

Territorial Authority Waste Levy Payments – Update regarding previous payments made to ineligible Territorial Authorities

Date Submitted:	26 June 2020	Tracking #: 2020-B-06871	
Security Level	In Confidence	MfE Priority:	Non-Urgent

To:	Action sought:	Response by:
To Hon David Parker, Minister for the Environment	Note the content of this briefing. Agree that this briefing and appendix will be released proactively on the Ministry for the Environment's website on 1 October 2020.	At your convenience
To Hon Eugenie Sage, Associate Minister for the Environment		

Actions for Minister's Office Staff	Return the signed report to MfE.
Number of appendices and attachments 1	Titles of appendices and attachments (i.e. separate attached documents): 1. Waste levy payments made to ineligible TAs 2012-2020

Ministry for the Environment contacts

Position	Name	Cell phone	1 st contact
Director	Glenn Wigley	027 491 7806	
Deputy Secretary	Sam Buckle	022 034 0311	✓

Territorial Authority Waste Levy Payments – Update regarding previous payments made to ineligible Territorial Authorities

Purpose

1. The purpose of this briefing is to:
 - Provide an update on the previous briefing (#2020-B-06655 on 1 May 2020) regarding the issue of waste levy payments made to Territorial Authorities (TAs) who had not reviewed their Waste Management and Minimisation Plans (WMMPs) in accordance with the timeframes set out in the Waste Minimisation Act 2008 (WMA),
 - Update you on steps that have been, and are being taken, to remedy the situation and also strengthen the Ministry's compliance, monitoring and enforcement (CME) activity in relation to the WMA.
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 and the waste disposal levy).

Waste Levy Payments made to Ineligible TAs

3. As previously advised, in April 2020 the Ministry was required to retain quarterly waste levy payments to six TAs who were identified by the CME team as not having reviewed their WMMPs at intervals of no more than six years after the last review, as required by the WMA.
4. Since April, the CME team have undertaken further investigation to identify what historical payments may have been made to those TAs while ineligible, along with payments to any other TAs whose WMMPs are now current but did not previously get reviewed within the required timeframe.
5. As a result of this review, three additional TAs have been identified as having received payments when ineligible, being Hurunui District Council, Christchurch City Council and Dunedin City Council. This brings the total number of ineligible TAs to nine (including the previously advised Chatham Islands District Council, Kawerau District Council, Kaikoura District Council, Invercargill City Council, Southland District Council and Gore District Council). In summary:
 - Eight TAs received payments in **2019-20** despite not having reviewed their WMMPs, equating to \$1,347,137.04 which is approximately three percent (3%) of total waste levy collected that year.
 - Nine TAs received payments in **2018-19** despite not having reviewed their WMMPs equating to \$1,707,528.13 which is approximately four percent (4%) of total waste levy collected that year.
 - Three TAs received payments in **2017-18** despite not having reviewed their WMMPs equating to \$50,944.63 which is less than one percent (1%) of total waste levy collected that year.
 - Prior to this, one TA received payments despite not having reviewed their WMMP, equating to \$14,313.79 in **2016-17** and \$13,629.01 in **2015-16**, which is less than one percent (1%) of total waste levy collected for those years.

6. The potential amount of misappropriated levy funds to TAs now totals \$3,133,552.60 (excl. GST), instead of the previously reported \$730,702. A summary schedule is attached (appendix A).
7. A large portion of this was paid to Christchurch City Council (\$2,123,529) whose WMMP was due for review around October 2018 but doesn't appear to have been reviewed in line with requirements under the WMA until April 2020.
8. There are limitations within the WMA regarding definitions of what constitutes a WMMP review as well as the evidence requirements and regulatory tools to encourage compliance. For this reason, as well as a lack of detailed records requested or held by the Ministry on each TA's review process and timeframes in the past, some difficulty was experienced in establishing the most likely review date for a number of TA's. After unsuccessfully seeking clarification on this from Christchurch City Council, the decision has been made to include their payments up to January 2020.
9. The CME team are commencing a refreshed 2020-2021 TA Audit Programme across all 67 TAs which will look in detail at each TA's compliance with the WMA, including levy spend and WMMP review timeframes. This may result in further non-compliances being identified over the coming 18 months. The results of this audit programme, as well as the Disposal Facility Operator (DFO) audit programme which looks at levy collection compliance, will be reported to Ministers in due course.

Breach of Appropriation

10. As previously advised, Audit NZ has sought a report on non-compliant payments. We have kept them updated with the latest information following the further review of historical payments.
11. As these payments constitute a breach of appropriation, Treasury have been advised of the breach and to remedy, 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 this time.
12. The breach will also 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

13. MfE has undertaken a review of available information (within MfE records) for all 67 TAs to ensure the total amount of the breach of appropriation is accurately reported on at this time.
14. We have written to all TA Chief Executives to emphasise their obligations under the WMA and in particular the requirements for waste payment eligibility.
15. We have engaged with the non-compliant TAs with a view to ensure they are clear on requirements and offered guidance to assist them in reviewing their WMMPs ahead of the next quarterly payment (20 July 2020).
16. We are finalising procedures to guide our management of WMMP compliance in future, as well as commencing comprehensive audit programmes to assess and educate TAs on WMA compliance. Previously non-compliant TAs are being prioritised within the audit programme.

17. MfE has also commissioned 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, completed by MfE's Principal Risk Advisor has delivered a number of findings and recommendations.
18. We have updated Audit NZ and Treasury to meet their requirements.

Recommendations

19. We recommend that you:

- a. **Note** that further investigation has been undertaken into historical waste levy payments and it has been determined that three further TA's (additional to the previous six) have been identified as receiving waste levy funds when ineligible. As a result, the total misappropriated funds is now estimated at \$3,113,552.60 (instead of the previously reported \$730,702).
- b. **Note** that Ministry for the Environment officials continue to work alongside the Treasury to remedy the situation in line with the requirements of the Public Finance Act 1989
- c. **Agree** that this briefing and appendix will be released proactively on the Ministry for the Environment's website on 1 October 2020.

Yes/No

Signature



Sam Buckle
Deputy Secretary, Waste and Resource Efficiency

Date: 22/06/2020

Hon David Parker
Minister for the Environment

Date

Hon Eugenie Sage
Associate Minister for the Environment

Date

Appendix 1

Current understanding of payments made to ineligible TAs since 2012										
	Chathams	Kawerau	Kaikoura	Invercargill	Southland	Gore	Hurunui	Christchurch	Dunedin	TOTAL
April 2020							\$ 12,658.15			\$ 12,658.15
January 2020	\$ 526.42	\$ 5,708.36	\$ 3,059.81	\$ 45,074.62	\$ 25,580.67	\$ 10,240.50	\$ 10,528.38	\$ 313,795.04		\$ 414,513.80
October 2019	\$ 570.57	\$ 6,187.13	\$ 3,316.44	\$ 48,855.18	\$ 27,726.21	\$ 11,099.40	\$ 11,411.43	\$ 340,114.10		\$ 449,280.46
July 2019	\$ 597.78	\$ 6,481.90	\$ 3,474.44	\$ 51,182.69	\$ 29,047.11	\$ 11,628.18	\$ 11,955.08	\$ 356,317.45		\$ 470,684.63
Total 19/20	\$ 1,694.77	\$ 18,377.39	\$ 9,850.69	\$ 145,112.49	\$ 82,353.99	\$ 32,968.08	\$ 46,553.04	\$ 1,010,226.59		\$ 1,347,137.04
April 2019	\$ 638.56	\$ 6,924.36	\$ 3,711.62	\$ 54,676.47	\$ 31,029.90	\$ 12,421.94	\$ 12,771.15	\$ 380,640.04		\$ 502,814.04
January 2019	\$ 639.88	\$ 6,938.68	\$ 3,719.30	\$ 54,789.57	\$ 31,094.08	\$ 12,447.63	\$ 12,797.57	\$ 381,427.37		\$ 503,854.08
October 2018	\$ 589.23	\$ 6,389.44	\$ 3,424.89	\$ 50,452.63	\$ 28,632.79	\$ 11,462.32	\$ 11,784.56	\$ 351,235.00		\$ 463,970.86
July 2018	\$ 603.42	\$ 6,543.32	\$ 3,507.37	\$ 51,667.77	\$ 29,322.40	\$ 11,738.39	\$ 12,068.38		\$ 121,438.10	\$ 236,889.15
Total 18/19	\$ 2,471.09	\$ 26,795.80	\$ 14,363.18	\$ 211,586.44	\$ 120,079.17	\$ 48,070.28	\$ 49,421.66	\$ 1,113,302.41	\$ 121,438.10	\$ 1,707,528.13
April 2018	\$ 633.42		\$ 3,752.98				\$ 12,171.06			\$ 16,557.46
January 2018	\$ 585.57		\$ 3,469.54				\$ 11,251.84			\$ 15,306.95
October 2017			\$ 3,609.04				\$ 11,704.27			\$ 15,313.31
July 2017			\$ 3,766.91							\$ 3,766.91
Total 17/18	\$ 1,218.99		\$ 14,598.47				\$ 35,127.17			\$ 50,944.63
April 2017			\$ 3,687.94							\$ 3,687.94
January 2017			\$ 3,442.67							\$ 3,442.67
October 2016			\$ 3,521.04							\$ 3,521.04
July 2016			\$ 3,662.14							\$ 3,662.14
Total 16/17			\$ 14,313.79							\$ 14,313.79
April 2016			\$ 3,855.51							\$ 3,855.51
January 2016			\$ 3,246.79							\$ 3,246.79
October 2015			\$ 3,249.66							\$ 3,249.66
July 2015			\$ 3,277.05							\$ 3,277.05
Total 15/16			\$ 13,629.01							\$ 13,629.01
TOTAL	\$ 5,384.85	\$ 45,173.19	\$ 66,755.14	\$ 356,698.93	\$ 202,433.16	\$ 81,038.36	\$ 131,101.87	\$ 2,123,529.00	\$ 121,438.10	\$ 3,133,552.60

