



HERITAGE
COUNCIL

Working with Western Australians to recognise, conserve, adapt and celebrate our State's unique cultural heritage

CHARTER

Vision

Heritage is integral to the vibrant life and prosperity of Western Australia

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1. Introduction

The purpose of this Charter is to set out the composition, objectives, responsibilities and administration of the Heritage Council of Western Australia (Council), including its relationship with the Department of Planning, Lands and Heritage (Department) and the Minister for Heritage (Minister).

The provisions of this Charter are derived principally from the *Heritage Act 2018* (Act) and the WA Public Sector Commission Good Governance Guides for Boards and Committees.

2. Council governance

The Council is a statutory authority established by, and whose functions and powers are set out in, the Act. It is responsible to the Minister for Heritage including for advising the Minister on heritage matters and, in particular, on the identification, conservation and protection of places that are, or may be, of cultural heritage significance and providing advice to decision-making authorities on ensuring that that cultural heritage significance is preserved.

2.1. Composition

The Council consists of up to nine persons appointed by the Governor on the recommendation of the Minister, including a Chair and up to eight ordinary members. The Chair must have demonstrated knowledge, experience, skills or qualifications relevant to the position of Chair. Members must have demonstrated knowledge, experience, skills or qualifications outlined in section 14 of the Act. The Council may appoint any person having relevant specialised knowledge or experience to be a co-opted member of the Council for a period or in relation to matter.

2.1.1. Terms of Office

Appointments to the Council may not exceed five years. To ensure continuity, appointments will be made for terms of two or four years.

2.1.2. Appointments

In accordance with the Act, Members of the Council are appointed by the Governor of WA on the Minister's nomination. State Cabinet's approval is also required. While the Council may appoint co-opted members, these appointments will also need endorsed by the Minister and considered by Cabinet.

2.1.3. Vacancies

The provisions for vacancies on the Council and for removal from office are defined under regulation 7 of the *Heritage Regulations 2019*. The office of a member becomes vacant if the member resigns by written notice, is insolvent, is convicted of an offence punishable by imprisonment for more than 12 months or is punished for failure to disclose a material personal interest under Regulation 13(1) of the Regulations.

2.2. Roles and relationships

In fulfilling its role, the Council works with and through the Assistant Director General Heritage and Property Services of the Department, while retaining accountability for governance of the Council. Council members require an understanding of the roles, responsibilities and reporting arrangement between key stakeholders.

2.2.1. The Minister

The administration of the Act is vested in the Minister, who shall be advised and assisted by the Council. The Minister is also responsible for other functions including:

- giving the Council written directions of a general character with respect to its functions;
- power to direct the registration of places, including amendments to these places and removal of them from the Register; and
- power to issue Protection Orders and Repair Orders.

The Minister may delegate some of his or her powers and duties to the Chair or other persons.

Regular and open communications are maintained between the Minister and the Council. These communications will normally be undertaken by the Chair and Department on behalf of the Council. The direct participation of other Council members may be requested in specific cases.

2.2.2. Chair

The Chair is appointed by the Governor on the recommendation of the Minister, and has responsibility for:

- providing effective strategic leadership;
- encouraging high standards of conduct and performance within the Council;
- communicating with the Minister on behalf of the Council;
- representing the views of the Council to the general public;
- controlling Council meeting procedures including agendas and minutes; and
- ensuring that the Council takes proper account of guidance provided by any host agency the Council is aligned to within Government.

2.2.3. The Department of Planning Lands and Heritage

The Department supports the Council and the Minister. The Department is responsible for:

- managing the Council's resources in accordance with strategy, plans, budget and delegations approved by the Council or as directed by the Minister;
- day-to-day management of the Council's work;
- financial control and compliance with relevant Government legislation, policies and procedures;
- developing corporate strategies for consideration by the Council;

- recruiting and managing staff in accordance with public sector guidelines;
- providing regular reports to the Council in an approved form; and
- business improvement generally.

2.2.4. Councillors

Individual Councillors are responsible for:

- acting in good faith in the best interests of the Council, irrespective of membership of other bodies;
- supporting the decisions of the Council;
- being active advocates for Council decisions and objectives; and
- adhering to the Council's Code of Conduct and governance policies.

2.2.5. Committees

The Council may from time to time establish Committees to assist the work of the Council. A committee must include at least one member who is a Council member. The terms of reference and procedures of any Committees will be specified in the Council's *Internal Delegation Framework*.

3. Key Council functions

3.1. Roles and Responsibilities of the Council

The Council is established under Section 11 of the Act as the State's expert body on matters concerning places of cultural heritage significance, other than places that comprise only the natural environment or places that have cultural heritage significance solely on account of their connection with Aboriginal tradition or culture.

The Council is responsible for a range of functions under Section 17 of the Act that include:

- providing advice to the Minister on heritage related matters;
- assessing and documenting places of cultural heritage significance, and administering the State Register of Heritage Places;
- providing heritage advice to referring parties and agencies;
- promoting and assisting in the management and maintenance of registered places, through the provision or facilitation of financial or technical assistance or other conservation incentives;
- endeavouring to prevent the destruction, deterioration of or damage to heritage places;
- advising and assisting local government in identifying and conserving local heritage;
- encouraging public interest in and understanding of Western Australia's cultural heritage; and;
- providing education and training on heritage matters.

In addition to its statutory advisory role to the Minister and development referral advice to decision-making authorities, the Council makes decisions about strategy, business plans, policies, projects and expenditure. The principal responsibilities of the Council are:

Strategy and Policy

- Setting the Council's strategic vision and strategies, and endorsing the Department's development of corporate strategy and performance objectives relating to the delivery of the Council's functions.
- Approving policies and major heritage projects.
- Determining the strategic focus of the Council's Committees.

Compliance and Risk

- Ensuring that effective audit and risk management practices are put in place by the Department to protect the interests of the Council.
- Ensuring that actions and decisions of the Council comply with applicable law.

Governance

- Determining Council procedures in accordance with the requirements of the Act.
- Recommending the appointment of co-opted members and members to the Council's Committees.
- Ensuring compliance with the Act, the Council's Charter and the Code of Conduct.
- Promoting strong Council performance through induction and training procedures, succession planning and performance review.
- Determining delegation policy regarding the Committees and the Department, as set out in the Internal Delegation Framework.

Finance and Accountability

- Monitoring financial outcomes.
- Approving the Council's annual budget, the annual business plan, and the Annual Report.

Decisions Reserved to the Council

- Making decisions arising from the statutory functions set out in the Act, including but not limited to:
 - advising the Minister with respect to registration decisions that are contentious, complex, have major social or economic impacts on the State or region, or have a concurrent development proposal for consideration;
 - considering development referrals involving projects that are contentious, complex, or have major social or economic impacts on the State or region;
 - making a recommendation to the Minister regarding a proposed protection order or repair order; and
 - approving Heritage Agreements and other legal instruments.

In some cases, the Council is required to undertake consultation before it can make a decision or recommendation to the Minister. The process and requirements for consultation are outlined in the Act, Regulations and the Council's *Stakeholder Engagement and Consultation Policy*.

3.2. Delegations

Under section 19 of the Act, the Council may delegate any of its functions, except for the power to delegate, under the Act or under another written law. A person to whom a function is delegated cannot delegate that function. Delegating functions does not absolve the Council from accountability for those powers or functions. A person who holds a delegation must take care to comply strictly within the limits of the delegation and any conditions placed on the delegation.

Section 19 of the Act does not limit the ability of the Council to perform a function through an officer or agent.

3.3. Execution of documents

The Council has a common seal and, when affixed to a document in accordance with the requirements of section 13 of the Act, that document is duly executed. The Department has charge of the seal and is responsible for its safe custody and proper use. Application of the seal must be recorded in the Council's Seal Register and is reported to the Council. The Common Seal may only be applied following a resolution of the Council.

4. Council Processes

4.1. Meetings

The Council has discretion under Division 3 of the Regulations to determine its own meeting proceedings.

4.2. Meeting frequency

The Council meets twice per month. One meeting is to consider strategic and governance items and development referrals. The second meeting is to consider assessment and registration matters. There is the opportunity for each meeting to consider items that would normally be considered by the other meeting.

Special meetings of the Council may be convened by the Minister or Chair. The frequency of committee meetings will be defined in the terms of reference for any committee.

4.3. Matters considered outside of a meeting

The Council may resolve matters outside of a meeting pursuant to regulation 23, which requires that assent in writing needs to be provided by at least half of the members.

Unless otherwise agreed or the matter is deemed urgent by the Chair, three working days is to be allowed for consideration of a matter. All Councillors must be contacted when considering items outside of a meeting.

4.4. Attendance

Council members are expected to attend all scheduled and special meetings. Attendance may be achieved by telephone or other means of instantaneous communication. If a member is unable to attend a meeting, an apology should be submitted to the Chair and to the Council support in the Department prior to the meeting. The Council may grant a member leave of absence for a maximum of two months. The Minister may do so for periods exceeding two months.

If a member is unable to act because of illness, absence or other cause, the Minister may appoint another person as an alternate member to temporarily act in the member's place.

4.5. Declarations of Interest

The management of conflicts of interest is set out in the Council's Conflict of Interest Policy. Declarations of a conflict of interest is a standing agenda item for all meetings.

4.6. Voting

Decisions by resolutions of the Council will normally be made by consensus of the Councillors present as reflected in the summing up made by the Chair.

In the event it is decided to reach of a decision by means of a vote, each member has a deliberative vote unless they have a conflict of interest. In the event of a tie, the Chair has a casting vote in addition to a deliberative vote.

4.7. Quorum

A quorum is at least half of the number of members in office.

Where a Council member is disqualified from voting due to conflict of interest, the quorum is at least half of the members entitled to vote. For example, if two members declare a conflict of interest, seven remaining members are entitled to vote. In this case the quorum would be at least half of the seven entitled to vote.

4.8. Agendas and Minutes

The Agenda is set by the Chair and the Department's Assistant Director General Heritage and Property Services or their delegates. Agendas specifying business to be transacted will be provided to every member seven days prior to the date of a meeting. The Council is required by the Regulations to keep accurate minutes of Council proceedings. Once confirmed by the Council, the minutes will be signed by the Chair as being an accurate record.

5. Council effectiveness

The Council is required to maintain standards of conduct and behaviour. A number of documents exist that assist Council members in identifying and meeting these standards.

5.1. Conduct

Members:

1. have an obligation, at all times, to comply with the law and relevant codes and standards;
2. must act honestly, exercise reasonable care and diligence and not make improper use of the information obtained in their positions;
3. owe a fiduciary duty to act in the best interests of the Council and not allow personal interests, or the interest of any associated person, to conflict with the interests of the Council;
4. will undertake diligent analysis of proposals placed before them, apply their specific expertise generously and act with a level of skill expected from members of a statutory authority;
5. have an obligation to act independently and to take all reasonable steps to ensure commercially sound and rational decision making;
6. will not disclose information except where disclosure is authorised or legally mandated;
7. will not use their position for personal gain or to compete with the Council;
8. will make reasonable enquiries to ensure the Council is operating efficiently, effectively and legally towards achieving its objectives;
9. will not engage in conduct likely to discredit the Council; and
10. will encourage the reporting of unlawful or unethical behaviour and actively promote ethical behaviour and protection for those who report violations.

5.1.1. Code of Ethics

The Public Sector Commissioner (PSC) establishes the Code of Ethics for the public sector within *Commissioner's Instruction No. 7 – Code of Ethics*. The Code of Ethics applies to all public sector boards and consists of three principles relating to personal integrity, relationships with others and accountability that set minimum standards of conduct and integrity. See https://publicsector.wa.gov.au/sites/default/files/documents/commissioners_instruction_07_code_of_ethics_08_17.pdf.

5.1.2. Code of Conduct

In addition to the overarching Code of Ethics and the Department's Code of Conduct, the Council has established its own Code of Conduct.

5.1.3. Accountable and Ethical Decision Making

The Department provides Accountable and Ethical Decision Making training to the Council. All Councillors are required to complete the training as part of their induction, within three months of appointment to the Council. All Council members are required to repeat the training annually. A register of training completion is maintained by the Department.

5.1.4. Conflicts of interest

A conflict of interest arises where there is a conflict between the performance of a public duty and private or personal interests. Confidence in the Council's functions is dependent upon the accountable and ethical decision making of Council members in applying the best interests of the community ahead of their own private interests. As such, all potential, perceived or actual conflicts of interest should be identified and appropriately managed. The Council has a Conflict of Interest policy that provides guidance in this respect.

5.1.5. Hospitality and gifts

The Western Australian community trusts public officers, including Council members, to perform their duties impartially and with integrity. In some cases, accepting or giving a gift, benefit or hospitality could create the impression an officer will favour a particular person or organisation when making decisions. This may not be the intention, however perceptions matter.

The Council's Code of Conduct prescribes the required conduct of members.

5.2. Council evaluation

The Council will undertake an annual evaluation of its performance. The evaluation methodology and the process will review how the Council is tracking against standards within this Charter and principles of good governance as defined by the PSC. The method of conducting each review will be determined by the Chair.

5.3. Remuneration

In accordance with the Act and relevant Premier's Circular, the Minister, on the recommendation of the PSC, determines the remuneration, travelling and other allowances paid to members. Fees may not be paid to members if they are:

- on the public payroll, including all current full time State, Commonwealth and Local Government employees; Members of Parliament; current and retired judicial officers; and current non-academic employees of public academic institutions; or
- a former Member of Parliament when less than 12 months has passed since sitting in Parliament.

Part-time public servants, elected Local Government Councillors and university academics are eligible for fees when sitting on State Government Boards and Committees.

Eligible members' fees (less tax) are payable fortnightly or monthly. Members are required to complete tax declaration forms and are entitled to superannuation. Eligible members are also reimbursed travel expenses incurred as a result of their attendance at meetings. For vehicle expenses the "current cents per kilometre car expense payments" rate set by the Australian Tax Office applies.

5.4. Independent legal advice

The Council may, with the approval of the Chair and the Department, seek legal advice from the State Solicitor's Office on matters presented to the Council.

5.5. Council member development

The Council has a commitment to the ongoing development of its members, in the pursuit of advancing the quality of its work. In order to continually improve performance, all Council members are encouraged to undergo ongoing professional training and development.

5.6. Council member induction

New members will receive a full introduction to their roles on the Council or relevant committee. Information conveyed to new Council members will include:

1. letter of appointment by the Minister for Heritage;
2. *Heritage Act 2018* and *Heritage Regulations 2019*;
3. Council Charter;
4. Code of Conduct;
5. current Council Strategic Plan;
6. Council Budget;
7. list of delegations;
8. list of Members of Council and Committees (as applicable);
9. most recent Annual Report;
10. Accountable and Ethical Decision Making (AEDM) Guide and training; and
11. the Department's Reconciliation Action Plan.

5.7. Review of this Charter

The Council will review this Charter annually to ensure it remains consistent with its objectives and responsibilities.

5.8. Related Documents

- Heritage Council Code of Conduct
- Department of Planning, Lands and Heritage Code of Conduct
- Heritage Council Conflicts of Interest Policy