Polly Seidler

17 Sept 2021

REVIEW OF HERITAGE ACT 1977 – Standing Committee on Social issues

CLARIFYING EVIDENCE - Transcript 17 August 2021

Page 34 – first paragraph – line 6

"factual inaccuracy and sloppiness in heritage listing"

This refers to the drafting of the listing. A heritage listing in effect becomes a form of a covenant which effectively binds the land owner – and yet these heritage listings are being drafted with factual mistakes or by people who have unsatisfactory understanding of what they are describing. Unlike a last minute student educational research assignment which only affects a student's academic marks – this sloppiness in a heritage listing can unfairly burden a land owner who is encumbered by a component which is not of any heritage significance or has false heritage information – which then misleads as to suitable alterations or upgrades.

Eg one listing for a building in the city was noting items which were later inflll in the draft listing. Sometimes – if I know about it – I have to take (unpaid) time on my own to research and to correct the record on heritage listings involving Harry Seidler.

If the heritage significance is not accurate and written by qualified people (eg those who are sourcing original documents and have qualifications in the field of (for architecture) architectural history and understanding of the period or architect in question. Alas many heritage listings are just pastes from whatever articles they find online- which are not even peer reviewed or even examined primary sources. Even if they source architecture books – there is no consideration of the later modifications to the architecture – ie the listing then describes a house as built but does not recognise the later modification and so incorrectly describes the architectural item on the site) How is it that a document that is a de facto covenant for what can happen on a piece of land has not standards for proper research? And no accountability for those who write these documents which have such implications for property owners if not done correctly? There is not even a statutory declaration that the research has considered all the original sources on the item or the architect's relevant statements.

Page 34 – second paragraph – line 3 "Federal legislation – moral rights of artistic integrity' – these "moral rights" provisions of the federal Copyright act 1968 – Part IX. (enacted on 21 December 2000.

Page 34 - comments on ROSE SEIDLER HOUSE

(3rd last line) my use of the word "close" was meant to state " close the current (static) house museum being open to visitors (seeing the original furniture in place etc) for half the year"

(2nd last line) my use of the word "lease" should have said "licence".

my use of the word "wanting" (5th last line) and "want" (3rd last line) should have been "proposed but not yet approved or implemented"

Sydney Living Museums (brand name of government cultural entity Historic Houses Trust of NSW) is considering to have (one of its historic house sites) Rose Seidler House (1950 house by Harry Seidler) with alternative furniture for half a year (not be open as normal house museum) rather be used for licensing (not leasing) to paying users like company development days and dining events or cocktail functions to generate income. Any heritage venue which is a cultural tourist site has to find ways to ensure there is enough funds to ensure the venue is maintained and there are enough visitors to the site and the leader at Sydney Living Museums has mooted that licencing for such events is a way to achieve this aim.

I note that the original terms of the gift from Harry Seidler to Historic Houses Trust NSW require that the original furniture remain in its original location as this is part of the interior Harry Seidler design for which is of cultural and heritage significance (and why the house is world famous in modern architectural circles). Sydney Living Museums has informally requested to Seidlers to change the conditions of the trust for this 1950 house.

I would like to clarify the concerns about **what will be tolerated in the name of "activation" for a tourist venue or heritage site?** I say this in respect of all heritage venues which are considered tourist items– be it for (a) facilities to serve tourists (toilets, café, parking, air conditioning) + also

(b) the inherent risk of having others pay to use the venue (eg film crews for location shoots, dining events, development training day events, cocktail events) which involves risk of damaging original building fabric (including interiors) fabric **which insurance money cannot remedy** (eg an event waiter is focused on serving food and drinks not ensuring they do not damage the original interior venue – as it is assumed the venue can cope if they trip and glass or food gets tossed onto and damages original interior building fabric) . Let alone the OH&S needs (eg air conditioning) to service likes development training days inside a historic heritage house with original interior (whose heritage significance includes the original furnishings). A person attending a development training day is at work and it is not the attendee's responsibility to modify their conduct so as not inadvertently damage a historic artefact (an attendee assumes the venue can cope with normal behaviour of people at a venue of development days), an IT person pulling computer cords cannot be expected not to consider cultural and aesthetic issues of not compromising the cultural integrity or possible damage to of the venue interiors when their job is to get computer screens ready for a development day - (unlike someone who is a museum visitor is 100% focused on not damaging the venue). Let alone risks if alcohol is consumed – how to control someone's behavior.

The immense pressure to generate "revenue" from non-standard museum visitor uses will have high risk of damaging the heritage venue and compromise the cultural integrity. And **do not assume contractual terms for licence venue use (+ insurance) solves the risk issue**– eg despite the terms making it clear no food or drink is allowed in upstairs Seidler penthouse, Milsons Point (proposed state heritage listing – currently only locally heritage listed) film crews still have to be watched and monitored against taking coffee upstairs as they film crew is focused on making a film not ensuring original fabric is not damaged. But in the aim of generating income and letting a film crew (or event organiser) do their work – venue owners will inevitably not be able to monitor sufficiently what is happening on site (unlike say the way that security guards at a public art gallery ensure people do not get too close to artworks on display).**There is**

an inherent tension between servicing the paying venue user (to generate income) and protecting the original heritage item (let alone cultural integrity).

Even events eg drinks functions – any event - involves contractors who have no idea of the terms of venue use. Sure it is the event managers role to make them aware but in my experience this does not happen.

When I put to ABC TV recently that unauthorised props were brought onto site of Rose Seidler house for documentary filming (the site was used a as a paid location for backdrop of filming), the ABC claimed words to the effect of "we paid for it so we could do what we want' even though the terms of the venue use agreement disallow this.

I manages commercial leases in two heritage listed buildings and a residential lease in a proposed state listed building - generating income producing activities can put pressure to satisfy commercial demands which of its nature might compromise the original heritage and design integrity (which insurance alone cannot remedy if damage to original building fabric is done), let alone the separate artistic integrity of modern heritage venues where the designer (who died after 1954) still has artistic integrity rights under the federal Copyright Act. I am one of the few building owners who have to carefully consider all the terms of any lease etc such that heritage and cultural integrity is not compromised – few other property managers understand how to navigate the terms for income generation with the implied duty to upholding original building fabric.

The issue is **particularly a concern for 'heritage self-assessing" organisations**. We saw what horrors happened when Rio Tinto self-assessed aboriginal heritage and destroyed original aboriginal artefacts. **When any "self-assessor" seeks to generate income from licensing venue** – then money can influence what will be tolerated- the tension is to compromise on heritage and cultural integrity in the aim of what is needed to generating income in the name of so-called "activating" the site. Historic heritage houses with original interiors are not mere venues to be licenced for events to generate income – a separate venue is needed for a "visitor centre" or 'conference centre" –to preserve and keep from inadvertent damage to the historic house (or other cultural heritage item earmarked for tourism).

Page 35 -= 3rd paragraph – re NSW State heritage register committee

My comments about Ausgrid member, and a public health care manager administrator (whom I later refer to as a "bureaucrat" and I should have said "public sector health care manager", and (big law firm) planning lawyer were all references to previous members of the NSW heritage register committee – being the paid persons on the committee for the state who decide (after the NSW heritage office staff or their consultants have prepared a draft listing) what items of (architectural) heritage are to be recommended to the NSW heritage minister for heritage listing. It is as though our cultural heritage is adopting a form of inherent "pub test' - when the issue should – for at least architectural heritage – qualified people who know something about architectural history deciding what should be architectural heritage. No other country in the world outsources decisions of cultural heritage to untrained people to be a vetting committee. Trained curators decide what items go into a public museum – yet the likes of a public health care manager (who has no architectural history qualifications) should not be deciding on the state's architectural heritage. What gets state heritage listed gets further confused if the draft heritage listing has not been written by someone who has done proper informed research.

Page 35 – 2nd last paragraph – managing a heritage asset and commercial leases

My comment **'not all owners are willing to engage in that process"** – I meant to say that few property owners have the ability to navigate managing the cultural heritage issues (and preventing damage to heritage interiors and building fabric and architectural integrity) as well as know how to negotiate commercial leases or residential leases. Commercial lease lawyers cannot be expected to know what particular restrictive clauses are needed to uphold heritage – as it is assumed - "indemnity to repair" or "insurance" is enough to rectify any damage done to a commercial building. This is why those who draft leases for use in heritage buildings have to be briefed about the use requirements so as not to damage built fabric or heritage interiors.

Even for residential leases – my mother's (formerly my parents residence) of 1960 unit at Ithaca Gardens in Elizabeth Bay has an original Harry Seidler interior (including timber built -ins) – even though the venue is proposed for state heritage listing (heritage register committee meeting minutes of 2018) – until then unless there is a specific residential lease term instructing tenants to treat the venue as if it were heritage listed (otherwise the tenant has rights to put nails into walls etc).

Further, with MP Alex Greenwich proposing to disallow residential leases from banning pets - has it is assumed the payment of a bond will cover for any damage – if a dog were to scratch the original Harry Seidler timber built ins – no bond or insurance can rectify this damage to the original building interior fabric. No real estate agent would know to insert such clauses into a residential lease. Likewise, our second Seidler penthouse of 1994 in Milsons Point (mooted state heritage listing by Heritage Register Listings committee shortlist of 2018) has original Seidler built-ins and furnishings and a previous residential tenant left out our chrome-leather chairs on balcony such that they are rusted and ruined (cannot be repaired), another had nail polish remover which ruined the timber built-ins – so now I have to have special conditions not to take chairs outside, not to burn candles on timber built-ins etc - these are special conditions to ensure the heritage interior and furnishings are not damaged which no real estate agent (who drafts the residential lease) would know about. Few property owners know how to navigate both the instructions to prevent damage to heritage fabric while earning lease income.

Page 37 – (last line) – re complying development consent – for commercial office fitouts (once heritage ticked off)

If not heritage listed - modifications to an interior fitout are "complying development" which means a certifier can grant "complying development consent". So a commercial tenant's fitout – every tenant wants the ease of getting a quicker and cheaper certifier to approve their internal fitout. Heritage Act must allow commercial buildings – which were built as commercial buildings – designed to be leased – the ability to get a heritage approval for interior fitout– and then get a CDC and not the more expensive and time-consuming DA. The current system penalises those who have such a good commercial office building design which makes it worthy of heritage listing – to impede easy commercial tenancy fitouts (with easy heritage approvals without requiring a full DA) - when the building was built with that very intent (of changing commercial tenancy fitouts) from the outset.

<u>Page 38 (my main spoken words in middle of page)</u>

(my first paragraph ie just above middle of page – last 3 lines) –

The locally heritage listed item (which was demolished) was a 1960 Harry Seidler house on Penrith River. The (locally) heritage listed original Seidler house was demolished (all authorised by a heritage architect and a heritage officer) and a new non-Seidler house erected on the site – all the while being noted as a heritage item *by Harry Seidler*. But Harry Seidler has nothing to do with the house on the site today – and it is false attribution under the (federal law) moral rights provisions of the Copyright Act section 195AE to have any heritage listing noting the house is by Harry Seidler. This is an example to show how NSW heritage processes are ignoring the federal legislation (moral rights provisions under the copyright act part IX) for architects who died 1955 or later – assuming that the only issue is NSW planning and NSW heritage law – with reckless ignoring of federal copyright legislation on artistic moral rights. False attribution in a heritage listing of any kind is inexcusable – and so the NSW heritage act must make mention of compliance with federal copyright legislation including moral rights for buildings where the architect died 1955 or later for those heritage enablers to consider the issue - to uphold heritage and cultural integrity. (let alone copyright).

(my second paragraph – about "*changing a Harry Seidler building – it loses its distinctiveness of being harry Seidler*"

if the alternations to a Seidler building are not done in consultation with architect Penelpoe Seidler who is the owner of Harry Seidler moral rights of artistic integrity under Part IX of the Copyright Act = then the Seidler distinctiveness which is what usually gives the building its heritage significance. It is possible to modify or upgrade a Harry Seidler building but this has to be done with architect Penelope Seidler (and her firm's) **design control to maintain Harry Seidler design integrity**. While this Parliamentary committee does not necessary care about Seidler architectural design –I assume this parliamentary committee cares about indigenous heritage – and would agree with the principle that any modifying of indigenous heritage is done in consultation with the traditional custodians of the land and not just have some heritage officer presume to know what is a suitable way to modify indigenous heritage. The same issue applies for modern architects and artists of public sculptures who died 1955 or later and have moral rights of artistic integrity – any modification requires consulting with them so as not to undo their cultural and heritage integrity.

(my third paragraph) – the federal moral rights legislation is a reference to Part IX of the federal Copyright Act.

3rd last line – NSW government gave notice to the architects before demolishing buildings on Martin Place for the Sydney metro project.

My comment "*someone at Macquarie Street has been well advised for its own work*" -by that I mean NSW Government has received good legal advice to uphold moral rights provisions of the federal Copyright Act in managing its own construction project of the Sydney Metro. Even thought the project did not involve demolishing heritage items– the procedural step of giving moral rights notice to the architects who are alive or who died 1955 or later was enacted – and should be enacted by all NSW heritage officers too.

(my last paragraph) – "they love using the name Harry Seidler yet is something that we disown ourselves from" – by this I mean people use the name Harry Seidler but if it has been altered in a way that it looses the characteristic of being Seidler design – then the Penelope Seidler and the Seidler firm disassociate the Seidler name from the project.

Page 40

My first paragraph re ***"brutalist"*** architecture – the title "brutalist" means off-form UNPAINTED concrete. Harry Seidler distanced himself from the description "brutalist" as he considered the UK brutalists to be unskilled copiers of his mentor Marcel Breuer's concrete architecture. Brutalist buildings in UK (the first to use the term) are heavy massing with no spatial lightness or spatial transparency which is characteristic of Seidler architecture – (from his visual aesthetics teacher Josef Albers whom he said he learnt more about design than in any architecture school). This is **a problem with heritage analysers considering only materials and ignoring the spatial component of design** which is what makes Seidler design unique. Alas no heritage analyser I have yet encountered have ever studied art or design history to consider the visual or design analysis of what makes Seidler design unique.

First paragraph, 4th line ***– the home in Killara*** – refers to the Harry & Penelope Seidler House in Killara NSW (state heritage item)

Second paragraph – 3d line – almost 3 years later after draft listing - "heritage office' should add "and the Heritage register listings committee"

2nd para – 3rd last line - "Has to get to through the approval process" – by that I mean the "heritage listing preparation process to present to Heritage Minister for approval".

My 3rd paragraph – when I speak of non- architectural heritage people who "*cannot read drawings*" –I mean "architectural plans and sections and construction drawings".

"*they cannot solve the problems*" – by that I mean they cannot - when faced with proposals to change a building – cannot make suitable architectural decisions which **entail not only materials**, but design, building code issues, structural issues (as well as cost and time of implementation issues) and long term maintenance issues– and how to analyse all without compromising architectural integrity. Some heritage officer thinks all can be solved by ranting "like for like" materials with no understanding of what architectural decision making involves.

Eg in around 2001 when he timber ramp at Rose Seidler house was being repaired – the initial proposal from heritage deciders 'like for like" ie rebuild the timber ramp. But Harry Seidler (who was alive at the time noted that this would me the ramp would again sag in 50 years – and far better to insert a hidden steel beam and metal capping – this gave structural stability and

better water proofing than mere "Like for like" – but if those who administer heritage keep insisting on "like for like" they are burdening owners of heritage items with unfair solutions for maintaining their buildings – and ignorant of ways to use different materials that do not in anyway imped the heritage significance.