



# Directors' Conflicts of Interest Policy

## Brief description

This Policy outlines the principles that apply to all Directors of Gladstone Ports Corporation Limited and its subsidiaries in relation to Conflicts of Interest.

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If you require any further information, please contact the Custodian.

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The current version of this Policy is available on GPC's Intranet.

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# 1 Terms and definitions

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In this Policy:

**"Affiliate"** means a:

- (a) relative of a Director;
- (b) relative of a Director's spouse;
- (c) body corporate, partnership, trust or other entity or arrangement which a:
  - (i) Director;
  - (ii) relative of a Director; or
  - (iii) relative of a Director's spouse,or any combination of them controls (having regard to section 50AA of the Corporations Act, where relevant); or
- (d) body corporate in which a:
  - (i) Director;
  - (ii) relative of a Director;
  - (iii) relative of a Director's spouse,or any combination of them own or hold in aggregate more than 20% of the voting shares.

**"Conflict of Interest"** (or **"Conflict"**) includes actual, perceived or potential conflicts of interest, as described in section 3 of this Policy.

**"Constitution"** means:

- (e) for a Director of GPC, the GPC constitution; or
- (f) for a Director of a subsidiary of GMPS, the constitution of the relevant subsidiary.

**"Corporations Act"** means the *Corporations Act 2001* (Cth).

**"Director"** means a director of GPC or a subsidiary of GPC.

**"GOC"** means a government owned corporation within the meaning of the GOC Act.

**"GOC Act"** means the *Government Owned Corporations Act 1993* (Qld).

**"Material Personal Interest"** has the meaning described in section 4.1 of this Policy.

Terms that are capitalised and not otherwise defined in this Policy are defined in the GPC Corporate Glossary Instruction (as listed in Appendix 1 – Related documents).

## 2 Introduction

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### 2.1 Purpose

The purpose of this Policy is to ensure Directors are aware of and understand their obligations to identify and disclose Conflicts of Interest and to ensure that Conflicts of Interest are dealt with by the Board in a transparent and accountable manner.

### 2.2 Scope

This Policy applies to all Directors of GPC and its subsidiaries. There is a separate Conflicts of Interest Policy for Employees of GPC and its subsidiaries.

For Directors of subsidiaries of GPC, this Policy should be read as though the references to "GPC" are references to the relevant subsidiary.

### 2.3 Objectives

This Policy is designed to:

- (a) protect the public and shareholding Ministers' interests by ensuring that Directors:
  - (i) act within the limits of their proper roles;
  - (ii) focus on the merits of each case without regard for private interests, personal attitudes or opinions;
  - (iii) comply with the law and company policies without bias or favour; and
  - (iv) act with integrity;
- (b) support transparency and accountability by ensuring that Conflicts of Interest are managed fairly and effectively and that the process for identifying, disclosing and managing Conflicts of Interest is transparent;
- (c) promote individual responsibility and personal example by helping Directors understand how to identify, disclose and manage any Conflicts of Interest that arise;
- (d) build a supportive organisational culture by encouraging effective decision-making when Conflicts of Interest arise and encouraging the full and frank disclosure of Conflicts of Interest by Directors; and
- (e) ensure that GPC, its subsidiaries and Directors comply with the requirements of the Corporations Act, GOC Act and the Constitution.

## 3 Conflicts of Interest

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A Conflict of Interest arises where a person's personal interests or duties to another organisation are inconsistent with, or conflict with, the person's duties to GPC.

There are three types of Conflict of Interest:

- (a) actual conflicts of interest, where a person has a direct conflict between their official duty to act in the best interests of GPC and their own personal interests;
- (b) perceived conflicts of interest, where it could be perceived or it appears that a Director's personal interests could improperly influence the performance of their duties, whether or not this is in fact the case; and

- (c) potential conflicts of interest, where it can be reasonably expected that a Director might, in the future, have a conflict between their duty to act in the best interests of GPC and their personal interests.

The following situations are examples of where a Conflict of Interest may arise:

- (a) where a Director or an Affiliate stands to gain financially from any business dealings or services provided by GPC;
- (b) where a Director is in any way interested in a contract or proposed contract with GPC whether directly or indirectly;
- (c) where a Director or an Affiliate is a service provider, supplier, adviser or consultant to GPC;
- (d) where a Director or an Affiliate receives hospitality or gifts from an actual or potential supplier to GPC;
- (e) where a Director or an Affiliate holds a position on the board or committee of another organisation which may give rise to a conflict between the duty owed to GPC and the duty owed to the other organisation;
- (f) where a Director uses confidential information received by them in their capacity as Director to personally benefit from that information;
- (g) where an Affiliate benefits in some way from the Director's position on the Board.

Categories of GPC activity with an increased likelihood of giving rise to Conflicts of Interest include: awarding contracts to suppliers, service providers and consultants or advisors; administering grants or community funding programs; entering into service agreements, project agreements or joint venture arrangements with a third party; and recruitment decisions.

It is not possible to list all of the circumstances in which a Conflict of Interest may arise; accordingly, it is necessary for Directors to exercise sound judgement. The onus is on the Director to take the appropriate action and declare a Conflict of Interest where necessary and seek appropriate advice when in doubt (as detailed further in section 4.5 of this Policy). Any conflict between a Director's interests and those of the organisation must be resolved in favour of GPC.

## 4 Disclosure of personal interests by Directors

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### 4.1 Disclosure obligations

Sections 191-195 of the Corporations Act set out detailed provisions requiring the disclosure and management of "Material Personal Interests". The term "Material Personal Interest" is not defined in the Corporations Act but can be interpreted to mean an interest that has the capacity to influence the actions taken or decisions made by a Director in respect of GPC. The interest does not necessarily need to be of a financial or pecuniary nature.

The Corporations Act requirements are reflected to a large extent in this Policy and articles 6.3 to 6.5 of the Constitution.

Directors are required to familiarise themselves with their obligations under the *Corporations Act 2001* (Cth) and the Constitution. In particular, Directors should be aware that:

- (a) section 191 imposes a duty on a Director who has a Material Personal Interest in a matter that relates to the affairs of the company to give the other Directors notice of the interest;

- (b) the duty in section 191 is subject to exceptions (which are reflected in this Policy in section 4.2 below); section 192 allows a Director to give the other Directors 'standing notice' about an interest, which must be tabled at the next Board meeting if not given at a Board meeting in the first instance;
- (c) interests disclosed under section 191 and section 192 must be recorded in the Board minutes; and
- (d) article 6.4 of the GPC Constitution and section 195(1) of the Corporations Act provide that a Director must not be present, and is not entitled to vote, at a Board meeting when the Board considers a matter in which that Director has a Material Personal Interest. However, section 195(2) of the Corporations Act provides that the Director may be present and vote if the non-conflicted Directors have passed a resolution that they are satisfied that the interest should not disqualify the Director from voting or being present.

## 4.2 Conflicts of Interest Declaration Form

Each Director is required to complete a Directors' Conflicts of Interest Declaration Form ("**Declaration**") (see Appendix 1) within one month of appointment and ensure that the Declaration is kept up to date throughout their term of appointment.

The Company Secretary will annually request each Director to review and update their Declaration. It is the responsibility of the Directors to update their Declaration at all other times in order to comply with this Policy, either by:

- (a) lodging an updated Declaration; or
- (b) declaring the new or changed Conflict of Interest at the next Board meeting.

While not an exhaustive list, types of interests that Directors should consider when completing the Declaration include:

- (a) other directorships;
- (b) employed roles (including previous roles and future prospects);
- (c) financial interests including:
  - (i) shares, debentures, rights of options and other securities (excluding shareholdings of less than 5% in listed companies);
  - (ii) unit trusts, leasing schemes and other managed investments;
- (d) interests as a trustee or beneficiary of a trust;
- (e) interests in any real property, contracts or business ventures that may be relevant to GPC;
- (f) being the recipient of gifts, discounts, concessions or hospitality from a person or entity who may have dealings with GPC;
- (g) relationships with Affiliates who have an interest (including as a director, officeholder, employee or significant investor) in an entity which has or may have dealings with GPC (except where the interest is a shareholding of less than 5% in a listed company);
- (h) prejudice based on friendship, animosity or personal involvement with another person or group of persons, including through membership of or participation in professional, sporting, social, industrial, religious or cultural organisations.

Directors must honestly assess whether any interest could affect, or appear to affect judgment, objectivity or independence. Any such interests must be disclosed in the Declaration.

The types of interests which Directors do not need to disclose include interests which:

- (a) arise in relation to a Director's remuneration as a director of GPC;
- (b) arise because a Director is a guarantor or has given an indemnity or security for all or part of a loan, or proposed loan, to GPC;
- (c) arise merely because a Director has a right of subrogation in relation to a guarantee or indemnity referred to in paragraph (c) above;
- (d) relate to a contract that insures, or would insure, a Director against liabilities the Director incurs as an officer of GPC (but only if the contract does not make GPC the insurer);
- (e) relate to any payment by GPC in respect of an indemnity permitted under section 199A of the Corporations Act or any contract relating to such an indemnity.

### **4.3 Conflicts of Interest Register**

All declarations of interest made by Directors will be kept by the Company Secretary in a Conflicts of Interest Register ("**Register**").

The Company Secretary is responsible for keeping the Register up-to-date, including by:

- (a) collating Declarations and ensuring the Register includes all interests disclosed in the Declarations; and
- (b) updating the Register after each Board meeting to include any new interests disclosed by Directors and recorded in the Board minutes.

The Company Secretary will keep the Board informed of entries to the Register and will ensure the Register is available at each Board meeting.

All personal information contained in the Register must be treated by the Company Secretary and Directors as confidential and must not be disclosed except to the extent necessary to implement this Policy.

### **4.4 Disclosure at Board meetings**

'Conflicts of interest Declarations' as recorded in the Register will be a standard agenda item at the beginning of each Board meeting. At the start of the meeting, the Chair will ask all Directors to state whether their interests as recorded in the Register are complete and correct. If there are no changes, the minutes will note that 'all Directors present affirmed that their entry in the Register remains complete and correct'. If any changes are declared, these will be recorded in the minutes of the Board meeting for entry into the Register.

In addition to checking whether the Register is current and correct, the Chair must also ask at the start of each Board meeting if any Director present has an interest in respect of any item on the agenda. If a Director does have an interest they must declare it, including the nature and extent of any Conflict that results, or may result, from it. An interest must be declared even if it is already recorded in the Register. If a Director becomes aware of a Conflict of Interest during the course of discussion on an agenda item, they must declare the Conflict immediately. The Board may require all relevant information in order to assess the declared Conflict and unanimously agree on the type of Conflict. The declaration and assessment will be recorded in the minutes of the Board meeting (as detailed in section 5.3 below) for entry into the Register.

## 4.5 Seeking advice

Where a Director is concerned (but is not certain) a Conflict of Interest exists, they should assume (and act as though) a Conflict does exist for the time being and seek advice from the Company Secretary or the Chair of the Board (or the Chair of the Audit and Risk Committee, where the concerned Director is the Chair of the Board).

## 4.6 Undeclared Conflicts

Where the Company Secretary or a Director believes that another Director has an undeclared Conflict of Interest, they should approach the relevant Director or notify the Chair of the Board (or the Chair of the Audit and Risk Committee where the concern relates to the Chair of the Board).

The Chair should discuss the matter with the relevant Director to enable them to declare the interest, if it exists.

If there is any dispute as to whether a Conflict of Interest exists, the Chair may put the issue to the non-conflicted Directors to make a decision.

# 5 Management of Conflicts of Interest by the Board

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## 5.1 Assessment of whether a Conflict arises

Where a personal interest is disclosed by a Director, the non-conflicted Directors must consider and make a decision as to whether the personal interest gives rise to a Conflict of Interest.

For a Conflict of Interest to arise, it is necessary to establish a causal connection to a personal benefit.

As the non-conflicted members consider the facts, they should do so from the perspective of the 'reasonable person', or the 'fair-minded lay observer'.

## 5.2 Management of Conflicts

If the non-conflicted Directors determine that a Conflict of Interest does exist, the non-conflicted Directors must then approve a plan which outlines how the Conflict will be managed by the Board ("**COI Management Plan**"). A conflicted Director must comply with the COI Management Plan.

Options for managing a Conflict of Interest can include:

- (a) Record – details of the Conflict of Interest are recorded in the minutes but the Director is allowed to participate in discussion and decision-making on the matter. Monitoring occurs to check whether this remains the appropriate option.
- (b) Restrict – the Director's involvement in discussion or decision making on the matter is restricted to the extent that matches the public interest. Monitoring occurs to check whether this remains the appropriate option.
- (c) Remove – the Director leaves the room and does not participate at all in the 'conflicted' matter.
- (d) Recruit – an impartial third party is engaged to provide advice (e.g. a probity adviser, lawyer, or governance expert).

- (e) Relinquish or resign – the Director relinquishes their private interest or steps down from their role with the other organisation on a temporary or permanent basis. Alternatively, the Director resigns from the Board itself.

The standard approach to be taken is that a Director with a Conflict of Interest should not participate in any discussions or decision-making relating to the conflicted matter and should remove themselves from meetings while the conflicted matter is being discussed and voted upon.

However, a conflicted Director may be present and vote on a matter if the non-conflicted Directors decide that the Director's interest is not likely to give rise to any real risk of conflict and should not disqualify the Director from being present or voting. The reasons for any such decision must be recorded in the minutes (as detailed in section 5.3 below) and the appropriateness of this decision should be monitored on an ongoing basis.

### **5.3 Minutes**

Where a Director has declared a personal interest, the following matters should be recorded in the relevant minutes:

- (a) the nature and extent of the Director's interest and the fact of it being raised in the meeting;
- (b) how the Director's interest relates to the affairs of the company (or the particular matter under consideration to which it relates);
- (c) any decisions by the Board (or voluntary decisions made by the Director) as to:
  - (i) whether there is any real risk of a Conflict; and
  - (ii) if so, how the Conflict is to be managed and the reasons for that decision; and
- (d) the point at which a Director enters or exits the meeting room as a result of a Conflict of Interest (if applicable).

### **5.4 Distribution of Board material**

Where a Director has a Conflict of Interest, that Director should not receive particular Board materials or may need to be provided with redacted materials. This could include both:

- (a) agendas and Board papers relating to a matter in which the Director has a Conflict of Interest;
- (b) minutes of Board meetings to the extent that a Director was absent from the meeting due to a Conflict of Interest.

The conflicted Director may request, or the Chair of the Board may determine, that the Company Secretary should not provide the relevant material to the Director. The Company Secretary should consult the Chair of the Board as to which material the conflicted Director should receive (or consult the Chair of the Audit and Risk Committee where the Chair of the Board is the conflicted Director). If the conflicted Director objects to the withholding of information, the matter should be discussed and determined by the Board without the presence of the conflicted Director.

## **6 Breaches of this Policy**

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A Director who may have breached this Policy must notify the Chair of the Board (or, where the relevant Director is the Chair, the Chair of the Audit and Risk Committee) immediately.



If the Chair is of the view that a breach has not occurred, the Board will determine at the next scheduled Board meeting, and record in the minutes, whether a breach has occurred.

If the Chair is of the view that a breach has occurred, he or she will arrange for the Board to determine on an urgent basis, and record in the minutes, whether a breach has occurred.

If the Board determines that a breach has occurred, the Chair will notify the shareholding Ministers in writing as soon as practicable.

A Director who believes that another Director may have breached this Policy but not yet notified the Chair will bring this to the attention of the Chair or will approach the other Director, who will then notify the Chair.

## 7 Review

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The Company Secretary must arrange for this Policy to be periodically reviewed at intervals not exceeding two years. The review will involve consideration of the effectiveness of this Policy in managing Conflicts of Interest.

## 8 Appendices

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### 8.1 Appendix 1 - Related Documents

#### (a) Gladstone Ports Corporation documents

The following documents relate to this Policy:

Type	Document number and title
<b>Tier 0:</b> Charter	#159390 Board Charter
<b>Tier 1:</b> Policy	
<b>Tier 2:</b> Standard/Strategy	#722669 Recruitment Standard #1311978 Probity in Procurement Standard
<b>Tier 3:</b> Specification/ Procedure/Plan	#1455068 Gifts and Benefits Procedure
<b>Tier 4:</b> Instruction/Form/ Template/Checklist	#1810447 Directors' Conflicts of Interest Declaration Form
<b>Other</b>	#1765117 Centralised Conflicts of Interest Register  Identifying, Disclosing and Managing Personal Interests: Developing an Interests Management Framework to Guide Practice for Multi-Member Decision-Making Bodies

## 8.2 Revision History

Revision date	Revision description	Author	Endorsed by	Approved by
18/05/2022	v1 Amended to accommodate improvements from conflict of interest framework review by Clayton Utz.	Mariette Lansdell, Acting Company Secretary	Craig Haymes, Chief Executive Officer	Board
	v2 Published			