

Linda Osborne

From: Administration Requests
Sent: Friday, 16 November 2018 1:17 p.m.
To: Clive
Cc: Administration Requests
Subject: FW: Rates arrears

Dear Mr Boonham

Thank you for your further email of 6 November 2018. I have responded to the points that you raised below.

Rates invoices for the second instalment for 2018/2019

I acknowledge and apologise for the incorrectly addressed letter.

Invoices for other properties

Thank you for the suggestion regarding separation of the rates invoices. I have spoken to the staff and asked that they identify a way to separate your disputed rates invoice from the rates invoices for 25 Alamar Crescent and 24 Margaret Street. This will enable the invoices to be sent directly from the print house, which will create a more efficient delivery.

Rates invoice second instalment for 27 Alamar Crescent

Our rates invoice is reviewed annually to ensure compliance with the legislation and I am satisfied that the Council has met all requirements to ensure compliance.

Oldest debt first policy and who has authorised the continuation of the oldest debt first policy?

Our Council made the decision to continue with the oldest debt first policy as part of the adoption of the 2018/28 Long Term Plan which was adopted by full Council on 26 June 2018. It is stated under the Funding Impact Statement – Rating Tools on page 59, Part Two.

Below is the link

<https://www.kaipara.govt.nz/site/kaiparadistrictcouncil/files/pdf/A-Z%20Documents/Annual%20Plans/LTP%202018-2028%20Pt%202%20Final.pdf>

Council has been provided with legal advice on the validity of the policy however, this legal advice obtained has been withheld under section 7(2)(g) of the LGOIMA in order to maintain legal professional privilege. Council has considered whether the withholding of that information is outweighed by other considerations which render it desirable, in the public interest, to make that information available. Council does not consider that such public interest considerations (such as there might be) outweigh its interest in maintaining legal professional privilege.

In accordance with section 27 of LGOIMA, you have the right to complain to the Ombudsman for an investigation or review of the decision to refuse to supply information in response to some aspects of your request.

Payment of rates instalment

Thank you for your payment of [REDACTED] which you have specified is to be allocated to current instalment. Unfortunately, as set out above, Council policy remains that any payments received will be credited first towards the oldest amount due. In light of this, we will be arranging to have the payment reversed.

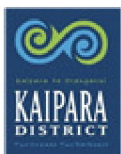
Payment of all arrears of rates

Council's Funding Impact Statement – Rating Tools on page 57, Part Two, outlines that penalties and arrears will be charged on outstanding rates; as your rates are outstanding then arrears and penalties have been applied.

Thank you for advising me of the incorrect addressing and potential service improvement in separating rates invoices, which the team will work on.

Kind Regards,

Louise



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From: Clive <[REDACTED]>
Sent: Tuesday, 6 November 2018 10:54 AM
To: Chief Exec <chiefexec@kaipara.govt.nz>; Council <Council@kaipara.govt.nz>
Subject: Rates arrears

Hi Louise

Some issues arising from your email of 2 November 2018.

The issue with the rates invoices for the second instalment for 2018/2019

The issue I raised in my email of 29 October 2018 relates to the rates invoices for the second instalment, not the first.

On or about 20 October we received a rates invoice for 27 Alamar Crescent. There were no invoices for our other properties at 25 Alamar Crescent and 24 Margaret Street.

On 24 October we received an email from Christine Toms apologising for sending the invoice because it was only an invoice for the unpaid rates. She advised that a credit note would be issued in due course. We understand that other whistle-blowers have had similar problems.

On 3 November we found in our mail box (not our PO Box) a letter from Christine Toms again apologising for the error and enclosing a credit note and rates invoices for all three properties that we own. The letter was dated 25 October and delivered on 2 November.

The letter sent to us was not correctly addressed. If you look at your copy of the letter you will see that that it sent to Clive & Judi Boonham, Mangawhai Heads, Mangawhai 0541. There was no street number or name and the postal zone number relates to the PO Box not the street address (they are different). Unfortunately this was the address showing in the window of the envelope. That may explain why it took so long to reach us.

Technically, the delivery of the rates invoices did not comply with sections 48 and 136 of the LGRA, but we will waive the non-compliance and pay them anyway.

Invoices for other properties

The properties at 25 Alamar Crescent and 24 Margaret Street have nothing to do with the disputed rates on 27 Alamar Crescent, and have no arrears. However, they have been linked together and we did not receive invoices for them at the appropriate time for the last instalment for last year and the first instalment for this year. The same has now happened again. Surely it must be possible to treat those properties in the normal way.

Rates invoice second instalment for 27 Alamar Crescent

The rates invoice is non-compliant with the legislation. Under the LGRA a rates invoice is an invoice for the rates for a particular period (section 46(1)). In other words it is an invoice for the current instalment only.

The amount payable on the current rates invoice must be clearly identified (section 46(2)(f)).

There must be a warning that if the rates are not paid on time a penalty may be added (section 46(2)(i)(i)).

The invoice must include the amount of unpaid rates from a previous financial year, but this cannot be part of the amount required to be paid by the due date.

The delivery of rates invoice to a ratepayer 14 days before the due date for payment creates the legal liability to pay the instalment clearly identified on that invoice. (Sections 48(3), 49 and 12).

The rates invoice for the current instalment does not create the liability to pay arrears of rates. That liability was created by the original rates invoices for the various instalments. They are simply arrears that remain owing. They should be properly treated by including a separate statement showing arrears outstanding. They cannot be included in the amount payable under a statutory rates invoice but there is no restriction on a local authority sending out, at any time, a statement of account showing the full amount outstanding to clear rates arrears.

It seems to me that the KDC, along with those who advise it, has misunderstood the very simple requirements of the legislation.

Oldest debt first policy

I note that you are still including the oldest debt first policy on the back page of the rates invoice.

The rates invoice creates a liability on the ratepayer to pay the clearly identified instalment amount by the due date otherwise the KDC will add a penalty. That is a clear statutory obligation. You cannot override that obligation by adopting a policy that denies the ratepayer the right to comply with that statutory obligation.

Local authorities are creatures of statute and, although they now have a general power of competence under section 12(2) of the LGA, that power is limited under section 12(3) of the LGA. One of the areas where a local authority is bound by its statutory powers is in respect of rates under the LGRA. The local authority simply does not have the power to waive statutory obligations or override them with its own adopted policies.

It should also be pointed out that even in a contractual relationship with normal commercial firms an oldest debt first policy is only binding if it is part of the contract between the parties. It cannot be imposed unilaterally.

Who has authorised the continuation of the oldest debt first policy?

You state in your email that the policy “remains the Council’s position”.

I would be obliged if you could advise who has made the decision to continue to include the policy as part of the rates invoice.

I note that the Crown Manager’s extent of authority in his terms of reference are limited to existing rating disputes and any legal actions relating to rates for the 2016/2017 rating year. He has no authority in respect of the 2017/2018 and 2018/2019 rating years. He also has no authority in respect of the way the rates invoice is drafted.

I understand that the chief executive is responsible for the format of the rates invoice under delegated power. The presumably means that you have made the decision based on advice received from the KDC’s lawyers. Your predecessor refused to make that advice available to me.

I now ask if you will provide me with a copy of all legal advice obtained by the KDC in respect of the oldest debt first policy.

In addition, Could you please advise if:

- The elected members have made any decision in respect of the continued use of the policy.
- The Mayor and elected members have been provided with legal advice on the validity of the policy.

Payment of rates instalment

The KDC cannot preclude ratepayers from meeting their statutory obligation to pay rates instalments as and when they fall due and then impose a statutory penalty for non-payment of those instalments. Fortunately the doctrine of estoppel prevents that sort of behaviour.

It appears that the policy is a simple but unlawful ploy to enable a local authority to charge an additional instalment penalty.

I advise that Clive Boonham and Judi Boonham will be paying the second instalment of rates for 27 Alamar Crescent by direct credit to the account of the KDC in payment of the second instalment of rates of [REDACTED]. This payment will be made pursuant to our statutory obligation to pay the instalment.

The monies are paid on the strict understanding that the monies are not to be applied to the oldest debt first. If you do not wish to accept the monies pursuant to our legal obligations, as tendered, then please return the payment to us.

Payment of all arrears of rates

I also restate the offer that whistle-blowers will pay all of the rates outstanding. That means rates but not penalties, interest or costs. The KDC has prevented us since 2012 from meeting our statutory obligation to pay rates instalments as they fall due. We are simply asking you to now accept payment of those rates.

The offer is NOT made in full and final settlement of all claims. It is an offer to settle our statutory obligations in respect of the rates only. If you believe that you have a claim for penalties, interests and costs then that is a separate issue which can be decided in due course.

I look forward to a positive response.

Regards

Clive