

Strata Community Awards for Excellence 2026

Essay Award

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Mascot Towers

A decision by the Supreme Court of NSW on the 24 November 2023, that has gone somewhat under the radar, has enormous implications to strata across Australia.

Mascot Towers, a building containing 132 residential lots and 9 shops, was infamously (at least in NSW) evacuated in 2019 when residents heard loud cracking noises and rapidly widening cracks in the walls and basement. Engineers subsequently found critical problems with the building's foundations and structure, and the building was condemned as unsafe to occupy.

Remedial works were not new to the building, at least not to the extent of becoming uninhabitable, and loans in the millions were already on the books of the strata plan for major repairs commenced prior to the 2019 evacuation.

A complete and utter financial disaster for the owners of the building, a lot of whom had their own personal mortgages in addition to the skyrocketing strata levies that included special levies for loan repayments. With rock bottom being the apartments were now almost worthless.

If this building were a company, it would be a straightforward liquidation. Both owners and lenders write off their losses and move on as best they can from a catastrophic failure. A liquidator would sell the land and what is left of the building to a developer and eventually, possibly, make a tiny distribution to shareholders. That is if Mascot Towers was a company. But it is a strata plan and that is a whole different scenario, especially since 2023.

The highest court in NSW ruled the strata plan for the building called Mascot Towers was unable to be 'terminated'. The reason given was SP 80877 (Mascot Towers) still had a source of income. Yes, wait for it - the owners. As a separate legal entity, the strata plan does still have a source of funding from a legal perspective. But the implications for this are incredible. Is every owner supposed to go bankrupt before a strata plan can be terminated? If every owner does declare bankruptcy except one, that sole owner owes the entire debt of the strata plan. In this case loans that total millions, that are officially 'unsecured' incurring higher interest rates than a (secured) mortgage, whilst being more secure than any mortgage ever could be - due to the Mascot Towers decision!

The even greater irony is, before the Strata Schemes Management Act and all the different iterations of strata legislation before that were enacted, buildings were corporations. Owners did not own apartments; they owned shares in a company. The change to strata legislation occurred in NSW on 1st July 1961. Queensland changed in 1965, Western Australia in 1966, Victoria in 1967, South Australia in 1968, Tasmania in 1969, The A.C.T. took until 1970, and the Northern Territory finally joined the rest of Australia in 1975 [NB: One unifying national strata legislation is an argument for another day!].

Over the years, the vast majority of company title strata formally converted to being strata plans. We need to tell the owners of those few remaining company title strata plans to never convert! For the sake of realism, had SP 80877 been a corporation it would likely have been named “1 Bourke St Mascot Pty Ltd”.

From the community forums I have been involved with, the general public already appear to have a lack of knowledge about what they are getting themselves into when purchasing strata. The rules and regulations, the shared communal living, that common areas are still partially your responsibility, your neighbour is right behind your wall and may have a barking dog etc.

For balance I feel I must also point out that the ‘one in all in’ situation lot owners have is not all bad. Your building’s roof is likely to be accessible to all, often with an amazing view. All facilities such as a pool, gym and carparking are managed for you and the costs are shared. If you use the facilities, you are laughing financially. Economies of scale can be achieved through a building’s common internet, solar panels, hot water, and intercom to name a few. And finally, amongst other things you can live in an area where you could not afford a house.

But a worst-case scenario is often a high consideration when making an investment. “What’s the worst that can happen?” is a sensible question to ask yourself when buying into strata. Because of the Mascot Towers decision, the answer has become horrific.

The building could become Australia’s version of the leaning tower of Pisa, be made inaccessible, deflate in value to be worthless, not be covered by warranty or insurances, and legally you can’t just walk away.

Perhaps I am being too dramatic. My accounting firm was engaged in auditing the financial statements of SP 80877 and we continue to do so. Everything I mention here is publicly available information, largely unread or not widely broadcast.

There was a solution. The government bailed out 123 of the owners with an \$8.2m settlement and the remaining owners negotiated with a developer. This is after assistance packages for temporary accommodation and lost rental income worth \$25m over 4 years were provided. The owners got to walk away after all.

The developer is in the process of fixing the building and will presumably resell all the lots. If the developer discovers it’s all too hard and they cannot make a profit the developer’s company can liquidate and walk away! Still suffering a large monetary loss, but able to draw a line in the sand. Lenders end up with the loan write offs. In this scenario the plan, now with only one owner, who is in liquidation, no longer has a source of funds and can be terminated!

The Minister for Building has said bail out packages will never happen again. So, we are left to wonder what happens to the next owners of apartments in a ‘Mascot Towers’ situation.

We need legislation within the state Acts that allows for the reasonable termination of a strata plan, which overrules the Mascot Towers decision.

I propose that;

If the combined private commercial value of a plans units and common areas is less than that plan’s audited net assets deficit (treated as if it were positive for comparative purposes), then that plan be allowed to terminate.

Who’s with me?

References:

www.nsw.gov.au/mediareleases/mascot-towers-owners-finally-free-to-move-on

www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2023/1401.html