

Kilkenny County Council

Internal Audit Report on Vacant Site Register and Vacant Site Levies

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Report Distribution

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Introduction

Since 2017, Local Authorities must maintain a Vacant Sites Register. This is a register of lands in the Local Authority's area that are suitable for housing or in need of renewal but have not been put forward for development and are idle or vacant. This requirement was introduced by the Urban Regeneration and Housing Act 2015.

The Planning Directorate within Kilkenny County Council has responsibility for maintaining the Vacant Site Register and issuing demands for Vacant Site Levies. Those sites included on the register are subject to the Vacant Sites Levy. The Levy is intended to encourage the development of vacant sites and to reduce land hoarding. Kilkenny County Council established a Vacant Sites Register in 2017. A vacant site can be entered on the register when the Council is of the opinion that it has been vacant for a minimum of 12 months preceding its entry on the register. Currently there are 29 entries on the register at 27th June 2022.

A site entered on the register is subject to a Vacant Site Levy, payable in arrears each year beginning in 2019. For 2018, the levy was 3% of the site's market value. For 2019 and subsequent years the levy increased to 7%. The levy is payable on demand within 2 months, though arrangements may be made for the payment of the levy by instalments by the owner of the site. If not paid the levy shall be recoverable as a simple contract debt through the Courts. Any levy due will remain to be a charge on the land until paid.

A new Zoned Land Tax was announced in Budget 2022, which will eventually replace the Vacant Sites Levy. The Zoned Land Tax will apply to land which has not been developed for housing, but is serviced and zoned for residential development or a mix of uses which includes residential. The

tax will be 3% of the market value of the land and it will be collected by The Revenue Commissioners. This tax will not apply until 2024 at the earliest. In the meantime, the Vacant Sites Levy continues to apply and be operated by the Local Authority.

A Circular Letter and Residential Zoned Land Tax Guidelines for Planning Authorities was issued from the Department of Housing, Local Government and Heritage in June 2022. It is stated in these guidelines that any outstanding charges in respect of the Vacant Site Levy will remain against the land in question to be collected by the Local Authority.

Approach

Internal Audit spoke with the staff involved with compiling the Vacant Site Register and administering the Vacant Site Levies. The Vacant Site Register was examined for compliance with the relevant legislation and the Vacant Site Levies demanded by Kilkenny County Council were reviewed.

Scope & Limitations of scope

Scope of the audit included the Vacant Site Register from 2018 – 2022 and the Vacant Site Levies demanded thereon.

Audit Risk

Inadequate monitoring and follow up on levies outstanding.

Possible loss of income to Kilkenny County Council.

Invoicing errors resulting in incorrect information on Agresso Financial Management System (FMS).

Difficulty proceeding to legal action if necessary for collection of outstanding monies because of incorrect information.

Inadequate audit trail and authorisation for some amendments to demands issued.

Co-operation of Management and staff

Internal Audit received full co-operation from Council Management and Staff throughout the check and would like to thank them for their assistance.

Internal Audit Opinion

Internal Audit's findings and recommendations are detailed below. Based on this audit of the Vacant Site Register (VSR) and Vacant Site Levies (VSL) the audit opinion is reasonable assurance. There is a sufficient framework of key controls for objectives to be met. Risks are managed but could be stronger. Controls are generally applied but some lapses in the application of controls have been observed. Internal Audit recommends that the recommendations made hereunder are acted upon immediately and the required skills and resources are assigned to this work.

This report was distributed to the Planning Directorate and includes their Management Action Plan.

The report was approved by the Management Team on 2nd September 2022.

The Audit Committee reviewed the Audit Report at their meeting of 5th September 2022.

Brigid Webster, Internal Auditor

Findings, Recommendations and Management Comments

VSL Analysis	Totals	VSL Payment by Kilkenny County Council (land owner)	VSL Payment by private land owners
Total Value of VSL Demands 2018-2022	€2,484,856		
Credit Notes/cancelled/amended VSL Demands	€211,544		
Total VSL Paid	€525,660	€366,900	€159,660
Outstanding VSL	€1,747,652		
% Collection overall	21%		
% Collection less KCC payments	6%		

<i>Findings</i>	<i>Implications</i>	<i>Recommendations</i>	<i>Management Action Plan & Timeframe</i>
<p>1. 2018 Demands for VSL Levies</p> <p>Demands issued in 2018 were manual demands. These demands were not recorded on the Agresso FMS. Of the 16 demands issued to a value of €280,275 the following is the current situation;</p> <ul style="list-style-type: none"> ➤ Paid - €100,950 ➤ Outstanding - €32,831 ➤ Cancelled/amended - €157,294 <p>Subsequently 3 demands with a combined value of €20,231 were invoiced to the relevant land</p>	<p>Incomplete records as demands are not captured on Agresso FMS.</p>	<p>Demands should always be issued in Agresso FMS to ensure they are captured on the Financial Management System and ensure that records are correct. This now applies to VSR18-20 only (see recommendation below) as all others are either paid or cancelled.</p> <p>It is noted that demands from 2019 to 2021 were issued on Agresso's FMS.</p>	<p>All documentation has issued in Agresso FMS since 2019 and will continue as recommended.</p>

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<p>owners on Agresso FMS. The cancelled/amended invoices were done by way of a manual nature.</p> <p>The demand for VSR [REDACTED] remains as a manual invoice only for 2018 in the amount of €12,600. This owner has not received a demand for 2019, 2020, or 2021 despite being on the current VSR.</p>	<p>Possible loss of income as the demands for VSR18-20 are not on Agresso FMS. Kilkenny County Council may encounter issues at a later stage if the debt has to be followed up legally due to the delay in issuing demands in a timely manner.</p>	<p>An Agresso demand should be issued for [REDACTED] for VSR [REDACTED]. Internal Audit notes that there is a query regarding a possible land swap on this file. I would recommend that a decision is made on this file and demands should issue for the subsequent years as it is entered on the current VSR. In the event that circumstances change which require an amendment this can take place at a later date.</p>	<p>Under VSR [REDACTED] partial activation of the site occurred with the land owner disputing that any payment was then due as a result. The Council are engaging with the landowner to resolve the outstanding levy and has also sought legal opinion in an effort to resolve.</p>
<p>2. Financial Reconciliation</p> <p>Internal Audit requested a full financial reconciliation from the Planning Department for VSL since its inception. While some spreadsheets are maintained it appears that a full reconciliation was not available.</p> <p>Planning Staff with responsibility for the VSL had no access to Agresso FMS.</p>	<p>Inadequate tracking and monitoring of demands for payment and poor follow up of outstanding monies owed to Kilkenny County Council.</p> <p>Possible loss of income due to non-collection. Every avenue should be utilised to ensure and avoid a 'Statute of Limitations' scenario.</p>	<p>A full financial reconciliation of VSL should take place to ensure all information is captured. This will also allow for monitoring and follow up of monies outstanding in a timely manner.</p> <p>Consideration should be given to a cross Departmental approach to the administration of the Vacant Site Levy and the collection of same.</p> <p>Agresso FMS access should be provided to the relevant staff in the Planning Department to allow for this task to be undertaken as part of the management of the VSL. Relevant training should also be provided if required.</p>	<p>A full financial reconciliation statement will be completed by September 30th 2022. (see below).</p> <p>Finance and Planning Sections collaborated to agree approach to collection of debt. Having consulted with the Council's legal team two test cases are currently being pursued by solicitors engaged by Finance Section.</p> <p>Access to Agresso FMS by the relevant Planning Staff with necessary training will be completed by September 30th 2022.</p>

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<p>3. Demand for VSL errors</p> <p>Care should be taken when issuing demands to ensure they are correct and the land owners name or company name are checked against details in Land Registry and the Companies Office.</p> <p>Internal Audit noted the following errors;</p> <p>VSR [REDACTED] – two demands issued in 2021 in the amount of €168k each, only one of these demands is due.</p> <p>VSR [REDACTED] – changed ownership in 2021, therefore no levy due for 2020, demand issued for €140k.</p> <p>VSR [REDACTED] – 2 invoices issued to different owners need to be cancelled, due to change of ownership therefore both levies of €24,500 each are not due.</p> <p>VSR [REDACTED] – change of ownership applies here, therefore levy of €133k not due.</p> <p>VSR [REDACTED] – incorrect surname on demand, should be [REDACTED] not [REDACTED].</p> <p>VSR [REDACTED] – no demand issued for 2021 (€140k).</p> <p>VSR [REDACTED] – no demand issued for 2021 (€52,500k).</p>	<p>Reputational damage for Kilkenny County Council due to incorrect demands issued.</p> <p>Loss of income for Kilkenny County Council.</p> <p>Difficulty in follow up if legal proceedings are required at a later stage to recover levies outstanding.</p>	<p>One demand in the amount of €168k requires cancelling on Agresso FMS.</p> <p>Demand issued should be cancelled in the amount of €140k on Agresso FMS.</p> <p>The two demands issued should be cancelled in the combined amount of €49,000 on Agresso FMS.</p> <p>Demand issued should be cancelled in the amount of €133K on Agresso FMS.</p> <p>Amendment required on surname and possible re-issue of invoice.</p> <p>Demand should issue for 2021 in the amount of €140k.</p> <p>Demand should issue for 2021 in the amount of €52,500.</p>	<p>Actioned on the 23rd June 2022.</p> <p>Actioned on the 20th June 2022.</p> <p>Actioned on the 20th June 2022.</p> <p>Actioned on the 20th June 2022.</p> <p>This will be completed by September 30th 2022.</p> <p>Actioned 14th July 2022.</p> <p>Actioned 14th July 2022.</p>

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<p>4. Issuing demands for VSL on landowners that have appealed to An Bord Pleánala.</p> <p>Kilkenny County Council have not issued subsequent demands to those landowners that have appealed their initial demand to An Bord Pleánala.</p>	<p>Delay in issuing invoices.</p> <p>Possible loss of income to Kilkenny County Council.</p> <p>Possible issues if legal action has to be followed to recover the levies outstanding.</p>	<p>I would recommend that Legal Advice is sought to clarify whether the subsequent demands should issue to landowners who are appealing to An Bord Pleánala.</p>	<p>Legal advice has been sought by Kilkenny County Council as to the correct legal procedure under the relevant legislation. This will be completed by September 30th 2022 and appropriately actioned.</p>
<p>5. Collection of outstanding levies and legal follow up</p> <p>To date there is a very low collection rate on VSL. Internal Audit notes that legal advice was requested by Kilkenny County Council on how to progress the collection of the outstanding VSL.</p>	<p>Loss of income to Kilkenny County Council.</p> <p>Failure of landowners to activate land for residential purposes.</p>	<p>I would recommend that all avenues for the collection of the levies are used. This will include reminder letters, engaging with the landowners and using the facility for the landowners to enter into paying the levies by way of installments.</p> <p>If all methods of collection fail the necessary legal action as required by Kilkenny County Council should be taken for the collection of levies owed by way of 'simple contract debt' which is allowed for in the Urban Regeneration and Housing Act 2015. The Act allows for the VSL to be a charge on the land concerned.</p>	<p>The Council has engaged with the landowners for payment and has used the instalment process for payment. The legal advice received on the collection of payments was to pursue some well-chosen test cases vigorously. Two test cases are currently being pursued by solicitors. The outcome of these will be used to inform the debt collection approach going forward.</p>

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<p>6. Request for Credit Notes/Amendments to Demands</p> <p>Not all requests for Credit Notes/Amendments to Demands on VSL were approved by a Senior Planner. For example, two requests were made to the Finance Section for Credit Notes to be applied to demands for landowners. When Internal Audit requested the signed recommendations for these they were not available on file.</p>	<p>Inadequate segregation of duties.</p> <p>No authorisation from the Senior Planner with responsibility for the process.</p>	<p>I would recommend that all applications for Credit Notes or Amendments to VSL Demands are signed off by the Senior Planner. The recommendation from the staff responsible should contain relevant supporting documentation for the request. These documents should be available on file for audit.</p> <p>In addition, a Delegated Officers Order should be signed by the Head of Finance to authorise the strike off of any Vacant Site Levies (CE Order 2021/14, 1(v) applies).</p>	<p>All supporting documents are on the hard copy file, including memos. The recommendation to reduce was signed at the time by the Senior Planner. (copy attached)</p> <p>All recommendations for credit (VSR [REDACTED] & VSR [REDACTED]) notes will be signed off by the appropriate delegated officer. This will action by Sept 30th</p> <p>This will be completed by September 30th 2022.</p>