

Submission on the Review of the Load Based Licensing Scheme Issues paper

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Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general-purpose councils and associate members including special-purpose county councils and the NSW Aboriginal Land Council. LGNSW facilitates the development of an effective community based system of local government in the State.

LGNSW welcomes the opportunity to provide comments on the Load Based Licensing Issues Paper. While these comments are on behalf of NSW local government, the submission does not over-ride or negate any submission made by an individual council.

Background

NSW councils hold more than 600 environment protection licences, with 220 of these being for sewage processing or treatment. Sewerage processing/treatment is the only category of licence held by councils (i.e. sewerage treatment plants (STPs) operated by councils' local water utilities¹) that is subject to load based licensing (LBL), and only a subset of the 220 licences actually trigger LBL. LGNSW's comments are therefore made largely in the context of LBL for discharges to water.

LGNSW has reviewed the document on exhibition and also promoted the opportunity to comment on the Issues Paper to councils across NSW. However, there have been multiple and complex reforms out for consultation at the same time, and councils have found it difficult to engage in all processes, particularly given that consultation is taking place during the December/January period. Therefore a low-level response from the sector should not be interpreted as disinterest. LGNSW also acknowledges that a more detailed proposal paper will be circulated for comment in mid 2017, and anticipates that this will draw more comments from councils.

Response

The structure of this submission follows the headings in the Issues Paper. The NSW Environment Protection Authority (EPA) has posed 42 topic and subject focus questions in this paper. The questions that this submission will address are provided in italics under each heading.

How effective has LBL been?

- *What should the role of LBL be? What shouldn't the role of LBL be?*
- *How can the LBL scheme best complement other regulatory approaches?*
- *Do you think the LBL scheme has been effective? Why or why not?*
- *What does an effective LBL look like?*

The role of LBL should be to recognise the discharge of pollutants that have significant environmental impacts which can also be abated, and provide an incentive to reduce those

¹ In regional NSW, outside the area of operation of Sydney Water and Hunter Water, councils provide water supply and sewerage services. There are 89 council owned and operated local water utilities providing these services to around 1.8 million people. They generate over \$1.2 billion in annual revenue and hold total water supply and sewerage assets valued at around \$26 billion. This significant responsibility involves ensuring water supply security through infrastructure provision, demand management and integrated water cycle management.

pollutants. The LBL should provide transparency and certainty to licensees about what is expected in terms of environmental performance, and also provide the framework for encouraging longer-term improvements. LBL should not be a tax for discharging pollutants that cannot be abated, particularly given that the environment protection licence is effectively authorising the discharge of that pollutant to begin with.

Councils have indicated that the LBL scheme could be integrated better with other regulatory requirements. For example, sewage treatment often requires UV disinfection or pathogen reduction to meet NSW Health-imposed requirements, however this is not recognised under LBL. Phosphorus is the main pollutant that councils pay load fees for, particularly in estuarine and riverine catchments. To retrofit plants to reduce this pollutant is quite expensive, but more manageable if done at new or rebuild stage, at which point it would likely be efficient to also incorporate changes to meet health or safety requirements.

A scheme that recognises all the regulatory requirements relevant to an activity/infrastructure would enable licensees to plan ahead and more efficiently improve performance across the range of regulatory requirements. The NSW Best Practice Management of Water Supply and Sewage Framework currently provides the framework for councils' local water utilities to implement long term strategic service and infrastructure planning and the safe, secure, efficient, and affordable provision for water supply and sewerage services. The LBL scheme in relation to those services should align with the principles in that framework.

Consideration must be given to the environmental impact of the abatement or pollutant reduction techniques compared to the benefit of undertaking the treatment. For example, the environmental impacts from the electricity or precipitates used to treat a pollutant may be greater than the environmental impacts of the pollutant itself. Consideration should also be given as to whether it is more effective to address other non-licensed pollutant sources (diffuse or point) in the same catchment rather than increasing load fees for the licensed activity.

Fees collected by the LBL scheme should be made available to support further abatement or mitigation or to address the environmental impacts of the discharge in question.

Key elements of the LBL Scheme

- *Are the right pollutants being captured?*
- *Critical Zones – are areas of highest concern appropriately targeted?*
- *Are appropriate scheduled activities included?*
- *Are load limits being used effectively?*

The Issues Paper makes the comment that “it may be beneficial to remove coarse particulates as an assessable air pollutant as they are largely an amenity issue” (pp 33). LGNSW argues that coarse particulates are an environmental issue given particulate emissions, particularly PM₁₀, affect the health and well-being of communities and influence how (and whether) they are able to enjoy their environment. Figure 4.1 of the Issues paper provides a comparison of PM₁₀ air emissions reported under LBL and the National Pollutant Inventory (NPI), showing that PM₁₀ emissions from coal mining activities increased between 2009/10 to 2012/13. It also showed significant shortfall in reporting under LBL compared to the NPI.

In relation to assessable pollutants, LGNSW recommends focusing on the highest priority pollutants (Option 2) as this would have the greatest environmental benefits. The EPA also refers to a variation of this option which would see “pollutants ranked differently in different

areas (or critical zones), allowing targeting of specific pollutants in places where they are a particular concern” (pp 35). Such an approach should recognise the sensitivity of the receiving environment, other sources of pollutants (point and diffuse) and reflect that in the fees. For example, if the licenced LBL activity is contributing 10% of the total load of a pollutant in the catchment then the fee would be proportional to the overall load.

In some cases the most effective mechanism for reducing pollutant load will not be through changes to infrastructure or operations at the licenced facility, but in investing in measures to address diffuse source pollution or non-licenced activities. For water-related discharges in particular, the catchment context needs to be applied to the pollutants covered, thresholds and weightings.

LGNSW does not support extending the LBL scheme to cover all EPA licensees, as this would not be consistent with the view that LBL should focus on the highest priority pollutants that can be abated. Option 3, i.e. keeping the current basic structure but refine coverage to capture highest emitting activities (>80% of assessable pollutant emissions), is preferable as it is closest to the approach outlined above where pollutants are treated differently depending on the sensitivity and catchment context of the discharge.

Option 4, which allows a more flexible application of pollutants to each LBL activity, could also achieve the above approach. However, a discretionary approach among EPA regional offices would reduce transparency and consistency for licensees. The pollutant rankings and weightings within zones need to be designed and applied systematically.

With regard to load limits, a combination of Options 1 and 3 may be preferable (i.e. develop an operational policy on the application of load limits and decouple load limits from the LBL scheme and allow them to be used for any licensees where warranted). Under the current scheme the load is calculated on the daily flow multiplied by the pollutant concentration as measured on specific days. STPs operated by councils have dry- and wet-weather flows where the concentration of pollutants can differ dramatically. While the load should average out over time theoretically, practical experience shows that some councils pay more in fees than they should because of wet-weather flows and/or exceedances of load limits.

Developing a policy on the application of load limits, and also on how load is calculated for STPs and similar weather influenced activities, could resolve the issue above without losing the ability to apply load limits where they are appropriate. However, the limitations and practicalities of operating particular types of STPs also need to be recognised and reflected in realistic targets.

The LBL fee

- *Do you consider any of the options described for improving the pollutant fee unit, critical zone weightings, fee rate thresholds, weighted loads or the administrative/load fee discount to be preferable? If so why?*
- *Are there any barriers under LBL to appropriate effluent reuse and the use of green offsets?*
- *Do you have any suggestions for how the LBL scheme can be amended to encourage additional effluent reuse, where appropriate?*

The Issues Paper proposes that the LBL scheme could be better targeted by “providing a significantly increased incentive for licensees to reduce specific pollutants in specific areas

where the evidence suggests it is warranted.” As stated earlier, a catchment-based approach to identifying priority pollutants, pollutant fee units and weightings is preferred. However, this approach needs to consider the licensees’ contribution in light of other pollutant contributors in the catchment. Merely increasing fees for licensees may not be the most appropriate solution. Incentives to tackle other pollutant sources/generators could deliver better environmental outcomes.

Another factor that should be considered in regard to determining fee units, fee rate thresholds and weighted loads is whether a specific pollutant can be feasibly abated or the load can be reduced. If the pollutant/load cannot be abated/reduced then there is no opportunity for the licensee to reduce their fees, which is contrary to the intent of LBL.

There are several challenges with establishing an effluent reuse scheme. The first is gaining approval under s60 of the *Local Government Act (NSW) 1993*, which has a number of steps and extensive documentation requirements. This process operates in parallel with the EPA licence approval process, where conditions can be at odds with the s60 regime.

The second is in relation to the costs of such schemes including setting up delivery infrastructure, agreements with recipients, soil and water monitoring and reporting requirements. In some cases, the establishment and ongoing costs of these schemes is the main deterrent for potential recipients to participate in effluent schemes, particularly if effluent is currently discharged to the river and other users can extract and apply it without additional monitoring or costs.

Another challenge is in relation to effluent quality. STPs are typically required to remove phosphorus to low levels. However, where the effluent is being used for agricultural production there is a demand for phosphorus as a fertiliser. This creates the perverse situation where the STP is required to remove phosphorus to enable discharge to the effluent reuse scheme, while the receivers must then add phosphorus to the crop. The LBL scheme needs to allow for the consideration of the larger context when setting controls for effluent reuse, and remove barriers to the more efficient use of effluent.

And lastly there is the question of return flow credits and implications for LBL. Return flow credits are a mechanism provided for under the *Water Management Act (NSW) 2000* that enables water (of a certain quality) to be returned to the river and be credited (in a volumetric sense). This concept is appealing to local water utilities on inland rivers in particular where their extraction for water supply could be offset by return flows.

As LBL load is calculated based on flow and concentration, access to return flow credits may provide an additional driver for local water utilities to consider either upgrading treatment facilities to meet return flow discharge requirements (and therefore potentially reduce LBL fees as well). LGNSW is aware that the Department of Primary Industries trialed a groundwater return flows policy in 2015. However, the groundwater return flow policy has not been implemented and LGNSW has not yet seen a similar policy in relation to riverine returns despite the latter being ‘on the cards’ for several years.

Other Issues Affecting Costs & Revenue

- *Do you consider any of the options described for improving compliance costs or load reduction agreements to be preferable? If so, why?*

- *Should there be some revenue recycling associated with the LBL scheme? If so, what should the revenue be used for?*

Out of the options presented for reducing compliance costs, Option 1 (modernising the LBL calculation and reporting process) is preferred. It would result in long-term benefits to licensees by providing transparency, certainty and ease of reporting, and benefits to the EPA in terms of faster and more efficient analysis and reporting of compliance.

The need for and merits of Option 2 (establishing an LBL Technical Unit to increase training and access) are unclear. The Issues Paper notes that a technical unit could help develop skills in-house, potentially reducing licensee need for external consultants. The EPA currently provides advice through its regional staff and existing compliance unit, and the Issues Paper lacks information on the scale/demand for such a unit. Licensees may currently use external consultants because they have limited capability with the scheme, but also because they do not have sufficient time to undertake the monitoring and reporting the scheme requires. Setting up a technical unit (at substantial cost) will not help licensees who are strapped for time.

Load reduction agreements (LRAs) enable licensees to invest funds, which would otherwise be paid in LBL fees, into pollution abatement measures. LGNSW considers this to be a fundamental benefit of the LBL scheme overall in that it achieves the purpose of reducing pollution rather than merely penalising those who pollute. The Issues Paper identifies a number of reasons why LRAs may not have been taken up by licensees, and LGNSW agrees with many of those. Option 1 (increasing the flexibility of LRAs) is supported.

The Issues Paper also canvasses the concept of 'revenue recycling' whereby the fees collected by the LBL scheme could be made available to particular facilities, industries or more broadly to fund further pollution abatement or to address the impacts of pollution on the environment. LGNSW is supportive of this mechanism because it achieves the purpose of reducing pollution (the purpose for which the fees were collected) rather than seeing the fees funnelled into NSW's consolidated revenue. However, LGNSW cautions that the costs of administering a grant scheme can be significant, and firm governance processes need to be in place to ensure the funds for abatement and mitigation are maximised.

Governance and Administration Issues

- *Do you consider any of the options for improving compliance assurance, administrative flexibility and the Technical Review Panel to be preferable? If so why?*

As a way of improving compliance assurance, the Issues Paper proposes the introduction of independent certification of LBL annual returns (Option 1). LGNSW does not support this option as licensees already must invest in monitoring and reporting of LBL, and requiring them to also pay for independent verification (a function that should be performed by the regulator) is unreasonable. Option 1 would be particularly unpalatable if an LBL Technical Unit were to be established under the premise that it would be undertaking audits and checking compliance.

In terms of improving administrative flexibility, the Issues Paper proposes simplifying the amendment of technical components of the LBL scheme by placing some outside the Regulation. While LGNSW understands how this would improve flexibility for the EPA in being able to amend the list of assessable pollutants, pollutant weightings and critical zones, it would reduce the transparency of the scheme for licensees. The EPA would be able to make

changes with minimal consultation or without the usual impact analysis that accompanies regulatory changes.

LGNSW appreciates the challenges of appointing and maintaining the Technical Review Panel (TRP), which is a statutory independent technical body advising the Minister for the Environment and EPA on the Load Calculation Protocol (LCP) and other LBL matters referred to it. LGNSW supports simplifying the TRP member appointment process (Option 1) and also improving its links with EPA operations (Option 3). The TRP could also provide expert advice in place of an EPA Technical Unit (the scope may need to be limited, and may depend on the expected level of demand). LGNSW strongly requests that local government continues to be represented on the TRP.

Improving the Load Calculation Protocol

- *How could the LCP be improved to reduce complexity or to make the scheme more flexible?*

The Load Calculation Protocol could be improved by removing LBL fees for pollutant concentrations that do not exceed concentration limits. Instead, LBL is best placed to provide a financial incentive or penalty for not meeting licence conditions. It should not raise revenue from those who are meeting their licence conditions.

Conclusion

LGNSW welcomes the review of the LBL Scheme, as it is long overdue. Local government has had long-standing concerns with the implementation of LBL for STPs.

LGNSW looks forward to further consultation in 2017 on the proposed changes to the LBL scheme, and in the interim would be pleased to provide further information on the matters in this submission. To discuss this submission please contact:

Susy Cenedese
Strategy Manager, Environment
Susy.cenedese@lgnsw.org.au
9242 4080