

# Heritage Council of NSW – Terms of Reference

These Terms of Reference set out the purpose, membership, responsibilities, authority and operations of the Heritage Council of NSW (the Council).

These Terms of Reference are consistent with the *NSW Government Boards and Committee Guidelines* (NSW Department of Premier and Cabinet, 2015) and *Classification and Remuneration Framework for NSW Government Boards and Committees* (Public Service Commission, 2019), and complement the Heritage Council functions as set out in the *Heritage Act 1977* (Heritage Act) and the membership and procedure provisions in Schedule 2 of that Act.

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## Purpose of the Heritage Council of NSW

The Heritage Council of NSW was established by the Heritage Act in response to strong community concerns about the loss of heritage in NSW to under-regulated demolition and development.

The Council's statutory functions include recommending to the Minister what is entered in and removed from the State Heritage Register, advising and making recommendations to the Minister on a wide range of heritage issues, conducting community education about heritage, and making decisions about applications for works to items listed on the State Heritage Register.

Council advice may be directed to the Minister responsible for heritage, NSW Government agencies, local government, the heritage industry, heritage owners or, as community education, to the general public.

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## Establishment

The Council is established under the Heritage Act.

## Responsibilities of the Council

The Council has statutory advisory and decision-making functions prescribed by the Heritage Act. The Council's functions, as defined in section 21 of the Act, are to:

- make recommendations to the Minister on matters relating to the exercising of the Minister's functions under the Act
- make recommendations to the Minister relating to the conservation, exhibition or display, provision of access and publication of information on items of State or local heritage significance

- carry out investigations, research and inquiries about the above matters, including by coordinating consultations, conferences, seminars and discussions
- maintain a database (State Heritage Inventory) listing items of State and local heritage significance
- conduct community education on NSW environmental heritage
- make submissions on environmental studies, planning instruments and environmental impact statements prepared under the *Environmental Planning and Assessment Act 1979* in so far as they relate to environmental heritage
- provide opinions, statements or other information relating to environmental heritage if the Council thinks it appropriate to do so.

## Authority and delegations

The Council is an independent body, not subject to the direction of the Minister or the Department responsible for heritage.

In carrying out its defined functions, the Council is empowered to:

### Make decisions:

- determine applications to carry out certain activities on items listed on the State Heritage Register or subject to an Interim Heritage Order, and to modify determinations (Part 4, Division 3)
- issue orders to remedy failure to maintain or repair in accordance with minimum standards, modify and revoke the orders, carry out work and recoup costs (ss. 120–122)
- issue excavation permits (s. 139)
- issue heritage asset management guidelines to government instrumentalities (s. 170A(3))

### Make recommendations to the Minister

The Council may make recommendations to the Minister:

- to direct the listing of items on the State Heritage Register (s. 32)
- to make exemptions to the requirement to seek approval for certain activities (s. 57(2))
- the exercise by the Minister of any functions conferred or imposed on the Minister by or under this Act or the regulations (s 21(1)(a))
- the taking of measures for or with respect to:
  - the conservation of,
  - the exhibition or display of,

- the provision of access to, and
- the publication of information concerning,  
items of the environmental heritage (s. 21(1)(b))
- regarding the making of grants or loans from the Heritage Conservation Fund (s. 106(1)).

### **Provide advice to the Minister**

The Council may advise the Minister:

- on the making of Interim Heritage Orders (s. 24(2))
- on the making of heritage agreements (s. 39)
- on the making of historic shipwrecks protection orders (s. 50)

### **Provide advice**

- The Council may issue opinions, statements or other information relating to the environmental heritage to persons or bodies if the Heritage Council considers it appropriate to do so (s. 21(2)(b))

### **The Chair**

The Chair has additional specific powers under the Heritage Act:

- issue orders restricting harm to items listed on the State Heritage Register or subject to an Interim Heritage Order (s. 79(c))
- issue orders restricting harm to buildings, works, relic or place (not being a building, work, relic or place the subject of an interim heritage order or listing on the State Heritage Register) (s. 136)
- issue orders to remedy failure to maintain or repair in accordance with minimum standards, modify and revoke the orders, carry out work and recoup costs (ss. 120–122). (This function can be carried out by the Heritage Council or the Chair.)

### **Delegations**

Under section 169 of the Heritage Act, the Heritage Council may, with the consent of the Minister, delegate any of its functions to a person or to a committee established by the Heritage Council. The Chair may also delegate their functions to a person, with the consent of the Minister.

The instrument of delegation is remade from time to time and is published in the [NSW Government gazette](#).

## Heritage Council committees and advisory panels

Under section 21A of the Heritage Act, the Heritage Council may establish committees to assist the Council with the exercise of any of its functions. Appointment of members to these committees is guided by the Guidelines for Appointment of Members to Committees and Advisory Panels of the Heritage Council of NSW (adopted 3 June 2020).

The Heritage Council has delegated some of its functions to the Approvals Committee and the State Heritage Register Committee.

The Council will ensure committees and panels established by the Council abide by this terms of reference in addition to their own terms of reference that set out their functions and operations. The Council is responsible for ensuring the committees and panels have terms of reference.

The purpose, membership and performance of the committees and panels should be reviewed from time to time.

## Role of Heritage NSW

As the Heritage Council does not have its own budget and cannot employ staff, Heritage NSW supports the Heritage Council to fulfil its statutory functions.

Heritage NSW carries out a range of Heritage Council functions under delegation, including determining applications concerning items listed on the State Heritage Register, issuing excavation permits and historic shipwreck permits, performing compliance and enforcement activities, maintaining the State Heritage Inventory, the State Heritage Register and the Register of Shipwrecks, and administering procedures relating to the nomination and listing of items on the State Heritage Register. Heritage NSW also performs secretariat functions for the Heritage Council's meetings and administrative matters.

In addition to supporting the Council, Heritage NSW has its own work and strategic priorities in policy development and engagement across government and with external stakeholders, as well as responsibilities for administering the Heritage Conservation Fund on behalf of the Minister and administering the heritage grants program.

Heritage Council engagement with Heritage NSW outside of meetings should occur via the Chair, who will communicate with the Executive Director, Directors or the Secretariat. Members may contact the Secretariat for administrative support at any time.

## Compliance obligations of the Council

The Heritage Act (s.7(2)) establishes the Heritage Council as a NSW Government agency. As a Government agency, the Council has the status, privileges and immunities of the Crown (*Interpretation Act 1987*).

As a NSW Government agency, the Council must comply with a range of whole-of-government regulations and policies including legislation and regulations, Ministerial Memoranda, Department of Premier and Cabinet Circulars, Treasury publications and Public Service Commission policy.

Heritage Council members are bound by the compliance obligations of the Council and the Heritage Council Code of Conduct 2023.

Following their appointment to the Council, all members are required to read a Heritage Council Induction Pack that gives additional information on the obligations of members. In consultation with Heritage NSW, from time to time, the Council may develop formal operational policies that members must comply with.

The following instruments give rise to obligations with which the Council must comply:

- *Heritage Act 1977* and *Heritage Regulation 2012*  
Establishes the Council as a statutory body. The Act and Regulations define the legislative framework for the administration of environmental heritage in NSW.
- *Government Sector Employment (GSE) Act 2013*  
The Council is a respondent (s.3.1(f)) to the GSE Act, which provides the statutory basis (including the ethical framework) for NSW government sector employment and workforce management.
- *Government Information (Public Access) (GIPA) Act 2009*  
The GIPA Act establishes a proactive approach to ensuring more open access for members of the public to government information in NSW. As a NSW Government agency, the Council is subject to this Act.
- *Independent Commission Against Corruption (ICAC) Act 1988*  
The ICAC Act establishes the ICAC with special powers to investigate, expose and prevent corruption involving or affecting public authorities and public officials. As public officials, the members of the Heritage Council are subject to this Act.
- *Anti-Discrimination Act 1977*  
The Anti-Discrimination Act applies to government agencies. The Act prohibits discrimination and vilification on prescribed grounds such as on the basis of sex, race or disability.
- *Government Sector Finance Act 2018*

The Council is an accountable authority under this Act and is required to provide annual reports.

- Government Sector Audit Act 1983

The activities of the Council can be audited under this Act.

- Protected Disclosures Act 1994

This Act gives protections to public officials, including members of the Council, who disclose corruption, maladministration or waste within the public sector.

NSW Government policies, at this time:

- Code of Ethics and Conduct for NSW government sector employees (NSW Public Service Commission)
- Code of Ethics and Conduct (Department of Planning and Environment)
- Identifying and managing conflicts of interest in the public sector (ICAC)
- Fraud and Corruption Control Policy (Department of Planning and Environment)
- M2013-06 NSW Government Boards and Committee Guidelines (NSW Premier and Cabinet)
- M2006-08 Maintaining Confidentiality of Cabinet Documents and Other Cabinet Conventions (NSW Premier and Cabinet)
- Public Interest Disclosures Policy (Department of Planning and Environment)
- NSW Cyber Security Policy (NSW Government)
- Acceptable Use Policy (Department of Planning and Environment)
- Social Media Policy and Guidelines (NSW Government)
- Travel Policy (Department of Planning and Environment)

Heritage Council policies:

- Guidelines for Appointment of Members to Committees and Advisory Panels of the Heritage Council of NSW (adopted 3 June 2020)

The following activities and actions will be undertaken to ensure compliance obligations are met:

- new members will be informed of their obligations and provided with all relevant policies on commencement of their term of appointment
- members will be informed when a new policy that they must comply with comes into force or an existing policy that effects them is amended
- members will abide by the code of conduct, including by disclosing conflicts of interest as soon as they arise
- the Secretariat is to maintain a register of conflicts of interest.

To provide reasonable assurance to the Department and the Minister that compliance obligations are met, the Council will provide yearly reports, signed by the Chair, attesting to the compliance of the Council with its compliance obligations.

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## Operation of the Heritage Council

Schedule 2 of the Heritage Act sets out operating procedures for the Heritage Council, including:

- terms of office
- ability of the Minister to appoint deputies
- vacancies
- removal from office
- disclosure of pecuniary interests
- general procedures for meetings, including quorum, presiding members, voting and minutes, and for transacting business of the Council outside of meetings.

The relevant provisions are attached at Tab 1.

## Membership

Membership of the Heritage Council is set out in section 8 of the Heritage Act.

The Council is to consist of 9 members. Eight of the members are appointed by the Minister (appointed members). The other member is the Secretary of the Department of Planning and Environment.

## Observers

The Council may appoint observers to the Heritage Council and committees on a standing basis. Observers can also attend on an ad hoc basis, subject to approval of the Chair. Observers are authorised to attend meetings and participate, but are not entitled to vote at a meeting or move or second a motion.

Since 2012, the Heritage Council has invited a representative of the Government Architect NSW to participate in the Council as an observer.

## Role of the Chair and Deputy Chair and role of members

The Chair is responsible for:

- serving as the presiding member at meetings of the Heritage Council and holding a deliberative vote or, in the event of a tie, a second or casting vote (Heritage Act, Schedule 2, cl. 13)

- carrying out statutory functions assigned to the Chair under the Heritage Act.

The role of the Deputy Chair is to:

- serve as presiding member at meetings of the Heritage Council in the absence of the Chair.

The role of members is to:

- attend Council meetings and participate in proceedings.

A member may be elected by the Council to be the presiding member at a meeting in the absence of the Chair and Deputy Chair (Heritage Act, Schedule 2, cl. 13).

The Heritage Council may create a roles and responsibilities document to support this terms of reference and update it from time to time.

## **Appointment**

### **Term of appointment**

Members are appointed as part-time members to terms of up to 3 years and can be reappointed (if otherwise qualified). Terms of individual members may be staggered to support the Council's continuity and knowledge exchange.

Once appointed, members will be provided appropriate documentation as part of onboarding and induction. Each member must acknowledge in writing their acceptance of these documents and declare any conflicts of interest before commencing as a Council member.

### **Resignations/Removal**

Provisions for resignation and removal of members and filling vacancies are set out in Schedule 2 of the Heritage Act.

Reasons for removal of a member may include a conflict of interest that cannot be managed, breach of code of conduct, irreconcilable differences between members or no longer meeting membership criteria. This is not an exhaustive list of reasons.

### **Alternates/Deputies**

Provisions for appointing deputies (or alternates) are set out in Schedule 2 of the Heritage Act.



## Meeting arrangements

### Secretariat

The Secretariat team of Heritage NSW acts as a central point of contact for the Heritage Council and committees and is responsible for:

- providing governance, business and administrative support
- managing the Council and committee meetings, including agendas, meeting papers, conflict of interest declarations, meeting minutes and actions
- managing correspondence
- managing calendar, events and site visits, including meeting venues and logistics
- managing advertising, appointment and re-appointment processes, induction and onboarding of new members
- assisting members in delivering strategic and business priorities
- establishing and maintaining records management systems
- managing accommodation and travel requirements for members
- managing members' remuneration and reimbursement of expenses
- coordination with cluster and partner agencies.

All records, including the agenda, minutes and any reports or recommendations, will be prepared and kept by the Secretariat team.

The Secretariat will coordinate with the Executive Director, Heritage NSW and Chair to draft and prepare the agenda for each Council meeting.

### Meeting frequency

The procedure for the calling of meetings of the Heritage Council is determined by the Heritage Council. In recent years, the Heritage Council has scheduled meetings on the first Wednesday of every month, except January, with other meetings scheduled on a case-by-case basis.

### Council decisions made out-of-session

The Heritage Council may, if it thinks fit, consider a matter out-of-session by the circulation of papers among all the members. The resolution is to be approved in writing by a majority of members. Email is an acceptable form of written response.

Matters decided by the Council out-of-session must be noted by the Council at the next formal meeting and be recorded in the minutes of that meeting.

## Publication of decisions

The confirmed minutes of Heritage Council meetings will be made publicly available, as required under Schedule 2, cl. 17 of the Heritage Act.

Resolutions of the Heritage Council and committee meetings are published on the Heritage NSW website within 2 working days after the Council meeting.

The Secretariat must coordinate with the Chair to ensure that the minutes of the meeting are promptly finalised, signed by the Chair and distributed to members for confirmation as soon as is practicable after each meeting. The minutes of the previous meeting should also be tabled at the next Council meeting for approval.

As the Department provides secretariat support, it holds documents of the Council. Those documents may be subject to an information access application under the *Government Information (Public Access) Act 2009* (GIPA Act). If there is an information access application relating to the Council, the Department's GIPA Unit will liaise with the Council about the appropriate response.

Please note that the Department is the decision maker in relation to GIPA applications made to it for documents it holds even though those documents relate to the work of the Council.

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## Conduct of members

The Heritage Council will abide by the Heritage Council of NSW Code of Conduct, which is established consistent with the DPE Board and Committee Code of Conduct and the Conduct of Members as outlined in the NSW Government Board and Committee Guidelines. Members must read and sign the code of conduct on commencement of their appointment to the Council.

## Conflicts of interest

Conflicts of interest must be disclosed and dealt with by the Council in a transparent way and in accordance with standing Departmental policy, as set out in the Heritage Council of NSW Code of Conduct.

Conflicts of interests that cannot be effectively mitigated may lead to a member being removed from membership to the Heritage Council.

## Communication with the media and third parties

Views that are publicly expressed by a member may be perceived or construed by the broader community as a view of the Council or of the Department.

Council members must not make media comment on matters that could pertain to the business of the Council. Requests from the media should be referred to the Chair of the Heritage Council for consideration. Heritage NSW provides support to the Chair in considering media requests.

General correspondence and enquiries are through the Secretariat, Heritage NSW.

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## Remuneration and allowances

### Remuneration

Remuneration of Heritage Council members is in accordance with the *Classification and Remuneration Framework for NSW Government Boards and Committees* (Public Service Commission, 2019).

Payment of committee members who are not also members of the Heritage Council is determined by Heritage NSW.

### Out of pocket expenses

Council members may be reimbursed in accordance with the Travel Policy (Department of Planning and Environment 2022) for legitimate and reasonable expenses incurred while carrying out their duties, such as travel, accommodation and meals. Council members may, with prior approval from the Executive Director, Heritage NSW, receive an allowance for the use of a private motor vehicle.

Accommodation is provided to members who live outside the Sydney metropolitan region. Expenses are paid for accommodation, meals and parking. Flights must be booked through the Heritage NSW travel booking system.

All expenses claimed are to be claimed as actuals. Members are only permitted to claim expenses that are incurred by them. Any expenses incurred by people travelling with the member are not met by the Department. Members must submit expense claims in a timely manner and must provide the Secretariat with receipts for travel expenses and out-of-pocket expenses in order to be reimbursed.

Anticipated expenses for official activities other than regular meetings must have the prior approval of the Executive Director, Heritage NSW.

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## Review

### Periodic reporting on performance

The Heritage Council shall perform an evaluation of its performance and self-evaluate its level of effectiveness every 2 years. The evaluation framework will be prepared by the Secretariat and endorsed by the members. The report should identify:

- how the Council is delivering on its objectives including a summary of key activities undertaken during the period
- outcomes achieved and key results for the period
- how the Council is overseeing any delegated functions, including functions delegated to committees
- meetings held during the period and attendance
- current membership and any changes that have occurred during the period
- current membership and functions of committees
- risk management strategies
- results of any reviews undertaken
- ratification of the terms of reference and any subsequent amendments.

### Formal review

Formal reviews are generally undertaken every 5 years. An external consultant may be engaged by Heritage NSW to assist with the evaluation and review of the Council's performance. A copy of the formal review will be provided to the Minister for their consideration.

A formal review of the Council and its members may consider:

- the matters considered in periodic performance reviews
- the legislative framework of the Council
- whether the Council is fulfilling its functions and objectives
- its successes and the outcomes of its work in respect of its business plan and strategic plan
- whether members have the appropriate mix of skills, experience, and diversity
- whether individual members are fulfilling their responsibilities.

Factors that may be considered as part of a formal review or individual member review include:

- participation in and contribution to the objectives and workload
- meeting attendance and engagement with other members

- clear understanding of the roles and responsibilities of the Council, its members and other key participants involved with the Council, its operating environment and the relationship with the Minister, statutory officers and other key stakeholders
- any actual or potential conflicts of interest.

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## Review of Terms of Reference

The Council will review the Terms of Reference annually to ensure it remains consistent with the Council's operation and responsibilities.

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## Agreement

These terms of reference are agreed by the Heritage Council of NSW as at 4 May 2023 and remain in force until otherwise amended, replaced or voided.

Chair: Frank Howarth AM PSM



Signature:

Date: 4 May 2023

### Attachments:

**Tab 1: Schedule 2 of the Heritage Act 1977**