

- Council is also a “water supply authority” under the *Water Management Act 2000* (Water Management Act) (it is the only council that is a water supply authority), and
- The prices for Council’s water supply services and sewerage services are regulated by the Independent Pricing and Regulatory Tribunal of NSW (IPART) (it is the only council for which maximum water supply and sewerage services prices are set by IPART).

This means that Council is subject to overlapping legislative regimes in relation to the provision of its water supply services and sewerage services.

Since October 2020, Council has been under administration due to financial performance issues. One factor for this poor performance was inappropriate transfers of money out of the water supply and sewerage funds, partly owing to regulatory complexity and ambiguity associated with the levying of charges for its water supply and sewerage services under two legislative frameworks (the Water Management Act and the Local Government Act), and in particular the application of restrictions under section 409 of the Local Government Act in relation to the movement and use for other purposes of money levied for the specific purpose of Council’s water supply or sewerage services.

On 17 March 2022, Minister for Local Government, the Hon Wendy Tuckerman MP, tabled the report into the *Public Inquiry into Central Coast Council (February 2022)*. Commissioner Roslyn McCulloch made eight recommendations, including key recommendations to clarify the legislative framework for the provision of Council’s water supply and sewerage services and that “consideration be given to removing Council as a water supply authority under the Water Management Act to enable it to administer its water supply and sewerage services in the same way as other NSW councils.”

While during the period of administration measures have been taken to restore Council’s finances, regulatory changes to prevent the reoccurrence of this issue have not been implemented.

The Bill implements these key recommendations of the *Public Inquiry into Central Coast Council (February 2022)* by removing Council as a water supply authority.

Objectives: What is the policy’s objective couched in terms of the public interest?

The Bill aims to reduce regulatory cost and ambiguity, and improve service agility, for Council’s provision of water supply and sewerage services. This improvement in regulatory clarity will strengthen Council’s governance, leading to more effective Council performance. Removing restrictions on the transfer of funds between Council’s sewerage services fund and its water supply services fund will facilitate more effective investments in water and sewerage infrastructure.

Removing Council as a water supply authority under the Water Management Act will, among other things:

- Reduce regulatory costs and complexity associated with being captured by, and operating under, both the Water Management Act and the Local Government Act.
- Remove regulatory ambiguity associated with the levying of service charges under two legislative frameworks (Water Management Act and the Local Government Act) that are not consistent, including in relation to restrictions on the movement/use of money levied as a special rate or charge for Council’s water supply or sewerage services under section 409(3) Local Government Act for other purposes.
- Reduce regulatory costs associated with having to seek approval of the Minister for Water under section 315 of the Water Management Act in relation to price determinations, whilst also being subjected to price regulation by the IPART.
- Align the regulation of Council’s water supply and sewerage services more closely with the regulatory framework which applies to all other councils that provide such services.

Regulation of Council’s prices for water supply, sewerage, trade waste, and other ancillary services (excluding stormwater services) by IPART is to be retained.

While removing IPART price regulation would further reduce regulatory burden, it is proposed to be retained because of Council's considerable size compared to other water supply and/or sewerage service providers, its unique location within the Sydney metropolitan area situated between the operational areas of Sydney Water and Hunter Water (both state-owned corporations regulated by IPART), and the prevailing economic climate marked by high cost-of-living pressures.

From 1 July 2026, it is intended that IPART will no longer play a regulatory role in relation to Council’s stormwater drainage service charges. Council is already transitioning to cost recovery via council rates from 1 July 2026, consistent with the current IPART price determination. Stormwater services, which benefit the entire community and are not

generally part of NSW councils' water and wastewater operations, should be funded mainly through council rates.

Options: What alternative policies and mechanisms were considered in advance of the Bill?

Alternative options were considered that reduce regulatory cost and ambiguity, and improve service agility, for Council's provision of water supply and sewerage services and that also ensure optimal outcomes for customers of Council's water supply and sewerage services and effective and efficient regulation of those services. The options were developed having regard to the findings and recommendations of the *Public Inquiry into Central Coast Council (February 2022)*.

Alternative options considered included:

- ***Do nothing – base case***
- ***Transition Council's provision of water supply and sewerage services to be under the Local Government Act and remove IPART price regulation***

This option involved:

- removing Council as water supply authority from the Water Management Act.
- Regulating Council's provision of water supply and sewerage services regulated under the Local Government Act. Allowing Council to transfer of money between its water supply fund and sewerage fund (but not out of the combined water supply and sewerage funds).
- Removing IPART price regulation.

- ***Council-owned corporation***

This option involved establishing a Council-owned corporation as a separate entity via an Act setting out the corporation's objectives, operating licence requirements, independent governance by a board of experts, regulation of performance against the operating licence, and continued price regulation by IPART.

Analysis: What were the pros and cons and benefits/costs of each option considered?

The pros and cons of each option were considered. Compared to the selected option and its benefits, alternative options were not preferred for the following reasons.

Do nothing – base case

Not preferred because:

- High risk factors contributed to Council being placed under administration remain unaddressed.
- Relatively higher regulatory cost and regulatory ambiguity not addressed.
- Limited service agility to operate as an integrated water utility.

Service provision under Local Government Act without IPART price regulation

Not preferred because:

- IPART price oversight is warranted given the large size of Council, its unique location in the Sydney metropolitan area between the areas of operation of Sydney Water and Hunter Water, and its complex interactions with Hunter Water's urban water system.

Council-owned corporation

Not preferred because:

- Loss of asset ownership and control for Council.
- Complex implementation challenges and significant implementation risk.
- Risk of misalignment with findings and recommendations of the *NSW Parliament's Joint Select Committee Inquiry into how to protect council local water utilities from privatisation and forced amalgamation*. The committee's key recommendation is that the NSW Government develop new legislation to protect council local water utilities from privatisation, forced amalgamations and sell-offs. The committee noted widespread support for maintaining local government ownership and control over local water utility assets and recommended legislative measures to ensure continued public ownership.

Pathway: What are the timetables and steps for the policy's rollout and who will administer it?

The Bill is introduced in the parliamentary session of 18 to 20 June 2024 to ensure amendment come into effect prior to the NSW Local Government Elections on 14 September 2024 to ensure incoming councillors are provided with a clear legislative framework in which to operate.

The Minister for Water is to continue to administer provision of the Local Government Act relevant to water supply and sewerage service provision by Council.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

Consultation has occurred with NSW Government agencies and external stakeholders and their views were considered in making the policy.

External stakeholders consulted include the Council, and the two key sector peak bodies, the NSW Water Directorate and Local Government NSW.

NSW Government agencies that were consulted include the Office of Local Government, IPART, NSW Treasury, NSW Health, and the Cabinet Office.