Moral rights and Australian contemporary architecture: recent professional dilemmas and the thoughts of Peter Muller in this discourse

David Jones
Abstract

The moral rights of contemporary design projects has arisen as a difficult ethical dilemma in Australian architectural discourses, and is more complex when matters of heritage are implicated. This paper considers the position of moral rights under the Australian Copyright Act 1968 having regard to the Australian exemplars of Peter Muller. Muller is one of the most highly regarded Australian architects of the twentieth century possessing a passion for organic architecture realised in several significant Australian and Indonesian design exemplars. The paper considers recent Australian debates about moral rights and projects that implicate several architectural and landscape architecture projects, the current legal interpretations, and explains the ideas, values, and opinions and practice of Muller in this context. A clear conclusion is that while the Act confers rights, there is no mechanism to ensure adherence to these rights, and particularly in the situation of a living designer where one of their designs is being accorded heritage status.

Introduction

Recent moral rights provision amendments to the Australian Copyright Act 1968, and how it relates to works of creators, especially works that are increasingly deemed contemporary works of state, national and or international heritage significance have provoked debate and uncertainty. Designers such as Harry Seidler (1923-2006), Glenn Murcutt (b.1936), Harry Howard (1930-2000), Ashton Raggatt McDougall (ARM), and Richard Weller have entered into this discourse. This is also a new realm for planning and heritage administrators and practitioners who are unclear as to adherence and responsibility under the provisions and obligations contained in these legislative amendments.

Drawn into this discourse are the various Australian professional institutions and associations. The Architects Institute of Australia (AIA) issued member Advisory Notes on the topic referring members to the Australian Copyright Council’s (ACC) G043 Information Sheet on Moral Rights (2006). ACC published more extensive guidance notes on Architects: Copyright & Moral Rights (2003; 2006) that provides detailed information, examples and discussion. The Australian Institute of Landscape Architects (AILA) have a Moral Rights Practice Note (2004) pointing members to the ACC publications and website. The Planning Institute of Australia (PIA), members of which are more often administering development change and legislative obligations, do not have comparable policies or Notes, offering only 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.³

For designers, it is not a debate many 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 occurring where listing and or creation alteration and curatorial management is entertained.

It is also clear that while a listing may attribute the ‘design’ to the principal architect, it is the direct associated allied professionals who are little-mentioned in the overall design credits; less at the time of some peer award ceremony. Accordingly, there are also valid questions of equity of attribution where more than one creator has had a direct role in the design and execution of a project.

Indirectly drawn into this debate has been the internationally prominent architect Peter Muller (b.1927) who 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 quietly frustrated with the lack of respect given to his own built designs and has expressed this disquiet by publicly “disowning” particular precedents of his authorship on his personal website.⁴

To aid an inner appreciation of the situation, Muller kindly agreed to be interviewed as a filter through which this topic is examined.

Moral rights and copyright in Australia

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 designs and that the “integrity” of work is respected.⁵ The latter amendments are directly applicable to this debate, being applicable 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 in 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 where any change or demolition of their built or executed project, whole or part, and that the ‘integrity’ of their design must be respected and due acknowledgement 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 (1946-2008) expressed, in establishing an internationally accepted legal precedent, that copyright comprised “three sacred principles”:

- “Thou shalt not steal”
- Ideas devised by the human mind may be owned; and
- Reward.⁶

Thus, the Copyright Act 1968 ensures ‘personal property’ can be subject to copyright.
In Australia, you as the “creator” own the artistic work, and the creator is 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 expires if the creator died before 1 January 1955, except where a government owns the copyright.⁷

Under the Act, “artistic work” means:
- a painting, sculpture, drawing, engraving or photograph, whether the work 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.]⁸

Plans themselves are deemed “underlying” works and are separately protected under the Act. A Conservation Study or CMP 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:
- A right of attribution of authorship;
- A right to not have authorship falsely attributed; and,
- A right of integrity of authorship.⁹

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 more difficult aspect is to identify “their representative”. If it is an incapacitated creator, or the creator has died, the valid copyright period is still applicable.

The second aspect is the voluntary nature of the process that places professional ethical
responsibilities upon a prospective designer, planner or heritage practitioner. Two relevant questions are:
Whose responsibility is it to ensure and police this process?, and
How do we know that the moral rights or a creator have not been infringed and respected and their rights of integrity observed?

In Australia, at present, there is no formal mechanism to ensure adherence, and no checking mechanism other than professional codes of conduct and a personal ethical appreciation and respect to the moral rights provisions for the Copyright Act 1968 by designers, planners, heritage practitioners and site managers.

**Moral rights debates in Australia**

Moral rights have not previously been the realm of heritage practitioners and site managers. But, recent changes in the Australian Copyright Act 1968 inserted moral rights provisions, and the increasing local, national and world heritage listing of contemporary designs (largely creations of designers since World War 2) together with defined temporal obligations in these provisions, now necessitate an obligation for author integrity and respect and full attribution to be afforded.

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 (1921-2011) 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 RAIA [AIA] were invited to intercede to seek the removal of the liability infringement of an architect’s integrity right that resulted in a “totally different design approach” that “established a preliminary methodology and a precedent for future consultations, a number of which are in the wings.”

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. Grrr... 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?*

A second debate at the NGA 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 (CMP), which was relatively unheard of for late twentieth century exemplars, the Garden area was at risk of deterioration, subject to economic-driven change in deference to management and security costs and issues, and may now never realise the original design concept and philosophy. 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.”

The Brisbane Riverside Centre has also been the subject of a legal claim by architect Harry Seidler in 2003 because of signage and physical façade 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 and launched 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.\textsuperscript{14}

The vitriolic 2003 public debates about the National Museum of Australia (NMA), and in particular the ‘Garden of Australian Dreams’ are exemplars on this discourse. Attempts by the NMA administration to change the fabric of their recently-completed complex resulted in considerable design and media discussion prompted by a review of the operation and agendas of the NMA. The debate was not simply about the “Museum [being] told it’s lost the plot,”\textsuperscript{15} but about the question of design authorship, attribution and integrity before and after construction. In essence 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 peer multi-award winning and extensively-photographed project. Central in this debate was the moral rights of designers. A NMA internal 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, criticised signage, acoustics and the cinema arrangements, and in particular proposed a major review 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 and in the print media he threatened to take legal action if the recommendations were actioned believing that “the plans are offensive to our artistic integrity”. Continuing, “to change our design makes a complete mockery of the entire process by which the work was chosen and created,” stated Weller. He believed that this action would contradict the numerous peer design and construction awards that were forthcoming to the ‘Garden’ and Museum, overall, following its construction and opening.\textsuperscript{16} Emotionally, Weller stated: “We don’t want (NMA review chair) John Carroll to be the first man in history to censor a garden”.\textsuperscript{17}

The ‘Garden of Australian Dreams’ is a large outdoor concrete courtyard devised in the post-deconstructivist style evocative of the stylistic works of landscape architectural practice Room 4.1.3 that meshed well with the design approach taken by the Melbourne-based architectural practice ARM in the building. The landscape design includes 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.\textsuperscript{18} In contrast, the NMA review panel perceived the ‘Garden’ to be uninviting, its “expans of concrete over-whelming” with “little that is explained clearly to visitors.” It proposed the addition of a lawn, sundial, Aboriginal rock art and tree planting.\textsuperscript{19} Weller threatened legal proceedings as a response invoking the recently enacted moral rights amendments to the \textit{Copyright Act 1968}. This was supported by the AILA.\textsuperscript{20} No change, or proposal to change, has since been entertained by the NMA, on the apprehension of legal precedent and advice, and 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.

These examples are not isolated as Seidler, Murcutt, John Andrews (b.1933), Peter McIntyre, John Stevens, Bruce Mackenzie (b.1932), Muller and Allan Correy (b.1931), all significant living designers, have witnessed the demise of their often award-winning designs or precedents.\textsuperscript{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:

\begin{quote}
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.\textsuperscript{22}
\end{quote}
Ethical questions of moral rights

Weller’s frustrations at the NMA administrators are not an isolated incident. His is simply a more forthright expression by an 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 is that the enacted legislation gives more teeth to the management of designs created, constructed, and planted, and places a higher ethical responsibility upon the host owner to afford greater respect to the work.

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 twentieth century heritage in Australia;\(^23\)
- 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 does the living designer ‘fit’ within a place that has heritage significance and listing; should change, alteration, extension, and or demolition be entertained?

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

- How does the living designer view the integrity and qualities of the executed design?
- Is it 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, or have a role in the future curatorial management of the place if it carries heritage listing? and,
- Does the designer actually care about the elevation of one or more of their designs to heritage status whether local, 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. Further, it is also clear that the living designer is a primary research component in their own right. But the protocols of how to proceed with such an investigation, what occurs after the research verification and heritage listing phases, are not.

In the case of the Sydney Opera House, architect Jørn Utzon (1918-2008) has been directly consulted on changes and renovations to the structure, inter alia with its World Heritage listing. 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 a potential model of how to capture the essence of significant contemporary buildings and places of heritage significance.\(^24\)
In another situation, landscape architect Allan Correy was directly consulted on his design intent and thoughts as to how to curate and manage the extant Mt Lofty Botanic Garden that carries only, now defunct, Register of National Estate listing. But these are isolated instances. 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.

**Peter Muller, heritage and moral rights: thoughts and practice**

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.

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 offices and Hoyts Theatres across Australia (1964-68), the Oberoi in Bali (1973-2001 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.

Educated at the University of Adelaide and Adelaide’s School of Mines & Industries (1944-48), Muller obtained a Fulbright Travel Scholarship (1950-51) to study at the University of Pennsylvania before returning to Sydney in 1952 to establish his practice. 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 his portfolio of projects, only the IPEC Building (1964), in Frewville, Adelaide, carries any heritage listing, as it is 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, whose associative work of this project was not even mentioned in the registration or study.

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. Urford’s thesis extensively documented Muller’s portfolio of projects but the thesis remained publicly obscure until its recent publication, personally guided by Muller, as well as the release of a series of unpublished photographs by prominent Sydney photographer Max Dupain that profiles several of Muller’s Sydney projects.

Architectural critic Philip Drew has observed that Muller’s work, influenced by Frank Lloyd Wright’s style, is more individualistic and independent in its exploration than Wright’s, and is very site and culture responsive. This was noted in correspondence between Wright to Muller in 1956. 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.

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. (Drew 1980: 572)

In interviewing Muller about the concept of ‘heritage’, it is not one that he has seriously considered. For him it is a new notion in its terminology; one that he does not use in his oral or text vocabulary when talking about his designs, but is allied to his notion of the “disowned project.” Muller has expressed it as, “… 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 extensively photographed by Muller and Max Dupain portraying the 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.”36

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.37

Here is a demonstration that the respect for integrity of a design and attribution for the creator was not forthcoming. But this example also possesses a dilemma of the personal moral attachment as the Whale Beach house 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.”38 Despite this approach to the original architect, the prospective demolition resulted in an unsuccessful court case wherein legal argument focused on the heritage and architectural significance of the building and thereby the international standing of the architect.

There is a contradiction in the above thoughts. While the Lance House was specifically designed for a client at a particular time and recognising the “occupancy-span” argument, the Muller Whale Beach house opinion contrasts to what a new owner did to this house. Thus, one house was more significant to Muller than the other, both as representative examples of his design work, and the latter possesses personal attachment values. This may demonstrate the value of a third person assessment of significance, in conjunction with the architect rather than rely solely on the architect to assess his own work.

Behind this personal response by Muller is the belief 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” as expressed by Muller.39

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.40

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].41

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

... 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.42
Muller’s particular relationship to time is also an important aspect to his personal view of ‘heritage’. In his mind, 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].

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 faithfully 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 epitomised and respected his approach and has even experienced bathroom renovations that respect his design integrity. Yet, he did not know it was executed. Where are moral rights positioned in this instance?

The Richardson/Kumale' house (1956) in Palm Beach, Sydney, is presently being renovated by a series of different architects more recently in direct consultation with Muller. While the house is not heritage listed, it is a portfolio 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 [one] sees 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.

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.

**Professional dilemmas**

The Australian Copyright Act 1968 has laid a framework for moral rights in 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 recently-designed structure, within the ambit of the timelines defined by the Act, has obtained heritage registration, there is and should be 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.

Thus, while the Act confers rights, there is no formal mechanism to ensure adherence to these rights placing reliance upon professional institute and personal ethical documents and values, and particularly in the situation of a living designer, where one of their designs is being accorded heritage status and thereafter curated.

Heritage practitioners in Australia need to better ensure respect of the 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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Bibliography

ACC, Architects: Copyright & Moral Rights, B119v01.
ACC, Architects: Copyright & Moral Rights, N119v01-2.
Australia, Copyright Act 1968
Australia, Copyright Amendment (Digital Agenda) Act 2000;
Australia, Copyright Amendment (Moral Rights) Act 2000
PIA, Professional Code of Conduct
ICOMOS, Ethical Commitment Statement for ICOMOS Members.
Australia ICOMOS, nd, Allegations of a Breach of the Ethical Commitment Statement.
Australia ICOMOS, The Australia ICOMOS Charter for Places of Cultural Significance (Burra Charter).
Dupain, M. 2009, Peter Muller. Walsh Bay, NSW: Walsh Bay Press.
Endnotes

1 Attribution and Disclaimer: An earlier version of this paper was read and approved for release by Peter Muller, 2009.

2 Australia, Copyright Act 1968.


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


7 Table 1: General Rules, ACCl, Architects: Copyright & Moral Rights, N119v01-2: 5.

8 Australia, Copyright Act 1968, Section 10 (1) “artistic work”.

9 Australia, Copyright Act 1968, Section 1


17 Safe, ibid, 3.

18 Safe, ibid: 3.

19 Safe, ibid: 3.


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


24 See a wider discussion about public architecture and copyright law that case studies the Sydney Opera House and the National Gallery of Australia in: M. Rimmer, ‘Crystal palaces: Copyright law and public architecture’ (2002) 14 Bond LR: 320-346.


28 Drew, ‘Muller, Peter’: 571-572.


31 Drew, ‘Muller, Peter’: 572.

32 Letter, Wright to Muller, 20 March 1956.

33 Drew, ‘Muller, Peter’: 572.

34 Drew, ‘Muller, Peter’: 572.


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


38 Muller, pers. comm., 2008.

39 Muller, pers. comm., 2008.

40 Muller, pers. comm., 2008.

41 Muller to Jones, 9 May 2001: 1.

42 Muller to Jones, 9 May 2001: 1.

43 Muller to Jones, 9 May 2001: 1.

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

45 Editor’s note: Overall, there has been 6 architects involved over 8 years, of which only Walter di Qual directly invited Muller’s involvement. Muller strongly objected to the
owners the second last set of architect renovation plans and the owners embraced
Muller’s plans and he is presently involved in partnership in the renovation of this house.
Muller to Jones, 24 October 2013:1.

46 Muller to Jones, 18 February 2009: 15.