

Coffs Harbour Regional Gallery Loans Policy

1 Purpose

This policy sets out the principles that the Coffs Harbour Regional Gallery (CHRG) will adopt and factors it will consider when assessing, approving and conducting loans.

2 Policy

2.1 Objectives

The objectives of the policy are to ensure that CHRG:

- makes its collections accessible to broad audiences through an active and soundly managed loans program;
- manages and negotiates loans on terms that are ethical, responsible, aligned with Council values and visible to public scrutiny; and
- maintains and promotes the Gallery's standing and reputation in the museum and gallery sector.

These objectives are to be achieved by ensuring that CHRG:

- undertakes only loans that are appropriate to its function in all circumstances;
- demonstrates best practice in the risk management of loans; and
- avoids any act or omission that may attract legal liability, involve CHRG in civil or criminal proceedings, or otherwise compromise CHRG's position and reputation for integrity.

2.2 Application

This policy applies to all activities relating to the loan of works of art. Nothing in this policy detracts from the terms of any loan agreement to which CHRG is a party.

2.3 Principles

2.3.1 Incoming Loans

Incoming loans are critical to CHRG's capacity to realise its changing and touring exhibition program as well as providing access to works of art for the purposes of study and research. Incoming loans facilitate access to artworks not represented in the collection, thereby enhancing the educational and economic potential of CHRG's exhibition program.

CHRG will only borrow artworks where it is confident that:

- the lender is reputable;
- the owner(s) hold valid title to the work;
- where the lender is not the sole owner, the lender has the legal authority to enter into the loan either on behalf of the owner and/or co-owners as an agent or representative

- or as the party who would reasonably be expected to have possession, custody or control of the artwork for the period of the loan, were that arrangement not in place.
- the works have not been illegally exported from the country of origin or any intermediary countries and relevant export licences and permits have or will be obtained for export from the country from which they will be exported;
 - the import of the works into Australia does not contravene Australian import restrictions, or international treaties or conventions to which Australia is a party or signatory;
 - the works have not been obtained through illicit or unauthorised means; and
 - there are no current or outstanding third-party claims on the works.

CHRG is also bound by the terms of the *Protection of Movable Cultural Heritage Act 1986*, and is guided by the *ICOM Code of Ethics*, *Museums Australia Code of Ethics* and the *Australian Best Practice Guide to Collecting Cultural Material*.

CHRG will remain aware of and vigilant to all risks of legal and ethical controversy that may arise in connection with incoming loans and will respond in a timely manner to notice of matters that bear upon the legal, ethical and societal propriety of a loan.

CHRG recognises that the owner of a work may elect to have the loan negotiated and managed on their behalf by an agent or third party or may elect to remain anonymous. In such instances, the identity of the owner must be made known to CHRG and documented in the loan agreement. With the exception of this requirement and to the extent that it is able to do so within legislative and policy parameters, CHRG will comply with this request.

CHRG will borrow works for a fixed period only, which will be agreed between all parties and which can be extended by mutual agreement. Works of art will not be accepted for loan for an indefinite period.

CHRG will exercise the same standard of care for works of art on incoming loan as it does for its own collection in accordance with established procedures and professional museum and gallery standards.

On occasion, CHRG may hold works in trust for a brief period for another museum or gallery or in accordance with statutory requirements. For the purposes of this policy, these circumstances do not constitute incoming loans and will be considered custodial arrangements.

2.3.2 Outgoing Loans

CHRG supports the sharing of art objects and items of cultural heritage and will seek to agree outgoing loan requests wherever possible. In considering outgoing loan requests CHRG will take into consideration the need to balance the accessibility of its collection in a variety of cultural, aesthetic and intellectual contexts, along with the long-term care, preservation, display and interpretation and stewardship of the collection.

CHRG will lend works to recognised regional and national cultural institutions for exhibition and display purposes. CHRG will also make a selection of works available for outgoing loan to Coffs Harbour City Council offices through the furnishing loans program. From time to time CHRG may conduct outgoing loans for other purposes, including but not limited to conservation or provenance research or in order to facilitate access to parts of the collection by traditional owners and communities. CHRG does not lend to commercial galleries, institutions or venues, or to private individuals.

CHRG will negotiate and manage outgoing loans on terms that are ethical, responsible and transparent to public scrutiny, thereby maintaining its standing and reputation in the public and the museum and gallery sector.

CHRG will manage the outgoing loans program in a sustainable, responsible and resourceful manner, including:

- the strategic use of human, material and financial resources;
- the consideration of Gallery priorities and commitments, including but not limited to the exhibition program, as part of the assessment and approval of outgoing loan requests; and
- the strategic management of risks.

In negotiating and managing outgoing loans, CHRG will seek to control and mitigate the risk of physical deterioration or damage, theft, loss, or seizure of the artwork, or of civil or criminal proceedings or any other act, omission or circumstance that would compromise CHRG's collection or position and reputation for integrity in public administration.

2.4 Assessment of incoming loans

2.4.1 Ethics, public accountability and risk management

When considering an artwork for incoming loan, CHRG will:

- practise and be prepared to show that it has practised high standards of due diligence;
- applying those standards, seek to establish by all reasonable means all accessible information on the provenance, legal and ethical status and general legitimacy of the work and on the legitimate interests of third parties;
- base the decision whether to borrow and the terms on which incoming loans are entered into, on a thorough and conscientious appraisal and risk assessment of the information obtained; and
- maintain thorough records of the process of incoming loan proposal, investigation and decision-making.

CHRG will not accept an incoming loan on terms that require it to:

- suppress reasonable misgivings about the artwork or transact on the basis of a flawed provenance;
- compromise its standing, integrity or freedom to act conscientiously; or
- act in any other manner contrary to the dictates of conscience and the public interest.

2.4.2 Provenance and due diligence

In determining whether to enter into an incoming loan, CHRG will evaluate the available provenance information and undertake due diligence to enable it to make an informed assessment. In accordance with the Gallery Exhibition Policy, the Curator will assess provenance and determine requirements for further investigation before approving to proceed with the loan.

Investigation, risk assessment and decision making will be undertaken and documented. When undertaking an incoming loan, CHRG will require the lender to provide warranties and indemnities regarding their account of provenance, ownership and/or possession.

After undertaking due diligence and determining to proceed with an incoming loan, if, in the course of the negotiation or conduct of the loan information emerges that has the potential to expose CHRG to legal entanglement or to render the loan ethically contentious, further investigation and risk assessment will be undertaken in order to determine how to proceed.

2.4.3 Permits, approvals and reporting

CHRG will at all times act in compliance with all administrative and legal processes in place at an international, national and state level and will obtain all necessary permits or approvals and comply with all other reporting and accountability requirements in relation to the import and export of materials to Australia.

2.4.4 Conflicts of interest

Only in exceptional circumstances will works of art from the private collections of Council staff be accepted for incoming loan.

CHRG staff must declare any conflict of interest in an incoming loan. Employees must exclude themselves from any discussion or decision in relation to an incoming loan in which they have an interest.

All incoming loans from the private collections of Council staff must be publicly acknowledged as being 'From the private collection of [staff member's name]'.

2.4.5 Repository of last resort

CHRG recognises that there may be circumstances in which it will take possession of works that do not conform to the provenance and title standards outlined in this policy due to ethical, cultural or legal considerations. This includes circumstances in which there is a significant risk of damage, loss or destruction of the work if CHRG fails to act, on the request of Aboriginal or Torres Strait Islander communities or other traditional owners, or where CHRG is fulfilling a statutory or legal requirement to do so. Such situations will usually be administered as incoming loans in accordance with this policy, or as custodial arrangements in accordance with the Collections Management Policy.

In considering the incoming loan of such works, CHRG will consult with representatives of appropriate communities or groups, the professional museum and gallery community, peak bodies and/or relevant governments. CHRG will enter into such arrangements on the basis of sound, considered professional and ethical judgements. Such loans will be undertaken only in specific circumstances and CHRG will only enter into such arrangements in instances where the works of art are not being borrowed primarily for temporary exhibition purposes.

Such loans will be assessed and approved in accordance with this policy. The basis for the decision and any variations to the terms of the standard loan agreement will be documented in accordance with this policy.

2.5 Outgoing loans to cultural institutions

Requests to borrow works from the collection must be received in writing 12 months prior to the opening date of the exhibition or other purpose for which the loan is requested. Loan requests received outside this notice period may be considered and approved on a case-by-case basis. In these circumstances, the borrower must agree to cover any additional costs incurred in order to facilitate the loan.

CHRG will lend works for fixed periods and to agreed venues only. Outgoing loans may be renewed, extended or varied by mutual consent of all parties. In the event that outgoing loans are extended for a period exceeding two years, CHRG will conduct condition reports of the work(s) on loan.

CHRG does not apply fees on outgoing loans to cultural institutions. However, in the absence of any separate agreement or memorandum of understanding, borrowers must agree to cover all costs associated with the loan, including but not limited to packing, transport, customs arrangements, courier costs and insurance.

Touring exhibitions coordinated by CHRГ will be managed on a cost-share basis between participating venues.

All loans must be fully indemnified against all risks and copies of the borrower's insurance policy must be approved by CHRГ before the works will be released.

Where not already negotiated as a touring exhibition coordinated by CHRГ, in the event that the artworks comprising the loan request constitute over 50% of the content of the borrower's exhibition, CHRГ may request to be credited as a joint partner and to contribute to decision making about display and interpretation of its collection. In such instances, CHRГ also reserves the right to apply an exhibition fee to cover costs associated with the development and preparation of the exhibition.

Should an agreed loan request be withdrawn or cancelled by the borrower prior to the commencement or expiration of the loan period, CHRГ reserves the right to charge the borrower for any material costs incurred in the preparation and processing of the loan to the date of cancellation.

CHRГ will not permit borrowers to assign or transfer any of its rights, powers or obligations to a third party, or to transfer possession of the work to a third party without CHRГ's prior consent.

2.6 Internal Furnishing Loans

CHRГ will make a curated selection of works available for loan to Coffs Harbour City Council offices. CHRГ will lend works for a period of two years. Excluding recalls by the Gallery, these loans may be renewed, extended or varied by mutual consent of all parties.

CHRГ will conduct a site inspection and assessment of the location in which the requested work is proposed to be displayed and may conduct further site inspections throughout the duration of the loan period. Art work must not be moved from the assessed site, except by CHRГ staff. CHRГ will conduct condition reports of works on loan.

Works may be recalled at any time from City Council office loans for display, study or conservation by CHRГ, or for loan to a museum or gallery.

2.7 Outgoing loans for other purposes

Loans for other purposes will be assessed on a case-by-case basis in accordance with the principles, objectives and criteria for assessment outlined in this policy.

2.8 Assessment of outgoing loans

2.8.1 The artwork and Gallery priorities

In assessing requests to borrow artworks from the collection, CHRГ will consider:

- the availability of the artwork, including any commitments to current or planned CHRГ programs and schedules, or prior commitments to other borrowers;
- any restrictions imposed on outgoing loan or display under the terms of the acquisition or by virtue of the nature of the work, including Aboriginal or Torres Strait Islander artworks to which access is restricted or community concerns have been identified;
- the material condition of the work, including but not limited to its ability to travel and the impact of handling, installation, light exposure and environmental conditions on the work;
- the provenance of the artwork; and
- the adequacy of the timeline and available resources required to prepare the loan.

2.8.2 The borrower and purpose for the loan

In addition, CHRГ will consider the following factors in assessing loan requests:

- the type and reliability of the borrowing institution and its legal and financial situation;
- the artistic or educational value of the exhibition or display concept and its feasibility, including consideration of whether the exhibition includes works that are known to have been stolen, illegally exported or illegally excavated;
- the adequacy and appropriateness of the borrower's facilities and the ability of the borrower to meet and maintain facility, environmental and security and the terms of the outgoing loan agreement or exhibition touring contract throughout the loan period;
- the availability of appropriate staff and any sub-contractors at the borrowing institution in order to administer, manage and oversee the loan and comply with the terms of the outgoing loan agreement throughout the loan period; and

2.8.3 Additional requirements

CHRГ has specific requirements regarding the following matters:

- use of approved couriers during transport and/or installation and de-installation;
- insurance arrangements;
- copyright and image reproduction;
- packing and transport arrangements;
- display and installation requirements;
- conservation treatment or other intervention into the artwork;
- removal of the work from display;
- notification of incidents impacting the loaned works;
- display and storage facilities and security and environmental parameters; and
- termination of the agreement.

Details of CHRГ's requirements are set out in the outgoing loan agreement or exhibition touring contract. Additional documentation or evidence of compliance with these matters may be sought in accordance with established procedures.

Requests to include works of art in an exhibition tour comprising multiple venues coordinated by another party will be assessed by the Curator. In the event that such loans are approved, CHRГ may impose additional requirements for couriers in transit between venues and periodic condition assessment of the artworks during the tour by appropriately qualified professionals approved by CHRГ.

In the event that a loan period is extended beyond the original term, the insurance valuations for artworks may be reviewed and updated. Amendments to insurance arrangements undertaken by the borrower must be made to CHRГ's satisfaction.

2.8.4 Couriers

CHRГ may require that an artwork be accompanied in transit and/or installed and de-installed and condition checked by a qualified person nominated or approved by CHRГ.

In determining requirements for and selection of a courier, CHRГ will consider:

- the significance and fragility of the artwork(s);
- any specific handling or installation requirements;
- the available staffing and contractor arrangements at the borrowing venue(s);
- the number of works comprising the consignment(s);
- the value of individual artworks and the overall consignment(s); and
- transport and other security arrangements in place.

The courier may be a Gallery employee, or another person approved by CHR.G. Couriers will be appropriately qualified and experienced in art handling and transport procedures and CHR.G will not assign courier responsibilities in order to defray the cost of travel for other purposes.

Courier selections will be approved by the Curator.

2.9 Approval of loans

2.9.1 Approval of Incoming Loans

Following approval to proceed with an incoming loan, if the proposed lender agrees in principle to the loan, the Curator will thereupon assume responsibility for negotiation and loan arrangements.

In consultation with the lender, Curator will determine the identity of the party responsible for issuing the loan agreement and on whose terms the loan will be concluded. Where CHR.G is responsible for issuing the loan agreement, incoming loans are concluded using CHR.G's incoming loan agreement which outlines standard terms, amended by special negotiation when so required. Where the lender's loan agreement is used, the conditions will be assessed to ensure they are consistent with the terms outlined in this policy and CHR.G's incoming loan agreement. Where necessary, amended or additional clauses to the lender's agreement will be negotiated.

Loan agreements for incoming loans are approved and endorsed under the delegated authority of the Curator.

All proposed outgoing loans must be approved by the Curator or her/his delegate. Loans will be approved in accordance with the Gallery Exhibition Policy.

Once approved, incoming loans for temporary exhibition will be requested in writing from the lender by the Curator.

In deciding whether to approve an incoming loan, consideration will be given to:

- the terms of this policy;
- the findings of provenance and due diligence investigations, and
- outcomes and recommendations arising from any community consultations.

The grounds for approval of any incoming loans that do not accord with the considerations outlined in this policy will be minuted by the delegated authority.

CHR.G will at all times act in compliance with all administrative and legal processes in place at an international, national and state level and will obtain all necessary permits or approvals and comply with all other reporting and accountability requirements in relation to the import and export of materials to Australia.

2.9.2 Approval of Outgoing Loans

All outgoing loan requests will be reviewed by the Curator in accordance with the terms of this policy.

Loans will use CHR.G's outgoing loan agreement or exhibition touring contract, amended by special negotiation when so required. Outgoing loan agreements are approved and endorsed under the delegated authority of the Curator and counter-signed by a witness.

Works will not be released on loan until the outgoing loan agreement has been completed and signed by both parties.

2.10 Transparency and accountability

2.10.1 Publication of incoming loans

CHRG may publish or make available a printed or online catalogue or other document for each exhibition listing the artworks that are included in the exhibition.

2.10.2 Record keeping

CHRG staff will maintain records (paper based and/or electronic) for each loan, including outgoing loans and proposed incoming loans that are not approved, documenting relevant information and decision making.

2.10.3 Staff obligations

CHRG staff members involved in the assessment, approval and administration of loans are bound by Coffs Harbour City Council's Code of Conduct and other relevant Gallery policies.

3 Definitions

Aboriginal or Torres Strait Islander art: means artwork:

- a) by an Aboriginal or Torres Strait Islander artist or group;
- b) containing Aboriginal or Torres Strait Islander themes or content.

Approved borrowing institution: means an institution approved under Part 3 of the *Protection of Cultural Objects on Loan Act* by the Minister for the Arts, or the Minister's delegate.

Collection: means works of art in various media that are CHRG property and have been formally accessioned. The collection also includes other material acquired and accessioned by CHRG for the purpose of research and enhancement of the collection, including the study collection. For the purposes of this policy, the terms 'artwork', 'work of art', 'work' and related terms are used interchangeably to describe all art or other material acquired into the collection.

Collection exhibition: means an exhibition of works of art that is largely drawn from the collection and may include incoming loans and/or commissions, in accordance with the Gallery Exhibition Policy.

Curator: means the Curator of CHRG appointed by the Coffs Harbour City Council and includes a person appointed as acting Curator.

Due diligence: means the thorough assessment of an artwork to evaluate its authenticity, ownership and provenance and to identify and assess any gaps in information about the artwork.

Exhibition program: means the forward program and schedule of temporary, collection and touring exhibitions, in accordance with the Gallery Exhibition Policy.

Incoming loan: means any contracted arrangement for the transfer of possession of an artwork or other material to CHRG on a temporary basis under which the transfer or grants a temporary right of possession to CHRG. It therefore includes loans that expressly benefit both CHRG and the party transferring possession and other sharing arrangements, such as a scheduled rotation of possession among co-owners. The terms 'lender', 'borrower', 'lending', 'borrowing' and 'loan' and all related or derivative terms are to be construed in the context of this definition and unless otherwise specified, references to incoming loan or any related terms may apply to proposed, contemplated, potential, approved or realised loan arrangements. The

terms do not apply to transfers of possession to CHRG where CHRG is the sole owner of the object and retains the sole right of possession.

Incoming loan for temporary exhibition: means an incoming loan made for a finite period for the primary purpose of display at CHRG venue or in a touring exhibition. In the context of this phrase, ‘temporary exhibition’ has a meaning distinct from its definition in the Gallery Exhibition Policy.

Incoming loan to the collection: means an incoming loan made for the purpose of display, research or other purposes associated directly with CHRG’s collection, including but not exclusive to exhibition.

Loan agreement: means a formal, legally binding written contract between the lender, who may be the owner of the artwork(s) subject to the loan or their agent, and CHRG as borrower, specifying the artwork(s) and outlining the conditions and terms of the loan and the responsibilities of each party.

Outgoing loan: means any contracted arrangement for the transfer of possession of an artwork from CHRG to another party or parties on a temporary basis under which CHRG grants a temporary right of possession to the borrower. It therefore includes arrangements that benefit both the Gallery and the party receiving possession and other sharing arrangements, such as a scheduled rotation of possession among co-owners. For the purpose of this policy, ‘outgoing loans’ encompasses touring exhibitions. The terms ‘lender’, ‘borrower’, ‘lending’, ‘borrowing’ and ‘loan’ are to be construed in the context of this definition and unless otherwise specified, references to outgoing loan or any related terms may apply to proposed, contemplated, potential, approved or realised loan arrangements.

Owner: means the party or parties who lawfully possess title to the artwork.

Provenance: means the history of ownership of an item from the time of its discovery or creation to the present day, from which authenticity and ownership is determined.

Temporary exhibition: means an exhibition of works of art including incoming loans and/or commissions and may include works drawn from the collection and is defined in accordance with the Gallery Exhibition Policy. When used in the context of the whole phrase ‘incoming loan for temporary exhibition’, this term has a different meaning.

Title: means the legal right to ownership of property.

Touring exhibition: means an exhibition of work(s) of art that may include works drawn from the collection, incoming loans and/or commissions that CHRG tours to other venues and is defined in accordance with the Gallery Exhibitions Policy.

4 Key Responsibilities

<i>Position</i>	<i>Directorate</i>	<i>Responsibility</i>
Mayor	Council	To lead councillors in their understanding of, and compliance with, this policy and guidelines.
General Manager	Executive	To lead staff (either directly or through delegated authority) in their understanding of, and compliance with, this policy and guidelines.

Position	Directorate	Responsibility
Executive leaders - All Directors	All Directorates	To communicate, implement and comply with this policy and related guidelines.
Group and Section Leaders	All Directorates	To implement this policy and related procedures.
All Council officials	Council	To comply with this policy and consider its implications for related projects and programs.

5 References (laws, standards and other Council documents)

- Australian Government, Attorney General's Department, Ministry for the Arts, *Australian Best Practice Guide to Collecting Cultural Material* 2014
- Australian Government, Attorney General's Department, Ministry for the Arts, *Protection of Cultural Objects on Loan: Scheme Guidelines* 2014
- Coffs Harbour City Council *Gallery Exhibitions Policy* 2016
- *ICOM Code of Ethics* 2013
- *Museums Australia Code of Ethics* 1999
- *NSW Freedom of Information Act* 1989
- *NSW Government Information Public Access Act* 2009
- *NSW Privacy and Personal Information Protection Act* 1998
- *NSW Uncollected Goods Act* 1995
- *Personal Properties Securities Act* 2009
- *Proceeds of Crime Act* 2002
- *Protection of Cultural Objects on Loan Act* 2013
- *Protection of Cultural Objects on Loan Regulation* 2014
- *Protection of Movable Cultural Heritage Act* 1986
- *Protection of Movable Cultural Heritage Regulation* 1987

6 Details of Approval and revision

- **Approval date:** 23/03/2017
- **Responsible Section:** Community Programs
- **Superseded policies/procedures:** N/A
- **Next review date:** 23/03/2021

Table of amendments

Amendment	Authoriser	Approval ref	Date