

Territorial Authority Waste Disposal Levy Payments

Date Submitted:	1 May 2020	Tracking #: 2020-B-06655	
Security Level	In Confidence	MfE Priority:	Non-Urgent

To	Actions sought:	Response by:
<p>To Hon David Parker, Minister for the Environment</p> <p>To Hon Eugenie Sage, Associate Minister for the Environment</p>	<p>Note that quarterly payments of waste disposal levy money were made to territorial authorities on 20 April 2020, but six payments were retained because the territorial authorities in question have not met statutory timeframes for reviewing their Waste Management and Minimisation Plans.</p> <p>Note that historic payments have been made to territorial authorities who were ineligible for payment at the time, and those payments likely constitute a breach of appropriations.</p> <p>Note that Ministry for the Environment officials are working alongside the Treasury to remedy the situation in line with the requirements of the Public Finance Act 1989.</p> <p>Note that the Ministry for the Environment has commenced a review of payment history and procedures that is expected to produce a number of recommendations, but that in the meantime has taken a number of steps to strengthen its compliance, monitoring and enforcement activity when it comes to Waste Management and Minimisation Plans</p> <p>Agree that this briefing and appendices will be released proactively on the Ministry for the Environment's website on 1 October 2020.</p>	<p>At your convenience</p>

Actions for Minister's Office Staff	Return the signed report to MfE.
Number of appendices and attachments 2	<p>Titles of appendices and attachments (ie separate attached documents):</p> <ol style="list-style-type: none"> TA levy payments retained on 20 April Current understanding of payments made to ineligible TAs since 2012

Ministry for the Environment contacts

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Territorial Authority Waste Levy Payments – Retentions and Previous Payments to ineligible territorial authorities

Purpose

1. The purpose of this briefing is to:
 - Inform you that waste levy payments were retained from six of the 67 territorial authorities for the April 2020 payment round on the basis that they had not reviewed their Waste Management and Minimisation Plans (WMMPs) in accordance with the timeframes set out in the Waste Minimisation Act 2008 (WMA),
 - Provide you with an overview of historic payments made to territorial authorities despite them being ineligible at the time (again, due to requirements around WMMPs). Audit NZ has raised concerns about these historic payments which constitute breaches of appropriation, and
 - Update you on steps that have been, and are being, taken to strengthen the Ministry for the Environment's compliance, monitoring and enforcement activity in relation to the Waste Minimisation Act.
2. This briefing is submitted to both the Minister for the Environment (given responsibility for Vote Environment) and the Associate Minister for the Environment (given delegations in respect to the Waste Minimisation Act 2008 and the waste disposal levy).

Waste Levy Payments and WMMP Requirements

3. Each year, approximately \$30-\$35m is collected by the Ministry for the Environment (MfE) via the waste disposal levy. 50% of these funds are retained by MfE for investment through the Waste Minimisation Fund (WMF), while 50% is distributed to territorial authorities (TAs) on a population basis, to be spent on waste minimisation activity. These payments to TAs are made quarterly, based on a statutory schedule.
4. Under the Waste Minimisation Act 2008 (WMA), TA eligibility for these waste levy payments depends on a TA having reviewed its Waste Management Minimisation Plan (WMMP). A WMMP contains a summary of the council's objectives, policies and targets for waste management and minimisation. Plans should clearly communicate how the council will deliver on these objectives. Some examples of goals include increasing recycling diverted from landfill by 20% or reducing illegal dumping in a district.
5. TAs were initially required to finalise their WMMPs by 1 July 2012 (four years after the WMA entered into force). Since then, the WMA requires WMMPs to be reviewed at intervals of no more than six years after the last review. The review process must include a waste assessment, which describes the region's waste situation, sets the vision, goals objectives and targets for the district, and develops options for meeting future demand. Following the waste assessment, the territorial authority must then consider whether it's existing WMMP needs to be revoked and replaced, amended, or whether it can remain unchanged into the next period.

6. Section 33 of the WMA requires the Secretary for the Environment to retain quarterly waste levy payments to TAs if a TA has not met its obligation to review its WMMP in accordance with statutory timeframes. Section 33(c) provides that retained funds cannot later be paid to a TA; retained money must be spent on the administration of the levy, WMF projects, or administering WMF projects.

April Levy Payment Retentions

7. During 2019, MfE significantly increased the resourcing for its WMA Compliance, Monitoring and Enforcement (CME) function. While the WMA CME team has several responsibilities beyond WMMP compliance (such as disposal facility operator's compliance with levy payment, product stewardship scheme compliance and compliance assurance for the plastic bag ban), this increase in resourcing has allowed for a renewed oversight of TA progress with minimisation planning.
8. This step-up in CME activity led to identification of WMMPs which had not been reviewed within the statutory timeframe. Initial concerns arose in January over two WMMPs (Chatham Islands Council and Kawerau District Council), but that expanded with more investigation to include a total of six TAs which hadn't met statutory timeframes for WMMP review. Payments were subsequently retained from those 6 TAs when the last quarterly payments were distributed on 20 April; the amount retained from the six TAs totalled \$108,434.83 (excl GST). We are reasonably certain this is the first time payments have been retained for reasons of non-compliance (noting that we are currently undertaking a historical review). The WMA provides that any retained money must be spent on waste levy administration, or WMF administration and/or grants.
9. The six TAs in question are Invercargill City Council, Southland District Council, Gore District Council (which share a joint WMMP as part of the WasteNet Group), Kawerau District Council, Kaikōura District Council and the Chatham Islands Council (see **Appendix A**). MfE informed the 6 Chief Executives (CEs) of these TAs of the intention to retain their quarterly payment. We have also offered to work with them as a matter of priority to guide them through the WMMP review process ahead of the next quarterly payment, scheduled for 20 July.
10. In addition, concerns had also been raised about the status of Christchurch City Council and Dunedin City Council's WMMPs. However, after further assessment by the CME and Legal teams, both received their 20 April payment.

Previous Payments to Non-Compliant TAs

11. The information that led to retention of the above payments in April 2020 also indicates that a number of TAs have previously received waste levy payments for which they were not eligible – on the basis they had not reviewed their WMMPs as required at the time of payment.
12. Audit NZ has sought a report on non-compliant payments going back to 1 July 2018 (that is six years after the initial adoption of WMMPs). We are currently compiling information for that report. A preliminary stocktake indicates that:
 - Six TAs received payments in **2019-20** despite not having reviewed their WMMPs (Invercargill City Council, Southland District Council, Gore District Council, Kawerau District Council, Kaikōura District Council and Chatham

Islands Council), with \$290,275 (excl GST) paid to ineligible TAs that financial year

- Six TAs received payments in **2018-19** despite not having reviewed their WMMPs (Invercargill City Council, Southland District Council, Gore District Council, Kawerau District Council, Kaikōura District Council and Chatham Islands Council), with \$423,365 (excl GST) paid to ineligible TAs that financial year
- Initial investigation suggests that two TAs received payments totalling \$17,062 (excl GST) in **2017-18** despite not having reviewed their WMMPs (Kaikōura District Council and Chatham Islands Council). Eligibility is subject to ongoing investigation given the historic nature of the payments and changes to record management systems.
- Kaikōura District Council may have also received payments in **2016-17** and **2015-16** when ineligible, but again, this is subject to further investigation by MfE.

13. More information on our current understanding of payments made when TAs were ineligible can be found in **Appendix B**.

Breach of Appropriation

14. In respect to the payments to TAs which had not met the statutory timeframe for review during the 2019-20 financial year and earlier, Audit NZ has advised that these payments constitute a breach of appropriation.

15. The Ministry has advised Treasury of the breach.

16. Expenses and capital expenditure that exceed the appropriated amount, fall outside the scope of the appropriation, are not in the prescribed period or are not covered by an appropriation at all have not been appropriated by Parliament and are therefore unappropriated.

17. Several remedies exist under the Public Finance Act 1989 for a situation of unappropriated expenditure or unauthorised capital injections, which will require Treasury to support the Ministry to resolve, but, depending on the nature and timing, can involve an Order in Council, Minister of Finance approval or validating legislation.

18. In this instance, to remedy the breach, a short cabinet paper will be required during the first part of the 2020/21 financial year to outline the circumstances. We will work with Treasury and your offices to prepare this at the time.

19. The breach will be included in the Ministry's Annual Report. The auditors will raise the matter at the Annual Review select committee, if not earlier.

Actions Taken and Next Steps

20. MfE is undertaking a review of the events and issues that resulted in the historic payments to TAs who had not met their WWMP review obligations. This review, to be completed by the end of May, is expected to deliver a number of findings and recommendations.

21. In the meantime, we can advise that:

- We have now largely completed the WMA CME recruitment plan (an additional five FTEs have been brought into the team during the 2019-20 financial year, bringing the team to nine members in total),
- We have written to all TA Chief Executives to emphasise their obligations under the WMA and in particular the requirements for waste levy payment eligibility,
- We have engaged with all the non-compliant TAs with a view to ensure they are clear on requirements and offer guidance to assist them in reviewing their WMMPs ahead of the next quarterly payment (which the WMA specifies must take place on 20 July 2020),
- We are finalising a new Standard Operating Procedure to guide our management of WMMP compliance, including early identification of compliance risks and an approach to communication and escalation,
- We are continuing to engage with the Treasury and Audit NZ to meet their requirements, and
- We are considering ways in which MfE could better facilitate cross-sector collaboration between councils of similar sizes or circumstances.

Recommendations

22. We recommend that you:

- 22.1 **Note** that quarterly payments of waste disposal levy money were made to territorial authorities on 20 April 2020, but 6 payments were retained because the territorial authorities in question have not met statutory timeframes for reviewing their Waste Management and Minimisation Plans;
- 22.2 **Note** that historic payments have been made to territorial authorities who were ineligible for payment at the time, and those payments likely constitute a breach of appropriations;
- 22.3 **Note** that Ministry for the Environment officials are working alongside the Treasury to remedy the situation in line with the requirements of the Public Finance Act 1989;
- 22.4 **Note** that MfE has commenced a review of payment history and procedures that is expected to produce a number of recommendations, but that in the meantime has taken a number of steps to strengthen its compliance, monitoring and enforcement activity when it comes to Waste Management and Minimisation Plans. We will update you in due course; and

22.5 **Agree** that this briefing and appendices will be released proactively on the Ministry for the Environment's website on 1 October 2020.

Yes/No

Signature

Approved electronically.



Sam Buckle
Deputy Secretary, Resource Efficiency:

Date 1 May 2020

Hon David Parker
Minister for the Environment

Date

Hon Eugenie Sage
Associate Minister for the Environment

Date

Appendix A: Waste Levy Payments Retained on 20 April

Territorial Authority	Payment Retained (excluding GST)
Invercargill City Council	\$54,192.70
Southland District Council	\$30,755.34
Gore District Council	\$12,312.03
Kawerau District Council	\$6,863.09
Kaikōura District Council	\$3,678.77
Chatham Islands Council	\$632.90
TOTAL	\$108,434.83

Appendix B: Current understanding of payments made to ineligible TAs since 2012

Financial year	Territorial Authorities paid when ineligible	Total Value Paid (excl GST)	Payments per TA (excl GST)					
			Chatham Islands Council	Kawerau District Council	Kaikōura District Council	Invercargill City Council	Southland District Council	Gore District Council
2019/20	Chatham Islands Council Kawerau District Council Kaikōura District Council Invercargill City Council Southland District Council Gore District Council	290,275	1,600	18,380	9,851	145,122	82,354	32,968
2018/19	Chatham Islands Council Kawerau District Council Kaikōura District Council Invercargill City Council Southland District Council Gore District Council	423,365	2,471	26,796	14,363	211,586	120,079	48,070

Total (2018/19 and 2019/20)		713,640	4,071	45,176	24,214	356,708	202,433	81,038
Financial year	Territorial Authorities paid when <i>suspected</i> ineligible (further investigation needed)							
2017/18	Chatham Islands Council (WMMP adopted in 2011) Kaikōura District Council (WMMP adopted in 2009)	17,062	2,464		14,598			
2016/17	Kaikōura District Council (WMMP adopted in 2009)	14,314			14,314			
2015/16	Kaikōura District Council (WMMP adopted in 2009)	13,629			13,629			
2014/15	Nil							
2013/14	Nil							
2012/13	Nil							
2011/12	Nil							