

## KĀPITI COAST DISTRICT COUNCIL POLICY

<b>Corporate Policy Title:</b>	<b>MEMBERS' DECLARATION OF INTERESTS</b>		
<b>Policy No:</b>		<b>Pages:</b>	1 – 18
<b>Group Responsible:</b>	People and Partnerships		
<b>Approval Dates:</b>			
– <b>Originally approved on:</b>		10 December 2015	
– <b>Current version approved on:</b>		1 November 2022	
– <b>Next review due on:</b>		1 November 2025	

### 1. POLICY OBJECTIVE(S)

- 1.1 The objective of this policy is to achieve transparent, consistent, timely and effective management of the declaration of interests by members of Council decision-making bodies (whether elected or appointed) and to ensure compliance with the requirement to keep a register of the pecuniary interests of elected members under the Local Government Act 2002 (as amended by the Local Government (Pecuniary Interests Register) Amendment Act 2022).

### 2. CONTEXT

- 2.1 Public officials, whether elected, or appointed, need to exercise care to avoid situations where they have, or appear to have, a conflict of interest.
- 2.2 Broadly speaking, a conflict of interest exists when a member could use, or uses, their position to further their own interests or those of their partner, or spouse.
- 2.3 Where members make decisions about the disbursement of public monies, ratepayers will expect them to exhibit a high degree of integrity and transparency in their official dealings. It is also important that members avoid even the perception of a conflict of interest, as far as is possible. In a small district, however, conflicts of interest are unavoidable to some degree and can arise without anyone being at fault. It is a matter of ensuring transparency through prompt disclosure.
- 2.4 The requirement to keep a register of elected members' interests under the Local Government Act 2002 through the amendments in the Local Government (Pecuniary Interests Register) Amendment Act 2022 is a further step in ensuring transparency of interests and to strengthen public trust and confidence in local government processes and decision making.

### 3. TYPES OF CONFLICTS OF INTEREST

- 3.1 A conflict of interest arises where two different interests overlap (or may overlap) and where a person's duties or responsibilities to a public entity could be affected by some other (usually private) interest or duty. The other interest or duty may exist

because of the person's financial affairs; a relationship role; or something they have said or done.

- 3.2 There are two types of interest: pecuniary and non-pecuniary. An interest, whether pecuniary or non-pecuniary, is one that exists which is greater than an interest in common with the public. Members must consider all types of interest when assessing whether their interests may conflict or be perceived to conflict with their role as an elected member. A checklist for assessing whether a conflict of interest exists or may exist in future is at Appendix 1.

### *Pecuniary interests*

- 3.3 A pecuniary interest is one that involves money.
- 3.4 The Local Authorities (Members' Interests) Act 1968 applies to the pecuniary interests of elected or appointed members, controlling the making of contracts (and subcontracts) worth more than \$25,000 (including GST) in a financial year between members and their local authority, and prohibiting members from participating in matters before the authority in which they have a pecuniary interest, other than an interest in common with the public. This includes a member's spouse or partner.
- 3.5 A member has a direct pecuniary interest if they are a party to the contract. They may have an indirect pecuniary interest if the contract is between the local authority and another person, and the member has a personal connection with that person, or could benefit from the contract.
- 3.6 A breach of the Local Authority (Members' Interests) Act 1968 could result in a fine and/or disqualification from office.
- 3.7 If there is any doubt about whether the \$25,000 limit applies in a specific situation the advice of the Chief Executive or the Office of the Auditor-General (OAG) should be sought. After consideration of circumstances the OAG may issue an exemption.<sup>1</sup>
- 3.8 The amendments to the Local Government Act 2002 as a result of the Local Government (Pecuniary Interests Register) Amendment Act 2022 come into force on 20 November 2022. The Local Government Act 2002 provisions require that a Registrar be appointed to keep a register of elected members' pecuniary interests and that a summary of the register be available to the public. Under the Local Government Act 2002 provisions, the Mayor, Councillors, and Community Board members are required to provide returns on their pecuniary interests.
- 3.9 Elected members are required to provide information on the following pecuniary interests in their return to the Registrar:
- Any company directorships, including the name of the company and a description of the main business activity of the company.
  - The name of the company and a description of its main business activity in which they hold more than 10% of the voting rights.
  - A pecuniary interest in any other company or business entity (except as an investor in a managed investment scheme).
  - The name of any employer(s) and a description of their business activities.
  - The name of any trust in which they have a beneficial interest.

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<sup>1</sup> Also see the OAG publication *Local Authorities (Members' Interests) Act 1968: A guide for members of local authorities on managing financial conflicts of interest*. Published June 2020.

- The name of any organisation or trust, and a description of their main business activities of which they are a member, which receives or has applied to receive funding from the Council, or community board to which they are elected.
  - The title of any role and the name of the organisation to which they are appointed to by virtue of being an elected member.
  - The location and a description of any real property in which they have an interest.
  - The location and a description of any real property in which they have an interest as a beneficiary of a trust.
  - The details of any travel outside of New Zealand where the travel and accommodation costs were not paid in full by the member and/or their family.
  - A description of any gift and the name of the donor of the gift (if known) that has an estimated market value of more than \$500 or where gifts from the same donor have a combined total of more than \$500.
  - Any payment for an activity in which they are involved (excluding salary paid under the Remuneration Authority Act 1977 or the Local Government Act 2002, any payment from an interest already disclosed and any payment from an activity which ceased prior to becoming a member).
- 3.10 A member may be fined up to \$5,000 if convicted of an offence under the Local Government Act 2002 for not providing a return on their pecuniary interests or for providing an inaccurate return.
- 3.11 The provisions in the Local Government Act 2002 do not replace the Local Authorities (Members' Interest) Act 1968 and members must ensure that they are meeting their obligations under both Acts.
- 3.12 The keeping of a register of a member's pecuniary interests does not remove the burden on members to disclose any conflicts of interest (pecuniary or non-pecuniary) relating to matters on an agenda at that meeting. It is prudent for members to state any conflict of interest, ask for that conflict of interest to be recorded in the minutes, and to refrain from engaging in debate on the matter, from voting on the matter and preferably physically withdraw from the meeting. Members should refer to the Elected Member Code of Conduct for additional guidance.

#### *Non-pecuniary interests*

- 3.13 This type of interest can arise through a variety of circumstances. It is an interest which the member holds that is greater than an interest held by the public generally. The following list of examples of non-pecuniary interests is not intended to be exhaustive – advice should be sought from the relevant Group Manager or Chief Executive (or the OAG) on a case-by-case basis as required. Members are also free to obtain their own independent legal advice in any circumstance.
- 3.14 The member's interest could be:
- Holding another public office
  - Being an employee, advisor, director or partner of another business or organisation
  - Pursuing a business opportunity
  - Being a member of a club, society or association (especially as an office holder or where money is involved)
  - Having a professional or legal obligation to someone else (eg. as a trustee)

- Being a spouse, relative or close friend of someone who has one of these interests (or who could otherwise be personally affected by a decision of the public entity).

3.15 If a member does not declare a non-pecuniary interest it is not an offence under either the Local Government Act 2002 or the Local Authority (Members' Interests) Act 1968. However not declaring such an interest creates a reputational risk for both the member and the council.

#### **4. MANAGING CONFLICTS OF INTEREST**

##### **Managing Conflicts of Interest under the Local Government Act 2002**

###### Appointment of a Registrar

4.1 The Local Government Act 2002 requires the appointment of a Registrar. The existing delegations to the Chief Executive allow them to appoint a staff member as Registrar.

4.2 It is expected that the Governance and Legal Services Manager will be appointed as the Registrar for Kāpiti Coast District Council. This sits alongside the functions as the Privacy Officer as there are also privacy requirements to be observed in keeping and updating the register.

###### Responsibilities of the Registrar

4.3 The Local Government Act 2002 does **not** require a Registrar to obtain a return from an elected member, or notify a member if they fail to make a return by the due date, or notify a member if there is any error or omission in their return. The onus is on the elected members themselves to ensure they provide a return and ensure the content of the return is accurate. However, the Registrar will provide guidance and advice on the process of completing returns on pecuniary interests. The Registrar will send elected members a form via email (Appendix 2) for completing their pecuniary interests return. The form will be sent three weeks prior to the due date for the return. A reminder will be sent to elected members one week prior to the due date for the return and again on the day prior to the return being due. The Registrar will also advise elected members on how to correct a return should an omission or error be discovered by an elected member after filing their return.

4.4 The Registrar will ensure that a register of members' interests is kept and that a summary of the register is available for the public to view on the Council website. Each of the public libraries have computers which will allow the public to access the register online. The Registrar will also update the register if a member corrects their return (having made an error or omission). The register will show that a correction or addition has been made and the date upon which the correction or addition was made.

4.5 The information provided by members in their pecuniary interests returns will be kept for seven years. After seven years have passed, that information will be destroyed. The Registrar will ensure that the information provided by members in their pecuniary interests return is only used or disclosed in accordance with the purpose of the register.

###### Completing returns

4.6 Elected members must provide returns to cover a 12 month period, being the 12 month period that ended the day that is one month before the due date set for

each year of the triennium In Year 1 of a new triennium, the return is due 120 days after the date on which the member comes into office under section 115 of the Local Electoral Act 2001. In Year 2 and Year 3, the return is due on the last day of February.

- 4.7 There is scope for a small number of days to not be covered by the return periods due to a misalignment of dates between Year 1 and Year 2. To avoid a time period being omitted, in Year 2, it will be the policy of the Kāpiti Coast District Council to ask members to include in their return the period from the last day of the return in Year 1 to 29 January of Year 2.

#### Referral of possible offences to the Secretary for Local Government

- 4.8 If an elected member does not provide a return, or provides a return which is incorrect, they are liable to have committed an offence under section 235 of the Local Government Act 2002. Each offence is punishable by a fine of up to \$5,000.
- 4.9 The Local Government Act 2002 is silent as to whether and in what way councils are required to report possible offences to the Secretary of Local Government.
- 4.10 In the absence of guidance in the legislation, it will be the policy of Kāpiti Coast District Council that if an elected member fails to provide their return by the due date or there is an error in the return, the Registrar will contact the member by email. The Registrar will advise the member that their return has not been received or that there is an error in the return and seek an explanation. If an elected member continues to not provide their return without a reasonable explanation, and more than 30 days have passed since the deadline for filing their return, the Chief Executive may make a referral to the Secretary for Local Government. The elected member will be advised by the Chief Executive that a notification will be made to the Secretary for Local Government.
- 4.11 The responsibility for charging elected members with an offence under section 235 of the Local Government Act sits with the Secretary for Local Government (the Chief Executive of the Department of Internal Affairs).

#### **Managing Conflicts of Interest under the Local Authority (Members' Interests) Act 1968**

- 4.12 Under the Local Authority (Members' Interests) Act 1968, it is up to each member to determine what interests or conflicts might be material in each case, and if doubt exists, further advice should be sought from the Chief Executive or the Office of the Auditor-General. In making their judgements, members should consider both the actual conflicts of interest that might arise, and the reputational risk to the member and to Council or a possible perception that there might be such a conflict.<sup>2</sup>
- 4.13 To align with the new provisions in the Local Government Act 2002, members will be asked to complete additional questions within the same form which deal with the requirements on members under the Local Authority (Members' Interests) Act 1968 to disclose the pecuniary interests and non-pecuniary interests of themselves and their spouse.

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<sup>2</sup> See also The OAG publication: *Managing conflicts of interest: a guide for the public sector*. (June 2020)

- 4.14 The Registrar will treat any pecuniary and non-pecuniary interests disclosed by the member in the same manner as those which are disclosed in the member's return required by the Local Government Act 2002. It is acknowledged that there is likely to be some cross-over between the pecuniary interests that are declared under the Local Authority (Members' Interests) Act 1968 and those which are required to be declared under the Local Government Act 2002.
- 4.15 Six months after the due date for members to provide their returns under the Local Government Act 2002, the Registrar will send all members a copy of the register and ask that members check the information recorded against their name and confirm that either there are no changes to be made, or if there are additions to be made to the register, then to complete the forms and return them to the Registrar who will update the register.
- 4.16. The Register will be subject to scrutiny by auditors at least annually, or as requested.

## **5. APPOINTED MEMBERS**

- 5.1 The Council has a number of appointed members who are members of committees and subcommittees. Community Representatives are appointed to some Grants Allocation Subcommittees, Independent Members are appointed to the Audit and Risk Subcommittee and Mana Whenua representatives are appointed to various committees and subcommittees. Community representatives, Independent Members and Mana Whenua Representatives are able to vote on the committees and subcommittees that they are appointed to.
- 5.2 While there is no statutory requirement for a register of interests to be kept for appointed members of committees and subcommittees, Council will ask appointed members to complete the same forms that elected members are required to complete and return and the details will be kept on a register which will also be available to view on the Council website.
- 5.3 The details of appointed members' pecuniary and non-pecuniary interests will be treated in the same manner as the details provided by elected members.
- 5.4 While appointed members will be asked to complete the same forms as elected members, they are not liable to be charged with an offence under the Local Government Act 2002 if they do not provide a return of their pecuniary interests. As is the case for elected members, it is prudent for appointed members to declare any conflicts of interest in a meeting and to have that conflict recorded in the minutes. Appointed members should also refrain from engaging in debate or voting on the matter and preferably physically withdraw from the meeting.

## **6. DEFINITIONS**

**Council** refers to the Elected Member body representing the Kāpiti Coast District (i.e. the Mayor, Councillors and Community Board members).

**Member** means an elected member of Council, a person appointed by Council to a Council decision-making body such as a Committee or Subcommittee or a community board member.

**Elected member** means the Mayor, Councillors and Community Board members.

**Appointed member** means community representatives, independent members and mana whenua representatives.

**Pecuniary interest** is an interest that involves an actual or potential financial gain or loss. Money does not need to actually change hands for an interest to be pecuniary.

**Non-pecuniary interest** is one that does not have a financial component but which may arise from personal or family relationship or involvement in sporting, social, or cultural activities.

**Local authority** is the Council .

## 7. REFERENCES

7.1 Relevant legislation, codes, standards and/or external references (including other Council policies) associated with this policy include:

- *Local Authorities (Members' Interests) Act 1968: A guide for members of local authorities on managing financial conflicts of interest*– Office of the Auditor General June 2020
- Local Government Act 2002
- *Managing Conflicting Interests in Local Government: The Local Authorities (Members' Interests) Act 1968 and Associated Issues* – Department of Internal Affairs August 2011
- *Managing Conflicts of Interest: a guide for the Public Sector* – Office of the Auditor-General June 2020

## 8. EXCLUSIONS

8.1 This policy does not cover declarations of expenses associated with local body elections (which are dealt with through a separate process and legislation), nor with issues of predetermination or bias associated with voting by members.

## 9. RELATED POLICIES

Code of Conduct for Elected Members 2019-2022 Triennium

## 10. REVIEW PROCESS

This policy will be reviewed every three years.

## 11. AVAILABILITY OF POLICY

11.1 This policy and the associated Register of Interests will be available on the Council website [www.kapiticoast.govt.nz](http://www.kapiticoast.govt.nz) or on request.

## 12. POLICY HISTORY


Version	Date	Policy Owner	Brief Description of Change	Approved By
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1	27 October 2022	Democracy Services	Office of Auditor General publications updated.  Declarations of interest pro-forma updated  Updated to take account of changes made to the Local Government Act 2002 by the Local Government (Pecuniary Interest Register) Amendment Bill 2022	Darren Edwards
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### 13. POLICY AUTHOR

Author name:	<b>Fiona Story</b>
Author position:	<b>Senior Advisor, Democracy Services</b>

### 14. SLT APPROVAL

Chief Executive name:	Darren Edwards
Chief Executive signature:	
Date:	01/11/2022

### Appendices

Appendix 1 Self-assessment checklist

Appendix 2 Local Government Act 2002 pro-forma



**SELF-ASSESSMENT CHECKLIST FOR IDENTIFYING A CONFLICT OF INTEREST  
(WHETHER PECUNIARY OR NON-PECUNIARY)**

(1) Describe the matter or issue being considered and the situation in which you are involved.

(2) What is your public duty in serving the public interest?

**Making an assessment**

Would I / my spouse or partner benefit from or be detrimentally affected by my proposed decision or action? YES/NO

Could there be benefits for me that would cast doubt on my objectivity? YES/NO

Do I have a current or previous personal, professional, or financial relationship or association of any significance with an interested party? YES/NO

Do I or my spouse/partner stand to gain or lose financially in some covert or unexpected way? YES/NO

Have I contributed in a private capacity in any way to the matter the Council is dealing with? YES/NO

Have I made any promises or commitments in relation to the matter? YES/NO

Have I received a benefit or hospitality from someone who stands to gain or lose from my proposed decision or action? YES/NO

Am I an office bearer of an association, club or professional organisation or do I have particular ties and affiliations with organisations or individuals who stand to gain or lose by my proposed decision or action? YES/NO

Do I still have any doubts about my proposed decision or action? YES/NO

What assessment would a fair-minded member of the public make? YES/NO

If I saw someone else doing this, would I suspect that they might have a conflict of interest? YES/NO

How would I feel if my actions were highlighted in the media? YES/NO

Is the matter or issue one of significant public interest that would lead to my proposed decision or action attracting greater scrutiny? YES/NO

### **Pecuniary Interests Return Form**

#### **Information for members:**

Sections 54A to 54I of the Local Government Act 2002 (**LGA**) requires members to provide annual returns of certain pecuniary interests. You can use this form to provide your return.

You are responsible for complying with your obligations under the LGA relating to this return.

You can, however, seek advice and guidance from the Registrar of the members' pecuniary interests register on how to complete your return.

For any advice and guidance please contact [democracy.services@kapiticoast.govt.nz](mailto:democracy.services@kapiticoast.govt.nz).

#### **How to file this return:**

You can file your completed return form with the Registrar via email to [democracy.services@kapiticoast.govt.nz](mailto:democracy.services@kapiticoast.govt.nz) or at 175 Rimu Road, Private Bag 60601, Paraparaumu 5254.

The due date for the return is *[insert date]*.

#### **Privacy statement:**

Your personal information is being collected so that the Council and the Registrar can comply with their obligations under the LGA, particularly those in sections 54A and 54G.

You are required to provide this information under sections 54C to 54H of the LGA. Failure to do so will constitute an offence under section 235 of the LGA.

Your personal information will be used and disclosed in accordance with the purpose of the register set out in section 54B of the LGA, which is to record members' interests so as to provide transparency and to strengthen public trust and confidence in local government processes and decision-making. The information will be retained for 7 years from the date on which you provide it, and will then be removed from the register.

A summary of your personal information will be made publicly available by the Council, in accordance with section 54A of the LGA. In addition, your personal information will constitute official information, and so is subject to the Local Government Official Information and Meetings Act 1987.

You have the right to access and seek correction of your personal information under the Privacy Act 2020. This can be done by contacting *[insert contact details]*.

**Return:**

This return is made under section 54C of the Local Government Act 2002, providing information required under sections 54E and 54F of that Act.

**Member's name:**

\_\_\_\_\_

**12 month period covered by this return:**

\_\_\_\_\_

- |   |                          |                          |
|---|--------------------------|--------------------------|
|   | <b>Yes</b>               | <b>No</b>                |
| 1. Are you the director of a company?<br><i>(section 54E(1)(a))</i> | <input type="checkbox"/> | <input type="checkbox"/> |

If yes, please provide the name of the company (or companies) and a description of their main business activities:

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\_\_\_\_\_

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|--|--------------------------|--------------------------|
|  | <b>Yes</b>               | <b>No</b>                |
| 2. Do you hold or control more than 10% of the voting rights in a company?<br><i>(section 54E(1)(a))</i> | <input type="checkbox"/> | <input type="checkbox"/> |

If yes, please provide the name of the company (or companies) and a description of their main business activities:

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3. Do you have a pecuniary interest in any other company or business entity (except as an investor in a managed investment scheme)?  
(section 54E(1)(b))

**Yes**   **No**

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If yes, please provide the name of the company (or companies) or business entity (or entities) and a description of their main business activities:

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4. Are you employed?  
(section 54E(1)(c))

**Yes**   **No**

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If yes, please provide the name of your employer(s) and a description of their main business activities:

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5. Do you have a beneficial interest in a trust?  
(section 54E(1)(d))

**Yes**   **No**

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If yes, please provide the name of the trust(s):

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6. Are you a member of an organisation, a member of the governing body of the organisation, or a trustee of the trust **and** that organisation or trust receives, or has applied to receive, funding from the Council, local board or community board to which you are elected?

**Yes No**

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*(section 54E(1)(e))*

If yes, please provide the name of the organisation(s) or trust(s) and a description of their main business activities:

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7. Are you appointed to any organisation by virtue of being an elected member?

**Yes No**

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*(section 54E(1)(f))*

If yes, please provide the title for your appointed role(s), the name of the organisation(s), and a description of them:

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8. Do you have a legal interest, other than as a trustee, in any real property?

**Yes No**

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*(section 54E(1)(g))*

If yes, please provide the location of the real property (eg suburb and city, or town) and a description of the nature of property (eg. family residence, rental property, or commercial property):

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9. Are you the beneficiary of a trust that holds real property (but excluding a trust that is a unit trust you have already disclosed under question 5 or a trust that is a retirement scheme whose membership is open to the public)?  
*(section 54E(1)(h))*

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

If yes, please provide the location of the real property (eg suburb and city, or town) and a description of the nature of property (eg. family residence, rental property, or commercial property):

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10. Have you travelled to any country (other than New Zealand) where your travel and accommodation costs were not paid in full by you and/or a member of your family?  
*(section 54F(1)(a))*

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

*(In this question, "family" means the member's spouse, partner, parent, grandparent, child, stepchild, foster child, grandchild, or sibling.)*

If yes, please provide the name of the country, the purpose of travelling to the country, the name of each person who contributed (in whole or in part) to the costs of travel to or from the country to or any accommodation costs incurred by the member while in the country (if more than one country was travelled to, provide all of this information for each country):

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**Yes No**

11. Have you received any gift (other than a gift from a family member, unless you consider that gift should be disclosed taking into account the purpose of the members' pecuniary interests register) that:

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- has an estimated market value in New Zealand of over \$500; or
- when combined with all other gifts from the same donor, have a total estimated market value in New Zealand of over \$500?

*(section 54F(1)(b))*

*(In this question:*

*“gift” includes hospitality and donations in cash or kind, but excludes electoral expenses, and*

*“family” means the member's spouse, partner, parent, grandparent, child, stepchild, foster child, grandchild, or sibling.)*

If yes, please provide a description of the gift(s) and the name of the donor of the gift(s) (if known or reasonably ascertainable by you):

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**Yes No**

12. Have you received any payment for an activity in which you are involved, excluding:

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- any salary or allowance paid to you under the Remuneration Authority Act 1977 or the Local Government Act 2002
- any payment received from an interest that has already been disclosed in this return; or
- any payment made in respect of an activity that you ceased to be involved in before becoming a member?

*(section 54F(1)(c))*

If yes, please provide a description of the payment(s) received by you:

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13. Do you or your spouse/partner have a direct pecuniary interest in the matter before the Council (sections 6 and section 3(1) of the Local Authorities (Members' Interests) Act 1968)

Yes	No

If yes, please provide a description of that direct pecuniary interest:

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14. Are you or your spouse/partner involved in a company or incorporated society that has a pecuniary interest in the matter before the Council, including where:  
 (i) either you or your spouse/partner, singly or together, own 10% or more of the share in a company (or another company controlling  
 (ii) either you or your spouse/partner are a shareholder of the company (or another company controlling the company) and either of us is the managing director or general manager of the company or the controlling company; or  
 (iii) either you or your spouse/partner are the managing director or general manager of the company and either of you is a shareholder of another company controlling that company (sections 6 and section 3(1) of the Local Authorities (Members' Interests) Act 1968)

Yes	No

If yes, please provide the name of the company (or companies) and a description of their main business activities:

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	<b>Yes</b>	<b>No</b>
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15. Do you or your spouse/partner hold any non-pecuniary interests, such as membership of a board, trust, club and/or committee?

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If yes, please provide the name of the board, trust, club and/or committee and the position held by your or your spouse/partner.

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	Yes	No
16. Do you have a further declaration to make due to an error or omission in a previous declaration?		

If yes, please provide the date of the return which contained an error or omission and details of the error and omission which now need to be added to the Register.

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