

Sydney Morning Herald, 14-15 August 2021

<https://www.smh.com.au/national/nsw/the-swathe-of-demolition-that-proves-courts-are-failing-heritage-20210812-p58i6f.html>

OPINION

The swathe of demolition that proves courts are failing heritage

[Elizabeth Farrelly](#)

The disturbing news that a grand century-old Vaucluse mansion was summarily razed by its owners should make us look daggers at our planning system. In particular, we should query the courts' destructive role in planning democracy.

In theory, the courts are value-neutral. They merely apply law-as-made. So bad court decisions should sheet home to bad law. And yes, there is that. Indeed, in NSW planning, bad law is almost the only sort we have. But there are also bad court decisions, irrational judgments and huge unintended consequences, which include skewing the results further towards the ultra-rich.

[In happier times ... 46 Vaucluse Road Vaucluse before it was demolished.]

A few examples. First, a bad court decision: Burwood's 1 Railway Parade. In the village heart, where this ordinary, once-cheerful and sun-drenched rail-side street crosses Burwood Road, it plunges into deathly shadow. Why? Because a scaleless, textureless and irredeemably hideous apartment building more than 200 metres long and up to 20 storeys high hogs the north side of the street. It was approved [by the Land and Environment Court](#) years ago, despite strenuous opposition by council and populace. And it's far from alone.

Next, irrational judgments – such as Willow Grove. In February, to enable the [Powerhouse relocation to Parramatta](#), the government approved its own proposal to demolish and, at huge expense, “relocate” this building of crumbly 19th century brick. Parramatta locals appealed for judicial review. They believed the approval invalid because, contrary to legal requirements, no alternative site or design to keep Will Grove had been considered. The judge found this legal requirement did not apply. Why? Because “there is no feasible alternative which would permit retention of Willow Grove” and allow a cross-site link from street to river.

This is wrong in fact. The potential for a cross-site link goes not to law but to design. Indeed, since the new Powerhouse is still unbuilt, the entire site – of which Willow Grove occupies maybe a fiftieth – is available for a link. Any architect worth employing could find a way to make it work.

The National Trust petitioned Arts Minister Don Harwin to consider alternatives but he has not found time to meet. So (subject to a CFMEU green ban) this beloved building will be demolished for an exercise in reassembly that has as much chance of success as the re-gluing from shards and dust of [Afghanistan's Bamiyan Buddhas](#), destroyed by the Taliban in 2001.

Or consider Bidura, in Glebe. It's a grand 1850s house designed for his own use by Colonial architect Edmund Blacket, with a 1980s Brutalist Metropolitan Remand Centre largely hidden behind. A controversial proposal by developer Vision Land keeps the mansion but disrespects it by demolishing the handsome Brutalist building for seven storeys of glowering apartments and townhouses.

There's massive resistance. The National Trust, Twentieth Century Society, the Australian Institute of Architects and Sydney City Council (which appealed the approval twice in the court) all consider the Brutalist building listable for its aesthetics and its rarity. Yet the court has repeatedly knocked back appeals. In 2018 it argued, bizarrely, that the evidence of the city's Brutalism expert was "diminished" by his advocacy whereas the proponent's expert Paul Davies was – although employed by the developer – "[objective](#)".

And so to the unintended consequences. The demolition of the house at 46 Vaocluse Road is a story of concatenated cock-up. This gracious, Mediterranean-style house, built in the 1920s for the Arnott family, the people who made Iced Vovos and with similar charm, was much-loved. Although designed by one of our finest architects, F. Glynn Gilling, it was unlisted. Locals say Woollahra Council "[tried valiantly](#)" to save it – but only after approving its demolition.

[Gone: the old Arnott mansion in Vaocluse Road, Vaocluse.]

In 2015, having been in one ownership for decades, the house was sold for \$15 million. The new owners were King Fai Chu, a director of Great Wall International, and Xiaoyi Zhu, who more recently built the ghastly white concrete box across the road. With no love for the house, they applied to demolish.

When the DA was lodged, says Liberal councillor Anthony Marano (who led the recent push to save the house), a council heritage officer visited the site, did not see anything worth saving and ticked off the demolition. The DA was then approved under delegated authority – that is, without ever going to council.

That was farcical, a combination of human error and a system that, 20-odd years ago, devolved responsibility for heritage to local governments but not the resources – financial or educational – to do it properly. The first Councillor Marano knew of the demolition threat was a friend's message saying "shame about that lovely house". Too late, council tried to remedy its error, commissioning a heritage

assessment (which recommended listing the house) and appealing to Harwin for an interim heritage order.

Harwin agreed, imposing a one-year stay of execution. Normally, this would have outlived the ageing DA approval. But COVID saw the government extend all existing DAs. The minister extended the heritage order also but, when the owners commenced court action, backflipped. He revoked the heritage order. Days later, the bulldozers moved in.

When I asked, the minister's office declined to say whether fear of costs orders or some other factor influenced his decision. But in all these cases the effect of the court – intended as a forum for the weighing of public interests – instead was to favour the developer. No example could be more poignant than Bidura, where the council was forced to wear the other side's costs as the price of seeking to conserve heritage.

In a planning system that already affords developers special access and ever-greater control, this is patently unjust. It's also hugely expensive. Planning is principally about value. The courts should be available for questions of law but, in value judgments, we'd be better to invest the same money upskilling and enabling local democracy to function with dignity, decency and autonomy.