

**Submission
No 86**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Name: Ms Polly Seidler

Date Received: 5 July 2021

Sunday 4 July 2021

HERITAGE ACT REVIEW SUBMISSION from Polly Seidler

Introduction

About Author: I write as a inhouse lawyer and history researcher advising on the architectural integrity issues on my late architect father Harry Seidler AC OBE who died 2006. I have not had the opportunity to get company approval of this submission (frantic timing end of financial year & covid etc). I have a Bachelor of Arts majoring in architecture and have studied modern architectural history at a masters level. I keep up-to-date with Society of Architectural historians annual conference since 2019. I write also as (director of company) which owns 2 locally heritage listed commercial office buildings by Harry Seidler and can see the unfair way heritage processes can burden owners with bureaucracy with no tangible heritage benefit.

Harry Seidler heritage listed items. - 4 x Harry Seidler houses are on the state heritage register and the NSW heritage register committee has been proposing to list about 10 other items since 2001 and then reconsidered in 2015 but these are all on hold. . Many more are on local heritage registers of various councils and 2 items on national heritage register.

My concerns about heritage relate mainly to **modern architecture** – namely architecture where the heritage significance is the (famous) architect and the architecture. **Specifically where the architect died 1955 or later or is still alive** – in other words where the heritage items are still under copyright and the federal moral rights provisions of artistic integrity still apply even though NSW heritage officers are wilfully blind and ignore this federal legislation when considering demolishing or altering an architect’s work.

BUILDING OWNER CONCERNS OF HERITAGE PROCESS

- 1. (fast track application) - Enable heritage component approval (without full DA) – if works (aside from heritage listing) would otherwise be Complying Development Consent**

If a building is heritage listed –enable a “no impact on heritage” approval by local or state heritage council where the rest of the legality for the development (building code, fire regulation etc) can be approved as Complying Development Consent by a private certifier. It is maddening that commercial office fitout that does not touch original commercial building fabric has to be considered as a full DA and not a heritage component approved CDC simply because a commercial office building is heritage listed. This adds far more time and cost to heritage

building owners and is unfair to them that council gets full jurisdiction over works which do not impact heritage and which would otherwise uphold all other planning laws.

2. Enable a joint local -state-federal approval process

I was aware that in about 2010-12 the owners of Australia Square tower and plaza in Sydney (1967 by Harry Seidler) - were willing to consider the building to be heritage listed but the owners did not want to go through 3 tiers of approval – local, state and federal (as all tiers of government were considering heritage listing). They engaged one of Australia’s top law firms Mallesons to draft a unified heritage proposal – but then the different heritage tiers were unwilling to work with each other and this venture died. This is what gives heritage a very bad name that the various bureaucrats are not willing to consider a unified approval process to make things easy for building owners. Without it – the building owners will resist multi-tiered heritage listing. The project is now only locally heritage listed.

3. Heritage of buildings with original use – heritage should not impede their use and upgrades

Alas heritage policy assume that an architectural heritage item needs “activation” or “adaptive reuse” or to be re-purposed or that the building needs to be conserved eg LEP 5.10.10 with a list of “conservation incentive” eg extra FSR. Such incentives are meaningless for a heritage listed commercial building or residence where the original use remains. Discounts off local council or land tax valuation or Australian Income Tax or other financial incentives otherwise the extra layer of heritage bureaucracy and costs undermines the owners legitimate financial concerns.

A 1982 Harry Seidler house in Castle Cove was recently sold and the real estate agent selling never mentioned that the house was heritage listed in the as heritage listing was seen as a detriment to anyone buying a house.

4. Infrastructure & incentives for heritage tourism

(covid aside) there is a growing world-wide interest in mid-century modern architecture and off form concrete modern architecture. For instance the huge crowds at Modernism Week in Palm Springs, California. There should be financial incentives and state covered insurance to enable public visits to such sites.

I note that country Germany promotes historic cultural tourism well – Australia only promotes nature and sport and ignores the cultural aspect of tourism (beyond aboriginal culture or the Sydney Opera House). The state and national tourism campaigns are missing on a whole market of such tourism.

ARCHITECTURAL CONCERNS ABOUT HERITAGE PROCESS

5. NSW heritage authorisations – consult with the original architect (for architects who died 1955 or later or who are alive) - to uphold architectural integrity

1.1 Background: Those who authorise the alternation or demolition of any building (even if is not heritage listed) designed by **an architect who died 1955 or later** and has not yet been dead for 70 years or is alive have to engage with the architect (or within 70 years of death their personal legal representative) to **uphold federal legislation of moral rights of artistic integrity** being Part XI of the Copyright Act. Currently NSW heritage and planning officers are operating as if there is no such federal law which applies to their decisions to alter a building other than NSW heritage and NSW planning laws. **Nothing under NSW law exempts compliance with federal legislation – and federal legislation prevails to the extent of the inconsistency.** Indeed, I understand that NSW government itself contacted the architects of the buildings being demolished for Sydney metro – notice was given of the demolition under federal moral rights legislation. Alas most local councils and NSW Heritage office operate as if no federal law applies to their decisions and are authorising infringement of an architect's moral rights and are making themselves vulnerable to being sued under federal law (see moral rights www.copyright.org.au).

1.2 Any heritage assessor must have a check list to ask 1. Is the architect alive? or 2. Did the architect die 1955 or later and has not yet been dead for 70 years? – if so then the federal legislation of consulting architect must be considered to comply with federal legislation on moral rights of artistic integrity (and not ignored). Or possibly engage in false attribution as noted below, or false attribution if not to disclose that the author architect did not consent to the alternations.

5.3 **CASE STUDY WHY ARCHITECT NEEDS TO BE CONSULTED:** a horror example is Penrith Council who (around 2015) heritage listed a 1960 Harry Seidler house on **Penrith River** (published in Seidler architecture books as “Wood House”) because of its connection to Harry Seidler (not that any one would know as it took the council over 3 years to put this on the NSW heritage online database) – and then allowed the house's demolition in 2015 with another architect whose statement on Harry Seidler merely annexed a wikipedia entry – and then this other architect designed what he claimed is what Harry Seidler what would have designed if designing for the site today. All of this was done without anyone speaking to moral rights holder Penelope Seidler or her firm Harry Seidler & Associates – all done behind Seidler firm's back.

The house on the site with a heritage listing now bears no resemblance to Harry Seidler architecture – and yet this council has this new house heritage listed noting it is a work by Harry Seidler! **This heritage listing is false attribution under the copyright act** to claim Harry Seidler design when there is no built fabric in any way connected to Seidler. No one would tolerate a non-aboriginal person creating an artwork or sculpture or landscape and describing it as

aboriginal when it is not so. Likewise, who would tolerate modifying an aboriginal artefact site without consultation with the relevant aboriginal community – and have a non- aboriginal adviser claim they know what an aboriginal person would do and never consult with an aboriginal person. This is cultural misappropriation and undermines the cultural integrity aspect of heritage. So why is modern architecture heritage treated in this way?

And this was all approved and endorsed by Penrith Council's heritage consultant. Around that time I had been asking Penrith council to heritage list the house as I was concerned about the house's fate – but I had no idea the council had already heritage listed the house and then authorised its demolition with a DA. I note that there were false representations that the mint Seidler house's kitchen would be offered to Powerhouse Museum. I checked with Powerhouse Museum and they had not received any such offer. Besides, Powerhouse Museum is NOT a dumping ground for interior design fitout when someone wants to demolish the original built fabric. NSW heritage laws should require that undertakings are given by statutory declaration to enforce integrity in promises made in a heritage approval.

5.4 REQUESTED EXCEPTION FOR HERITAGE APPROVAL: Where a building is heritage listed, there should be a provision that **if the item's heritage significance is its (modern) architecture and its connection to a certain architect** - the architect whose name is the subject of the architectural significance is proposing the alterations that this be a deemed automatic heritage approval (as long as other planning laws are upheld). Further if the architect who has deceased, has in their will nominated a personal legal successor who is themselves an architect – that later architect should be granted heritage approval. I consider it serves no one that architect Penelope Seidler with her husband Harry Seidler won the state's top residential architecture Wilkinson award for her house of 1967 for Seidler House in Killara, has to lodge a DA to effect roof repairs to her own house. She is an architect and knows more about the house and roof design than any heritage officer. She knows how to uphold her own architectural integrity.

A system of registering the architect and personal legal representative should be part of the heritage listing process for all heritage listings where the creator died 1955 or later or is still alive.

6. Minimum professional standards for heritage listing authors + those who authorise alterations to modern architecture.

3.1 other than having a 1.5 year masters degree in heritage (which is a scant survey of Australian architecture) and the masters elective on modern architectural materials is just a 5 day intensive looking at pebblecrete. In other words people who have no qualifications in

modern architecture or structural design or architectural design are making decisions about modern architectural heritage. This means well-meaning but ill-equipped persons are making architectural decisions which they have no training to make. I note that general historians without history of design training miss analysing the design component of heritage (indeed they cannot even read plans). Let their expertise be for non-architectural significant works eg social history.

3.2 for alterations – **no archaeologist should be making decisions about architectural alterations** (just as no architectural person is to make decisions about archaeology).

Those without architectural training resort to insane checklists which mis-characterise the architectural work in question. And their focus is only on materials and architecture is far more than materials – the special dynamic is something that is lost when purely a focus on materials. Often for modern architecture (unlike previous eras) the material used is not significant for the design.

3.2 (for modern architecture) Qualifications and **minimum standards of modern architecture heritage listing**. The standard of some heritage listings I have seen on Seidler architecture would fail a high school assignment for a lack of basic knowledge and major factual mistakes. The community is not served by sloppy drafting of heritage listings as it undermines the cultural integrity and frustrates building owners.

These should be the requirements:

- (a) Primary sources studied ie architectural plans and the original historic published books (not later compilation books and journalistic articles on the internet) . Far too many heritage listings just refer to journalistic error-prone biographies which have no architectural information. For Seidler - the plans are at State Library NSW.
- (b) The writer of the heritage report must have qualifications in architectural history and practice to write about modern architecture (just as an art valuer must have qualifications). A general survey course of Australian architecture is insufficient.
- (c) The listing should be offered to the original architect or their personal legal representative (successor) for comment.

Eg Case study on Harry & Penelope Seidler house at Killara 1967 – the state heritage listing has not engaged with any recorded Harry Seidler lecture or architecture book on the house design – not primary sources were consulted. Nothing about what Seidler himself says is significant about the design and its special configuration. I think the heritage listing of the house is confused and will not guide anyone as to the architectural significance.

Eg case study of heritage listing for Harry Seidler's Luursema House 1958 (since modified) in Castlecrag (Willoughby Council) . the drafter of the heritage report quoted a 1954 book page as source which was from a footnote on a paper which was accessible online – but alas this source was false information for the heritage item - the authors made false claims that the heritage house was a ring plan when it was not – they quoted a source they had not seen (the source showed a plan of different configuration from the proposed heritage item). I consider this to be inexcusable sloppiness (when the book was at a public library) and undermines all that heritage is meant to be about.

Eg Ryde Council's heritage listing of a much modified Seidler home – calls it "international style' and Harry Seidler is on public record saying there was no such thing as "international style". How is that the person these heritage listings are meant to honour – the person's own published writings and interviews are being ignored – and that a Wikipedia pasting was sufficient for a heritage listing?

Any source referred to in heritage listing text and footnote must be declared by report writer as having been sighted (not just blindly copied from what they find online). I have informed Willoughby Council of this mistake. There should be some factual truthful standards for heritage listings.

- (d) Bibliographies should be divided between "books/sources consulted" and "books/sources copied from other biographies and not consulted". I have seen one heritage report just past another bibliography with completely irrelevant articles for heritage item eg different genre or era of architect's work.
- (e) Quality control on what sources are noted on the heritage listing. I have seen heritage listings include later journalistic articles with factual errors added to the online heritage listing. It is as if some librarian is annexing media articles to the listing. This then confuses what is the actual official heritage listing. Only authorised annexures should be on public record for the listing. Any side commentary by others should be clearly marked as "media articles mentioning the heritage item (after its listing)".

It seems to me that NSW Heritage just outsources to the cheapest bidder to write their modern architectural heritage listings. Or relies on volunteer listing drafters eg from group Docomomo Australia or NSW Institute of Architects heritage committee who are architects volunteering on top of their normal jobs. With such huge implications for state's heritage and culture (and the property owner) proper qualifications (not just the cheapest bidder) should be writing reports.

3.3 Heritage Council and Heritage Register Committee

There should be at least one architect having studied a subject on modern architecture history on NSW heritage council and heritage register committee.

It is concerning to see likes of a member of Ausgrid, and a public health administrator and a planning lawyer determining what should be our state's heritage (such members no loner part of Heritage Council).

NSW HERITAGE LISTINGS COMMITTEE & NSW HERITAGE OFFICE – resourcing

The discussion paper claims that “some items take more than a year to be listed on the SHR”. The statement does not capture the huge delays in this -eg Seidler items proposed back in 2001 and 2015 – still have not been listed –these are referred to as “legacy” listings which I consider to be a euphemism for “backlog” listings.

Back in 2001 the NSW Institute of Architects heritage committee had assisted with suggesting some Harry Seidler items for state heritage listing nothing happened. In 2013, a NSW Heritage officer asked me about Thredbo ski lodge of 1962 by Harry Seidler but this did not seem to eventuate to any listing. Alas by early 2015 the house's external timbe had been painted grey (without asking Penelope Seidler) which I think undermines the house's architecture as there is no longer any differentiation of the black structural frame against light timber, all is one big grey mass - looks horrible (could be reversed at some expense to remove all the paint off the timber).

Then 2015 a interim heritage listing and then eventual full state heritage listing – for a Seidler designed home of 1954 (Thurlow house in Blakehurst). I was then after this state listing told by an officer of NSW Heritage that they cannot keep doing interim heritage orders for Seidler homes about to be demolished (happened twice – see below for other one). So NSW Heritage were going to recognise and heritage list Seidler architectural items to get all in place. In February 2018 the Heritage Register Committee minutes item 8.2 propose some items for NSW state heritage listing but again nothing happened. In 2018 the NSW heritage office asks NSW chapter of Institute of Architects heritage committee (architects who volunteer to serve on the committee and meet monthly) for help, and the institute of architects submitted draft heritage listings in late 2018. Since then nothing has happened. The Seidler proposals are classified as “legacy” listings.

It seems to me that the whole state heritage listing of modern architecture is on hold (other than a few interim heritage orders) – meanwhile the buildings get horribly altered or destroyed. Eg in a Seidler designed building on south-west edge of what was traditionally known as Sydney's MLC Centre (now known as 25 Martin Place) the famous Italian structural engineer Nervi designed roof of the plaza restaurant (part of a unique world-wide ensemble of five Nervi designs on one site) and I think the space

could have been repurposed but the developer demolished it in early 2020 as there was still no heritage listing.

The constant delay by NSW Heritage office is putting state heritage (especially modern architecture) at risk. Heritage committee minutes of 2021 state that LGBTI heritage is being prioritised for Pride 2023. I have not heard of any LGBTIQ heritage in danger in the way that our modern architectural heritage is in danger. It seems that the NSW Heritage office is not adequately staffed and the only way modern architecture heritage is going to be saved is if someone knows about impending demolition and gets a interim heritage order. But even then this is then dependent on a volunteer in the community doing the hard work of drafting the heritage listing. If NSW government cares about heritage, then resource NSW Heritage properly and get those with architectural qualifications on staff. I am unaware of any registered architect being on staff of NSW Heritage. Or indeed anyone with a full architecture degree.

COMMUNITY ENGAGEMENT + education

4.1 RE-ENACT “DEMOLITION NOTICE” SIGNS

The 2007 planning reforms which allowed a building to be demolished with no notice of impending demolition being on the site – is poor for community engagement. I note that in 2000 a friend tipped me off that he had seen a sign outside Harry Seidler designed 1953 so called “Igloo house” on Parrawi Road Mosman. Were it not for that Demolition sign on the site– there would have been no community awareness that led to this building’s eventual Interim Heritage Order and eventual state heritage listing in 2001. The process of including a demolition notice on a site should be resurrected so the community knows what is happening. (and if building is by an architect who is alive or died 1955 or later – then moral rights notice of demolition should be given under federal law).

4.2 Local councils who heritage list items should be required to upload the heritage listing to the NSW heritage database portal within 1 business day of the listing – otherwise be charged heavy penalties. I note that Penrith Council who heritage listed 31-22 Nepean Ave Penrith in 2015 did not upload the listing to the NSW portal until late 2018. As noted before this local heritage listing constitutes false attribution by calling it Seidler when there is nothing Seidler design about it.