

Moral Rights, Heritage and Australian Contemporary Architecture: Thoughts & Designs of Peter Muller¹

Associate Professor David Jones²

ABSTRACT

Peter Muller is one of the most unique Australian architects of the 20th century possessing a passion for organic architecture realised in several significant Australian and Indonesian design exemplars. His inquiry in the organic style of architecture stylistically mirrors that of Frank Lloyd Wright whom wrote to Muller expressing his pleasure in his successful pursuit of this style in Australia.³ This paper considers the position of moral rights under the Australian *Copyright Act 1968*⁴ having regard to the Australian exemplars of Muller. It considers recent Australian debates about moral rights and projects that implicate several architectural and landscape architecture projects, the interpretations the legal fraternity are taking in approaching this topic, and positions the ideas, values, and attitudes of Muller in this context. Muller's personal opinion is expressed providing an insight into the thoughts of one senior contemporary Australia architect as to 'their' architecture and 'heritage'.

INTRODUCTION

This paper considers the position of the recent moral rights provision amendments to the Australian *Copyright Act 1968*, and how it may pertain to works of creators, especially works that we are increasingly deeming contemporary works of state, national and or international heritage significance. Names of designers like Harry Siedler (1923-06), Glenn Murcutt (b.1936), Harry Howard (1930-00), Ashton Raggatt McDougall (ARM), Richard Weller immediately come to mind when this discourse is entertained. This is a new realm the planning and heritage administrators and practitioners have little addressed in which to ensure adherence with the provisions and obligations contained in these legislative amendments.

Indirectly drawn into this debate has been the internationally prominent architect Peter Muller (b.1927) whom has adopted a personal strategy to express his concern at the lack of respect of integrity and moral rights courtesy. Muller has, over the last 15 years, very much prior to Australian parliamentary debates about moral rights, been increasingly quietly frustrated with the lack of respect given to his own built designs and has given flight to this antipathy by publicly "disowning" particular precedents of his hand on his personal web site.⁵

Like some designers, it is not a debate they wish to entertain publicly. But, clearly it is a realm of personal angst. For particular contemporary designers, who are finding their creations being placed on local, state and national heritage lists, there is uncertainty of protocol and attribution going on where listing and or creation alteration and curatorial management is thereupon entertained. It is also clear that a listing may also attribute the 'design' to an architect and allied professionals thereto are little mentioned in the overall design. Accordingly, there are also increasingly questions of equity of attribution where more than one creator has had a direct role in the design and execution of a project.

In terms of this discourse, it is relevant to note the responses by professional institutions and associations to this topic. The Architects Institute of Australia (AIA) has issued member Advisory Notes on the topic referring members to the Australian Copyright Council's (ACC) *G043 Information Sheet on Moral Rights* (2006). ACC has also a more extensive discussion on *Architects: Copyright & Moral Rights* (2003; 2006) that provides detailed information, examples and discussion. The Australian Institute of Landscape Architects (AILA) have a separate *Moral Rights Practice Note* (2004), and thereupon points members to the ACC publications and www site. The Planning Institute of Australia (PIA), members of which more often are administering development change and legislative obligations, do not have a comparable policy but do have a tacit reference in their *Professional Code of Conduct*. Both ICOMOS and Australia ICOMOS have no specific documents or policies on moral rights. ICOMOS, however, has an *Ethical Commitment Statement for Members* (2002) that in Article 4 implies that a member has a responsibility to adhere to their respective professional organisation "codes and disciplinary standards," and Australia ICOMOS (AI) has an *Allegations of a Breach of the Ethical Commitment Statement* (nd) that provides an avenue for practice complaints.⁶

¹ Attribution and Disclaimer: This paper has been read and approved for release by Peter Muller, 2009, Pier 6/7, 201/19 Hickson Road, Walsh Bay, NSW, Australia, 2000.

² School of Architecture, Landscape Architecture & Urban Design, The University of Adelaide, Adelaide, Australia, 5005.

³ Letter, Wright to Muller, 20 March 1956.

⁴ Australia, *Copyright Act 1968*.

⁵ Peter Muller, <http://www.petermuller.org/disowned.html>, accessed 6 February 2009.

⁶ AIA, *Advisory Notes* 10.02101-109; ACC 2006, *Information Sheet: G043 - Moral Rights*, pp. 1-6; ACC, *Architects: Copyright & Moral Rights*, B119v01; ACC, *Architects: Copyright & Moral Rights*, N119v01-2; AIA, *Advisory Notes* 10.02101-109; ACC, *Information Sheet: G043 - Moral Rights*, pp. 1-6; AIA, *ibid*; ACC, *Information Sheet: G043 -*

CONTEXT

Moral rights have not previously been the realm of heritage practitioners and managers. Due to changes in the Australian *Copyright Act 1968* that inserted moral rights provisions, and the increasing local, national and world heritage listing of contemporary designs – largely creations of designers since World War II – the time obligations within the moral rights provisions of the *Act* now necessitate an obligation for author integrity and respect and full attribution to be afforded.

During 2003 the National Museum of Australia (NMA), and in particular the ‘Garden of Australian Dreams’, was subject to considerable design and media discussion as a consequence of a review of the operation and agendas of the NMA. The debate was not simply about that the “Museum [being] told it’s lost the plot,”⁷ but about the question of design authorship, attribution and integrity before and after construction. It appeared that the NMA wished to change physical components of the executed design that would compromise the design integrity of this ARM and Room 4.1.3 multi-award winning and extensively photographed project.

Central to this debate was the moral rights of designers. The NMA review report highly criticised the NMA’s “disjointed arbitrariness” of content and narratives in some exhibitions, questioned the under-representativeness of key figures in Australian post-contact history, noted the neglect of significant engineering and science projects and discoveries that enabled Australia’s scientific and technological advancement, criticized signage, acoustics and the circa cinema arrangements, and in particular proposed a major review of the future of the ‘Garden of Australian Dreams’. Landscape architect and academic, Professor Richard Weller, one of the designers of the ‘Garden’ lampooned the critique of the Garden. Vocally he threatened to take legal action if the recommendations were actioned believing that “the plans are offensive to our artistic integrity”. Weller further stated, “to change our design makes a complete mockery of the entire process by which the work was chosen and created,” and runs counter to the numerous peer design and construction awards that were forthcoming to the ‘Garden’ and Museum, overall, following its construction and opening.⁸

Emotionally, Weller continued: “We don’t want (NMA review chair) John Carroll to be the first man in history to censor a garden”.⁹

The ‘Garden of Australian Dreams’ is a large outdoor concrete courtyard devised in post-deconstructionist style evocative of the stylistic works of the landscape architecture practice of Room 4.1.3 that meshed well with the directions set by the Melbourne-based architectural practice ARM in the building. It included a fibreglass swimming pool, a map of Gallipoli and other Australian references such as a dingo fence and the paintings of Jeffrey Smart. “It has proven very popular with visitors, precisely because it looks and feels unlike normal gardens,” Weller stated.¹⁰

In contrast the NMA review panel perceived the ‘Garden’ to be uninviting, its “expanse of concrete overwhelming” with “little that is explained clearly to visitors.” It proposed the addition of a lawn, sundial, Aboriginal rock art and tree planting.¹¹

Weller threatened legal proceedings as a response invoking the recently enacted moral rights amendments to the *Copyright Act 1968*. Such was supported by the AILA.¹² No change, or proposal to change, has since been entertained by the NMA, perhaps on the apprehension of legal precedent and advice, and perhaps on the validity of this accusation that the NMA consciously chose and directly participated in the fruition of the design and thereby has a direct participatory ownership over what they chose and guided.

Weller’s frustrations are not an isolated incident. It is simply a more forthright expression of a design author of the potential or consequential amendment, despoliation or demolition of a created design. This frustration is prevalent, in Australia, in the architecture and landscape architecture disciplines, as well as in the emerging public art realm. It is not new, but what is new in the enacted legislation that gives more teeth to the management of designs created, constructed, and planted, and places a high ethical responsibility upon the host owner to afford greater respect to the work.

Moral Rights, pp. 1-6; PIA, *Professional Code of Conduct*; ICOMOS, *Ethical Commitment Statement for ICOMOS Members*; Australia ICOMOS, nd, *Allegations of a Breach of the Ethical Commitment Statement*.

⁷ Safe, ‘Museum told it’s lost the plot’, 5.

⁸ Safe, ‘Museum designs to court’, 3.

⁹ Safe, *ibid*, 3.

¹⁰ Safe, *ibid*: 3.

¹¹ Safe, *ibid*: 3.

¹² Corkery, ‘The Australian Institute of Landscape Architects calls on the National Museum of Australia to reject suggested changes to the garden of Australian Dreams’, Press Release, 18 July 2003.

The questions raised in these examples are real and contemporary. They rotate around questions of:

- Intellectual property;
- The practice of relinquished design ownership,
- The credibility and standing of peer design and heritage awards and heritage registrations;
- The position and merit of 20th century heritage in Australia;¹³
- The role and merit of contemporary architectural and landscape architectural designs within our community and heritage administrations;
- Importantly the position of 'duty of care' and moral rights; and specifically,
- Where the living designer 'fits' within a place that has heritage significance and listing should change, alteration, extension, and or demolition be entertained.

These are ethical questions driven by our academic research and management activities and do not necessarily reflect the opinion and values of the living designer. In this regard,

- How does the living designer view the integrity and qualities of the executed design?
- It is a 'stand alone' design or precedent project, or a specific-client audience design, or is it a design that is simply a phase in a larger design inquiry and thereby 'process design'?
- Does it possess 'heritage merit' from the living designer's perspective?
- Should we be consulting these living designers about what they themselves consider to be the 'heritage' of their design portfolio rather than proceeding on an inequitable survey-to-survey, or place-to-place, basis as the situation arises?
- Does the living designer actually value the heritage listed place as 'heritage'?
- Is the designer happy not to be consulted about the executed design's prospective alteration, change, renovation and or demolition?
- Does the designer wish to be consulted about such, and or have a role in the future curatorial management of the place if it carries heritage listing? and,
- Does the designer actual care about the elevation of one or more of their designs to heritage status whether local or state or national?

Clearly the principles of the Burra Charter, and provisions to the *Copyright Act 1968*, place an obligation upon the heritage practitioner to seek primary research material to document and guide conservation measures for the place under study, that the living designer is a primary research component in their own right. But the protocols of how to proceed with and after this research and significance verification process are more unclear. In the case of the Sydney Opera House, architect Jørn Utzon (1918-08) has been directly consulted on changes and renovations to the structure, and landscape architect Allan Correy (b.1931) was directly consulted on his design intent and thoughts as to how to curate and manage the extant Mt Lofty Botanic Garden that carries Register of National Estate listing.¹⁴ We need to appreciate the nature of these engagements and discuss protocols on how to proceed with heritage places as a subset of the larger moral right discourse.

The tireless communication by Richard Johnson with Utzon opened up a remarkable opportunity for the designer to revisit and supervise the re-establishment of his design in accordance with the original design proposal and drawings. This collaboration has enabled the preparation of a clear set of fundamental design principles and vision for the building, assuring as a potential model of how to capture the essence of significant contemporary buildings and places of heritage significance.¹⁵

The National Gallery of Australia (NGA) has been the subject of two recent public controversies about its approach to renovations and moral rights. In the first instance, a dispute by the architect to the NGA, Colin Madigan (b.1921) spilled into the media in June 2001 where Madigan claimed that changes by architects Tonkin Zulaikha Greer constituted derogatory treatment of his original design. The RAI [AIA] were invited to intercede to seek the removal of liability infringement of architect integrity right that resulted in a "totally

¹³ Jones, 'Acknowledging recent cultural heritage': v-vii.

¹⁴ Australia ICOMOS, *The Australia ICOMOS Charter for Places of Cultural Significance (Burra Charter)*. Note, due to legislative changes in Australia, the *Register of the National Estate*, established under the Commonwealth's *Australian Heritage Commission Act 1975*, is now defunct and has no legal standing, being replaced by the National Heritage List established under the Commonwealth's *Environment Protection & Biodiversity Conservation Act 1999*. See the Correy discussions in: Jones, Aitken & Morris, *Mt Lofty Botanic Garden Conservation Plan*.

¹⁵ See a wider discussion about public architecture and copyright law that case studies the Sydney Opera House and the National Gallery of Australia in: Rimmer, 'Crystal palaces: Copyright law and public architecture': 320-346.

different design approach” that “established a preliminary methodology and a precedent for future consultations, a number of which are in the wings.”¹⁶

Media reporter Farrelly expressed this debate in terms of a family law custody battle:

*The current National Gallery debate is little more or less than a classic custody tussle. Architecture is always mixed progeny, with at least two – client and architect – and probably more assisting not only at birth but at conception. Grrrruesome. Even thereafter, architects occasionally get all anal, hanging around to select every little thing down to carpet, cupboard handles, furniture, paintings. Normally, though, and quite rightly, the architect moves on once the birth pictures are taken, leaving the infant edifice in full care and control of the client, loving or otherwise. But later, much later? The question exercising many a professional mind is this: what rights, if any, should the original architect have when, years or even decades later, the now mature building needs amendment. Whose building is it anyway?*¹⁷

The second debate concerns the Sculpture Garden, designed by Harry Howard in 1982, which was listed on the Register of the National Estate in 1993. Notwithstanding a newly drafted conservation management plan, which was relatively unheard of for late 20th century exemplars, the Garden area is at risk of deterioration, economic-driven change over management and security costs and issues, and may never realise the original design concept and philosophy.¹⁸ While successive Gallery directors undertook modifications to the Garden, and subsequently engaged a team of architects and landscape architects to devise a new operational scheme for the building and Garden, “little attempt was made by the new designers to understand the original design principles, the history or the significance of the place.”¹⁹

The Brisbane Riverside Centre was subject to a legal claim by architect Harry Seidler in 2003 on the basis that signage and changes to the Centre associated with ‘The Pig ‘N’ Whistle’ hotel area. Seidler claimed that such changes infringed his right of integrity to the original building design, launching formal court proceedings. Unfortunately the matter was settled out of court on a confidential basis in October 2003 negating a legal precedent case for Australia.²⁰

These examples are not isolated as Siedler, Murcutt, John Andrews (b.1933), Peter McIntyre, Bruce MacKenzie (b.1932), Muller and Correy, all significant living designers, have witnessed the demise of their often award-winning designs or precedents.²¹

It is also a problem common around the world. Charles Birnbaum has put forward North American case studies that deal with similar dilemmas in the US National Park Service. Birnbaum concluded with an observation and a plea:

*We must be committed to these landscapes that are often a part of our everyday lives, even those that we take for granted. If we allow these losses and modifications to continue—unmonitored by the profession and allied communities—we run the risk of erasing a significant chapter of landscape history.*²²

PETER MULLER

Architect Peter Muller (b.1927) was born in Adelaide, Australia, and established the practice of ‘The Office of Peter Muller’ (1952-88) in Sydney in 1953, and ‘Peter Muller International’ (1988+), designing many buildings and residences in Australia, Indonesia, Egypt, Saudi Arabia, The Philippines and Sri Lanka, until his professional practice retirement in 2007.²³

His designs for the Muller House (1954) at Whale Beach, Sydney, the Audette (1952) and Gunning (1960) Houses in Castlecrag, Sydney, a suite of IPEC and Hoyts Theatres across Australia (1964-68), the Oberoi in

¹⁶ Martin, ‘Blue Murder in the art cathedral as angry architect tackles the archbishop’: 1, 6; Jahn, ‘Moral rights in practice architecture’: 159.

¹⁷ Farrelly, ‘The Art World’s Great Custody Case’: 16.

¹⁸ Buchanan, ‘20th Anniversary – The High Court and National Gallery Precinct, Canberra’: 32-33.

¹⁹ Buchanan, ‘Modern heritage issues at the National Gallery of Australia and the Sydney Opera House’: 100.

²⁰ Farrelly, ‘Genius doesn’t mean pleasure’.

²¹ Murcutt, pers. comm., 2001; Muller, pers. comm., 2001; Correy, pers. comm., 2003; Barwick, pers. comm., 2003; Buchanan, ‘Modern heritage’: 100.

²² Birnbaum, ‘Preserving Contemporary Landscape Architecture’: 8.

²³ For profiles on Muller see: McCartney, *50/60/70 Iconic Australian Houses*: 12-13, 34-45; Apperly, Irving & Reynolds, *A Pictorial guide to Identifying Australian Architecture*: 236-239; Urford, *Peter Muller*; Drew, ‘Muller, Peter’: 571-572.

Bali (1973-01 including upgrades), the Oberoi in Lombok (1997), and the Amandari Hotel Village (1988-89) in Kedewatan, Bali, are deemed architectural precedents by his peers and architectural critics.²⁴

Muller was educated at the University of Adelaide and Adelaide's School of Mines & Industries (1944-48), and obtained a Tuition Scholarship and a Fulbright Travel Scholarship (1950-51) to study at the University of Pennsylvania before returning to Sydney in 1952 to establish his practice.²⁵ During 1975-77 he served with the National Capital Development Commission as Director in charge of establishing the Australian Parliament House design competition terms of reference.

Of this international portfolio of projects, only the IPEC Building (1964), in Frewville, Adelaide, carries any heritage listing being included on the State Heritage Register for South Australia. It has been subject to a *Conservation Study* (1993) but Muller was not consulted on its contents or recommendations, nor subsequent renovations and alterations, and neither was landscape designer Robin Hill about the associative work of this project was not even mentioned in the registration or study.²⁶

Muller's lack of a public profile is very much a reflection of his individualist style and approach, and very little has been written about his projects. The dearth of writings has also been assisted by his extensive time overseas in the 1970s-90s. While Urford's thesis extensively documented his portfolio, it remained publicly obscure until recent publication personally guided by Muller, as well as the pending release of a series of unpublished photographs by prominent Sydney photographer Max Dupain that profile several of Muller's Sydney projects.²⁷

Architectural critic Philip Drew has observed that Muller's work, influenced by Frank Lloyd Wright's style, is very much individualistic and independent in its exploration than Wright's, and is very site and culture responsive.²⁸ This was noted in correspondence between Wright to Muller in 1956.²⁹ Natural materials and spiritual principles of cultural architecture guide Muller's particular responses in deference to newer synthetic finishes and appropriation of fashionable overseas styles and terms. While Wright's design language had a direct influence upon Muller, it did not undermine Muller's individual expression enabling "his own lights ... pursuing an organic ideal within the Australian context" and a distinct culturally responsive design approach overseas.³⁰

Thus, the style conforms to the 'critical regionalism' thesis articulated by Frampton. 'Critical regionalism' was first used by Tzonis and Lefaivre (1981) and Frampton expanded this concept in 'Towards a Critical Regionalism' (1983) where he drew upon Ricoeur's (1965) question of "how to become modern and to return to sources; how to revive an old, dormant civilization and take part in universal civilization".³¹ The answer lay, according to Frampton, also drawing upon phenomenological research to substantiate his argument, in the adoption of a modern architecture that critically interrogated its universal qualities but also directly engaged with the context. Thus, topography, climate, light, tectonic form rather than scenography and the tactile sense rather than the visual were extremely important variables.

Drew has concluded that:

*Peter Muller occupies an important place in post-war Australian architecture as the leading romantic architect of his time, one who has developed, as an alternative to the modern movement, an organic conception of architecture.*³²

MORAL RIGHTS & COPYRIGHT

²⁴ Apperly, et al., *A Pictorial guide to Identifying Australian Architecture*: 236-239; McCartney, *50/60/70 Iconic Australian Houses*: 34-45; Drew, 'Muller, Peter': 571-572.

²⁵ Drew, 'Muller, Peter': 571-572.

²⁶ For the IPEC Building Statement of Significance, see: <http://www.heritage.gov.au/cgi-bin/ahpi/record.pl?SA13990>, and <http://www.planning.sa.gov.au/index.cfm?objectID=F2D3709D-F203-0D46-AD813765BAD9B959&i=8374>, and Hanson, 'Peter Muller: IPEC Building'; Muller pers. comm., 2008; Hill pers. comm., 1997; Klenke, *Former National Headquarter of IPEC*.

²⁷ Urford, 'The architecture of Peter Muller'; Urford, *Peter Muller*; Dupain, Peter Muller.

²⁸ Drew, 'Muller, Peter': 572.

²⁹ Letter, Wright to Muller, 20 March 1956..

³⁰ Drew, 'Muller, Peter': 572.

³¹ Tzonis & Lefaivre, 'The grid and the pathway', 15; Ricoeur, *History and Truth*: 276-277; Frampton, 'Towards a Critical Regionalism'; Paterson, 'Critical Analysis of 'Towards a Critical Regionalism' by Kenneth Frampton'; <http://www.petermuller.org/influences.html>.

³² Drew, 'Muller, Peter': 572.

Copyright is defined under Australia's *Copyright Act 1968* and sets out the parameters for copyright including applicable periods of time, scope for cover and types of materials covered. The latter includes different types of materials including paintings, drawings, sculptures, digital imagery, craft works, photographs, engravings, films, videos, sound recordings, textual materials, as well as designs. The *Act* details when other people, including architects, academics and students, other than the copyright owner, can use the copyright material with or without permission.

The *Act* was amended in 2000 to include copyright material using digital technologies and communication systems, including the internet. A further amendment *Act*, gazetted in December 2000, sought to attribute creator 'ownership' over their designs and that their "integrity" of their work is respected.³³ The latter amendments are directly applicable to this paper, to contemporary architectural and landscape architectural three-dimensional projects as distinct from drawings and plans that normally carry copyright under existing provisions of the *Act*. It is into this context that contemporary 'heritage' of state, national and international significance and relevance has considerable bearing and is yet to be fully appreciated, legally tested, and a robust discourse entertained.

In essence, the *Copyright Act 1968* now mandates that the designer must be attributed into any change or demolition of their built or executed project, whole or part, and the 'integrity' of their design must be respected and due acknowledge made. The interesting dilemmas are where to position contemporary heritage in this context, the present failure of the attribution process, and the lack of clarity as to who monitors and ensures attribution and acknowledgement.

In 1996 Canadian Justice Sir Hugh Laddie (1946-08) expressed that copyright, comprised "three sacred principles":

- "Thou shalt not steal"
- Ideas devised by the human mind may be owned; and
- Reward.³⁴

Thus, the *Copyright Act 1968* ensures 'personal property' can be subject to copyright.

Therefore, in Australia, you as the "creator" own the artistic work, and you are the only person entitled to 'reproduce', 'publish', 'exhibit', 'communicate' and 'adapt' such work to the public. There is no registration process for copyright but individual creators are encouraged to place a 'Copyright Notice' on their work often involving "© Peter Muller 2009," "© The Office of Peter Muller 2009," or "© Peter Muller International 2009", as examples.

As a general rule, copyright under the *Copyright Act 1968* for "artistic works" applies from the year of creation and lasts for some 50 years after the death of the "creator". However, copyright has expired if the creator died before 1 January 1955, except where a government owns the copyright.³⁵

Under the *Act*, "artistic work" means:

- *a painting, sculpture, drawing, engraving or photograph, whether the works is of artistic quality or not;*
- *a building or a model of a building, whether the built model is of artistic quality of not; or*
- *a work of artistic craftsmanship to which neither of the last two preceding paragraphs applies ...* [sic.]³⁶

Plans themselves are deemed "underlying" works and are separately protected under the *Act*. A Conservation Study would be protected under copyright as a literary work however if the report was written in the course of employment, the employer would own the copyright.

The term "creator", as distinct from 'designer', is used in the *Act* to describe individuals like writers, architects, composers, painters, choreographers, directors, producers, screen writers, performers, etc.

The personal rights of the "creator", whether or not the creator owns the copyright or ever owned the copyright, are covered within this scope. These rights require acknowledgement or attribution in three ways:

³³ Australia, *Copyright Amendment (Digital Agenda) Act 2000*; Australia, *Copyright Amendment (Moral Rights) Act 2000*.

³⁴ Laddie, "Copyright: Over-strength, Over-regulationed, Over-rated?": 253.

³⁵ Table 1: General Rules, ACCI, *Architects: Copyright & Moral Rights*, N119v01-2: 5.

³⁶ Australia, *Copyright Act 1968*, Section 10 (1) "artistic work".

- A right of attribution of authorship;
- A right to not have authorship falsely attributed; and,
- A right of integrity of authorship.³⁷

To date, the moral rights provisions of the Act as it relates to “a building” have yet to be legally tested, although several precedents in Australia have already been forthcoming.

Because of the lack of a legal precedent, there are several topics of uncertainty as to the application and scope of the moral rights. These relate to:

- the right of creator consent and waiver;
- what constitutes ‘reasonable’ treatment to a creator;
- the position of ‘moveable’ work;
- the position of landscape architecture works of a “soft landscaping” nature;
- changes or alterations to buildings; and,
- site specific artworks.

It is clear also that the creator has the right to request their/any identification mark to be removed from any work “affixed to or forming part of the” the building subsequent to the change or relocation.

One key aspect for the above clearly rotates around the ability to know the creator and the ability to locate and thereby notify the creator. If the name of the creator is unclear, obscure or not identified, then it is impossible to apply the notification process. In the case of most contemporary heritage listed buildings and places the creator or creators are more often known, so it is notionally easy to locate that creator(s). But the harder aspect is to identify “their representative” if is an incapacitated creator or the creator has died and we are still within the valid copyright period.

The second aspect is the voluntary nature of the process that places professional ethical responsibilities upon a prospective designer, planner or heritage practitioner. Whose responsibility is it, and how do we know that the moral rights of a creator have not been infringed and respected and their rights of integrity observed? There is no mechanism to ensure adherence, and no checking mechanism other than professional codes of conduct and an appreciation and respect to the moral rights provisions for the *Copyright Act 1968*.

MULLER & HERITAGE

In pondering the concept of ‘heritage’, it is not one that Muller has been previously asked. It is a new notion in its terminology, one that he does not use in his vocabulary when talking about his designs, but is allied to his notion of “disowned project.”³⁸ He has expressed it as, “it’s certainly an honourable recognition to have placed upon your work,” but often the owners do not wish it.

The Muller house (1954) at Whale Beach, Sydney, is a classic contemporary design that has been extensively compromised by extensions and alterations by the current owners without consultation with Muller. “Basically the site determined the house” and I “threaded the architecture through the marvellous 200 year old Angophora tree.” It is a house that was been photographed at the time by Muller and Max Dupain portraying the unique sculptural arms of the Angophora (*Angophora costata*) branches embracing the house and reflected in the water-filled roofs. “That house taught me how to respond to the site.”³⁹

Frustrated with despoliation of a house and studio that Muller personally designed for himself, that expressed his ‘reading’ of the North Shore landscape characteristics, Muller has written that

*... house [has been] totally ruined over time by insensitive alterations and additions ... including the removal of the magnificent 200 year old Angophora gum tree to make way for an additional room. The grey brickwork and natural timber fascias throughout have been painted white....a disaster. The whole colouring of the house originally co-ordinated with the natural bush setting.*⁴⁰

³⁷ Australia, *Copyright Act 1968*, Section 1

³⁸ <http://www.petermuller.org/disowned.html>, accessed 6 February 2009.

³⁹ Muller pers. comm., 2008; See image in Drew, ‘Muller, Peter’: 572.

⁴⁰ <http://www.petermuller.org/disowned.html>, accessed 6 February 2009.

Here is a demonstration that respect for integrity of design and attribution for the creator was not forthcoming. But is also something of personal moral attachment as this was Muller's own home and studio for many years and he personally designed it to enable his design-style to evolve and mature.

In the case of the Lance House (1962) in Darling Point, Sydney, Muller was drawn into the demolition discourse about this structure in 2003-04. "I did not have any special feelings about" this house. It was sold by the Lance family, and the new owner wrote to Muller "seeking my okay for demolition; "I replied in writing saying 'okay', 'no problem', and "I don't care."⁴¹ Despite this unusual approach to the original architect, the prospective demolition resulted in an unsuccessful court case wherein key argument launched was the heritage and architectural significance of the building and thereby the international standing of the architect.

A key theory behind this response is the belief by Muller that his designs are for the client at the time to live and evolve in. He 'reads' both the client and the site to realise a design that is more often "conceived as a piece of sculpture." Changes in ownership break this special relationship and thus the house loses its 'design' spirit – "it's sense of place". Such cannot be encapsulated in heritage listings as "how can you preserve the integrity of the building."⁴²

Similarly, "I was not concerned with time" in my designs and their 'historical' occupation and "I wasn't concerned with heritage." "For me, it was the intellectual engagement with the client and the place" that was important. Each design was separate and not evolutionary, as each design was site-responsive yet laden with culturally stylistic explorations.⁴³

*In the end, one's photos and memories are really all that is left of the past which is gone and no longer a reality, the future is a concept, not a reality, because it hasn't happened ... only the immediate present is real [sic].*⁴⁴

For the IPEC Building state heritage listing, or indeed research leading up to the listing, and subsequent alterations, Muller was not consulted. When discovering the listing,

... naturally at first one is quite flattered, but the reality comes later.

*I found that the owners of the buildings are not always pleased and in the case of the IPEC building in Adelaide for example, they decided ... [to alter] its configuration to suit their particular needs and simply rented out the spaces and let the property run down.*⁴⁵

Muller's particular relationship to time is also an important aspect in his view of 'heritage'. Time is transient. Time in design is linked to the client for whom he designed the house and the occupancy-span of time within which the client resides in the house. Change the client and occupant and you stop time. Thus, demolition is a feasible option once this occupancy-span ceases.

*... [I] am more inclined to accept the inevitable ... all is transient ... best to look forward to the next project as if it were your only one [sic].*⁴⁶

But, how do you deal with a dilemma that has recently confronted Muller. In 1964 Muller prepared some sketch designs for Dr Walsh while working in Adelaide on the IPEC project. Design fee payment never eventuated and no construction drawings were thereafter sought. Yet, the house was constructed to the design sketches, very much in the materiality and ethos of Muller's style, and has been lovingly cared for and respected by two families since c.1964. It was a complete surprise to Muller to discover that the house existed, and more so that it accords with his approach and has even experienced bathroom renovations that respect his design integrity. Yet, he did not know it was lovingly design executed. Where are moral rights positioned in this instance?⁴⁷

The Richardson/'Kumale' house (1956) in Palm Beach, Sydney, is presently being renovated by architect Walter Di Qual in direct consultation with Muller. While the house is not heritage listed, it is a portfolio

⁴¹ Muller, pers. comm., 2008.

⁴² Muller, pers. comm., 2008.

⁴³ Muller, pers. comm., 2008.

⁴⁴ Muller to Jones, 9 May 2001: 1.

⁴⁵ Muller to Jones, 9 May 2001: 1.

⁴⁶ Muller to Jones, 9 May 2001: 1.

⁴⁷ As a note, the owners of the Walsh house have requested that the address of this residence remains private.

precedent in Muller's mind. In pondering changes to this house, and the substance of this paper, Muller has responded:

*... my contention is that one should be free to make changes to one's own designs as he see fit. Historians wish to retain buildings as they were originally conceived but that makes no sense for buildings which are in continuous occupation and need to allow for changes in personal ownership requirements and changes in technology... [in these instances, I support] the strict proviso that the original creator, if still alive, should be involved and in control of all design decision making. Only he really understands how to maintain the integrity of the original concept.*⁴⁸

A further question to ponder is, "why do we not ask the living designers which of their executed projects they deem 'heritage' of their genre", and secondly, whether these places should be heritage listed. Muller certainly has not been asked these questions previously until our interviews.⁴⁹

THOUGHTS

The Australian *Copyright Act 1968* has laid a framework for moral rights respect of the integrity of constructed designs but there has been little legal precedent nor procedural framework to ensure that such respect does occur. It is difficult applying this scenario generically for all architecture if you adopt a wider perspective. But clearly where a contemporary designed structure, within the ambit of the timelines defined by the *Act*, has obtained heritage registration, there is a greater ethical and procedural responsibility placed upon heritage and planning development administrators and practitioners to ensure respect of integrity of design and authorship is adequately and responsibly ensured because such listing implies the place is of community wealth and legacy to Australians.

Heritage practitioners in Australia need to better ensure respect to integrity of place and authorship in their conservation studies but also in their assessment, renovations and recommendations pertaining to contemporary designed places that have been local, state and national heritage listed.

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⁴⁸ Muller to Jones, 18 February 2009: 15.

⁴⁹ Muller, pers. comm., 2001, 2003, 2008.

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