

# State Heritage Register Committee and Approval Committee of the Heritage Council of NSW – Terms of Reference

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

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 *NSW Heritage Act 1977* (Heritage Act) and the membership and procedure provisions in Schedule 2 of that Act.

These Committee Terms of Reference have been created in reference to *Heritage Council of NSW – Terms of Reference* (adopted 4 May 2023) (amended in December 2023). Members of the SHRC and AC required to abide by these terms of reference in addition to the *Heritage Council of NSW – Terms of Reference* (adopted 4 May 2023).

---

## Purpose of the Heritage Council Committees

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 State Heritage Register Committee (SHRC) and Approvals Committee (AC). Their responsibilities are detailed in these terms of reference. The purpose, membership and performance of the committees and panels should be reviewed from time to time.

---

## Establishment

The Heritage Council is established under the *NSW Heritage Act 1977*.

Under section 21A of the Heritage Act,

- (1) The Heritage Council may establish committees to assist it in connection with the exercise of any of its functions.

(2) It does not matter that any or all of the members of a committee are not members of the Heritage Council.

(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Heritage Council or (subject to any determination of the Heritage Council) by the committee.

Additionally, under section 169 of the Heritage Act,

(3) The Heritage Council may, with the consent of the Minister, delegate to a person, or to a committee established by the Heritage Council, the exercise of any of the Heritage Council's functions, other than this power of delegation.

---

## Authority and Delegations

In carrying out its defined responsibilities, the SHRC and AC are empowered to exercise delegated powers on behalf of the Heritage Council, as per *Government Gazette No 218 Planning and Heritage* of Friday 20 May 2022.

## Responsibilities

The Heritage Council of NSW must specify the functions of each of its committees but may from time to time amend those functions. The role of the SHRC and AC is to fulfill delegated statutory functions of the Heritage Council, as established below:

### State Heritage Register Committee

The State Heritage Register Committee is responsible for recommending the Heritage Council's intention to list items on the State Heritage Register (SHR) and providing expert comment on significant heritage places. It has delegations to:

- Issue a notice of intention to consider listing
- Make a recommendation to the Minister that items be listed on or removed from the SHR
- Provide advice to the Minister on the making of Interim heritage orders (IHOs)
- Give written notice to person(s) considered to be an affected owner or occupier (except for in the case of listed precincts)
- Make recommendations to the Minister relating to the taking of measures for or with respect to the conservation, the exhibition or display the provision of access to and the publication of information concerning items of environmental heritage
- Advise the Minister regarding heritage agreements

- Form an opinion on preliminary nominations
- Contribute to program level priorities and work planning
- Undertake strategic planning to support state heritage register listing.

## Approvals Committee

The Approvals Committee acts in the Heritage Council's consent authority role. It approves, comments on, and suggests amendments to proposed changes to listed State Heritage Register items. It has delegations to:

- Form an opinion on whether an application, if approved, would materially affect the significance of an item of environmental heritage
- Determine an application made under s.60
- Determine whether the relevant conditions are satisfied and to notify the applicant
- Give the owner of a building, work or relic an order to do or refrain from doing such things as are specified in the order
- Order the occupier of any land to permit work specified in the order to be carried out
- Do all things necessary or convenient to give effect to the terms of an order, where person fails to comply with terms of order
- Determine an application under s.140 for an excavation permit (s.139) for determinations associated with excavation permits
- Approve plans and specifications for the rebuilding of a building when required by order of the Court
- Request an inspection of a heritage item.

## Role of Heritage NSW

Please see page 4 of *Heritage Council of NSW – Terms of Reference* (adopted 4 May 2023) (amended in December 2023).

## Compliance Obligations of the Committees

Please see page 5 & 6 of the *Heritage Council of NSW – Terms of Reference* (adopted 4 May 2023) (amended in December 2023) for a list of relevant legislation and policies.

---

## Operation of SHRC and AC

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.

These procedures also apply, where relevant, to the Heritage Council's committees.

## Membership

Appointment of members to the Committees is guided by the *Guidelines for Appointment of Members to Committees and Advisory Panels of the Heritage Council of NSW*.

The Heritage Council of NSW will appoint members to the SHRC and AC.

- The Chair of the Heritage Council is an alternate member of both the State Heritage Register Committee and the Approvals Committee.
- The maximum number of members of both the SHRC and AC is eight, unless otherwise approved by the Heritage Council.
- At least half of the appointed members on the SHRC and AC must be members of the Heritage Council.
- Heritage Council members who are appointed to the SHRC and AC serve for the duration of their appointment to the Heritage Council. If they are reappointed to the Heritage Council they are concurrently reappointed to their respective role in the SHRC and/or AC, unless otherwise decided by the Heritage Council.
- Non-Council members may be appointed by the Heritage Council to the SHRC and AC if their expertise will assist the decision-making committee to carry out its functions.

## Expertise of Committee Members

The diversity of expertise sought for committee membership is to complement a balanced distribution of skills specified under the *NSW Heritage Act 1977* for members of the Heritage Council, as relevant to specific committee.

At least one member per committee should be an Aboriginal person who possesses knowledge, skills and experience relating to Aboriginal heritage management.

## Observers and Alternate Members

### Observers

- The Heritage Council of NSW may appoint observers to committees on a standing or ad-hoc basis. Observers are authorised to attend meetings and participate where permitted by the committee Chair. Observers are not entitled to vote at a meeting or move or second a motion.
- The Heritage Council of NSW will consider the benefits of expert advice and administrative implications in appointing observers.

### Alternate members

- The Heritage Council of NSW may at any time appoint, as an alternate member to act during the absence or illness of a member of a committee a person with similar experience and expertise as the person for whom he or she is the alternate member.
- An alternate member has, while acting as a member of the committee, the same powers and obligations, as such a member, as the person of whom he or she is the alternate member.

Observers and alternate members may be appointed to committees. Observers are not entitled to vote at a meeting or to move or second a motion. Alternate members act a member of a committee or panel during the absence of the person for whom they are the alternate member.

## Committee Chair

The Heritage Council of NSW will appoint one of its members as Chair, and one person as a Deputy Chair. The Chair, or the Deputy Chair, must preside at all meetings of the Committees.

If the Chair and the Deputy Chair are not present, the members present will elect another member of the committee who is also a member of the Heritage Council, to preside at the meeting.

## 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 committee and holding a deliberative vote or, in the event of a tie, a second or casting vote as per the procedure for the Heritage Council (Heritage Act, Schedule 2, cl. 13)

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 committee meetings and participate in proceedings.
- A member who is also on the Heritage Council may be elected by a committee to be the presiding member at a meeting in the absence of the Chair and Deputy Chair, per the procedure for the Heritage Council (Heritage Act, Schedule 2, cl. 13).

## Appointment

### Term of Appointment

A member of a committee of the Heritage Council holds office for a period of up to three years, as determined by the Council. A committee member is eligible for re-appointment, with a maximum term of up to six-years in total (two consecutive terms).

Terms of individual members may be staggered to support the Council's continuity and knowledge exchange.

In exceptional circumstances, the Heritage Council may reappoint a member to a committee for a period longer than the normal two consecutive terms if it is deemed in the public interest.

### Resignations/Removal

Provisions for resignation and removal of members and filling vacancies in the Heritage Council 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. These provisions similarly apply to members of the SHRC and AC.

---

## Meeting Arrangements

### Secretariat Support

Please see page 9 of *Heritage Council of NSW – Terms of Reference* (adopted 4 May 2023) (amended in December 2023).

### Meeting Frequency

The procedure for the calling of meetings of the committees is determined by the Heritage Council. In recent years, the SHRC and AC have scheduled meetings on the first Tuesday of every month (except January), before the Heritage Council meeting on Wednesday, with other meetings scheduled on a case-by-case basis.

## Business Outside of Meetings

A committee 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 Committee out-of-session must be noted by the Committee at the next formal meeting and be recorded in the minutes of that meeting.

## Heritage Council Members May Attend Meetings

A member of the Heritage Council who is not a voting member of the SHRC or AC is entitled to attend, and to speak at, a meeting of the committee.

However, the member of the Council in this instance is not entitled:

1. to move or second a motion at the meeting; or
2. to vote at the meeting

unless the member is attending as an alternate member.

## Quorum

A majority of appointed voting members of the SHRC and AC must be present at a meeting to form a quorum.

## Publication of Decisions

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

Resolutions of the committee meetings are published on the Heritage NSW website within 3 working days after the Heritage 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 published publicly. The minutes of the previous meeting should also be tabled at the next committee meeting for approval.

As the Department provides secretariat support, it holds documents of the SHRC and AC. 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 a committee, the Department's GIPA Unit will liaise with the SHRC and AC 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 SHRC and AC.

---

## Conduct of Members

Please see page 10 of *Heritage Council of NSW – Terms of Reference* (adopted 4 May 2023) (amended in December 2023).

---

## Remuneration and Allowances

Please see page 11 of *Heritage Council of NSW – Terms of Reference* (adopted 4 May 2023) (amended in December 2023).

---

## Review

Evaluations and formal reviews of the SHRC and AC are conducted as part of the broader process of the Heritage Council as stipulated on page 12 of *Heritage Council of NSW – Terms of Reference* (adopted 4 May 2023) (amended in December 2023).

---

## Review of Terms of Reference

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

---

## Agreement

These terms of reference are agreed by the Heritage Council of NSW as at 7 August 2024 and remain in force until otherwise amended, replaced or voided.

**Chair: Frank Howarth AP PSM**



Signature:

Date: 7 August 2024