Personal Submission - Tim Kottek

1. Overview

Three issues are raised in this submission that overlap a number of the questions presented.

- Section 61 Insurance is unreasonably wide and can be resolved in a number of ways to achieve the intended outcome to “protect lot owners in particular of large or multi-storey buildings, where the consequences of previous neglect or unforeseen events may be disastrous”
- Providing Guidance to the Subdivision Act (similar to the guidance on easements) as to what may be “properly” created as common property will prevent inequitable and unreasonable outcomes.
- Maximising the beneficiary pays principle in substantial (over say 400 lots) corporations is more likely to lead to harmonious and liveable communities than “press ganged” services.

2. Context

Thumbnail of the Owners Corporation OC1 on PS443140M

From a Planning perspective this unlimited prescribed Owners Corporation covers most of the land in a Comprehensive development Zone in the Surf Coast Shire. The necessity for this owners corporation is given by the ownership of “The Lakes” (an integral part of the Golf course design) as common property.

There are over 600 residential lots with a further ~ 74 possible with as yet un subdivided land zoned as medium density. 100 of the lots are in the “residential Hotel” which have lots at more than one level, these are in another Owners Corporation as well as the unlimited Owners Corporation. Two additional owners corporations cover the ~ 126 medium density units and lot owners are members of both owners corporations.

Timeline

- The initial Concept Plan has a 30th April 2001 date for Shire Acceptance.
- The Masterplan of this staged Subdivision was registered on 2nd September 2002.
- 22nd July 2005 Additional Rules are registered and do not include rules governing the lakes. The AGM minutes contain “amenity lake and other waterways that will be converted to common property”.
- 6th February 2006 Additional Rules are registered based on the AGM of 8th December 2005 restrict the use of the common property to the Golf Course operator and mentions a licence to be issued (that has not been issued).
- 3rd August 2008 Lots 601 to 700 and Common Property 3 were registered as Stage 23. This created the first lots that meet the Section 61 criteria of lots in a multi-level development

Informal Purpose

This struck a chord with me “improving the ‘liveability’ of owners corporations communities.” however in the context of a Staged Broad Acre Plan good legislation is likely to serve too divergent a range of needs and thus have unintended, but unreasonable, inequitable, and potentially unjust outcomes.
I’m making this submission as a personal submission, and I am a Committee member of the above owners’ corporation which has made its own submission.

3. Insurance

Section 61 seeks to "protect lot owners in particular of large or multi-storey buildings, where the consequences of previous neglect or unforeseen events may be disastrous". while "giving owners corporations a high degree of self-management and flexibility"

Q14

In August 2008 in our large broad acre development stage 23 in the staged development created a number of lots in the only subdivided building on the plan that meet the Section 61 criteria. Suddenly obliging the OC to periodically value and take out Section 59 and Section 60 insurance not only all future building but also those already built for a number of years.

How to overcome the "unreasonable" outcome of Section 61? Could an approach on a multi-level building by multi level building work? Another potential is to see a stage of a subdivision as the range of application. For the sake of equity in all such cases the "benefit principle" needs to be applied to the distribution of lot owners of the premiums involved.

Q 7

Confine Section 61 building

Please forgive an amateur's version of what this might look like:-

61. Insurance for lots in multi-level buildings ~~developments~~

Q 14
Q 24

(1) If a building on a plan of subdivision is located above or below common property, a reserve or a lot, the owners corporation must take out the following insurance in respect of all lots in the building ~~plan~~—

(a) reinstatement and replacement insurance for the buildings containing these lot in accordance with section 59; and

(b) public liability insurance in accordance with section 60— as if any reference in those sections to common property were a reference to those lots. and building.

Recognise the Staging of Subdivisions

Again please forgive an amateur's version of what this might look like:-

61. Insurance for lots in multi-level stages of developments

Q 14

(1) If a building on a stage ~~plan~~ of subdivision is located above or below common property, a reserve or a lot, the owners corporation must take out the following insurance in respect of all lots in the stage ~~plan~~—

(a) reinstatement and replacement insurance for all buildings on each lot in accordance with section 59; and

(b) public liability insurance in accordance with section 60—

as if any reference in those sections to common property were a reference to those lots.

Support OC's wanting to do the right thing

My suggestion is that S170 exemption order application (at least for Insurance) be included in the list of VCAT application that do not require a resolution - Section 18 or perhaps an application for exemption is not a "proceeding".

Q 1, 2
Q 56

Taking our example it would make sense if this OC could take a "proposal" to VCAT which shows:-

- Insurance cover by the Owners Corporation of that Building (Section 64) or in its own right, and
- Request VCAT to exempt the insurance requirement on the rest of the plan for the prescribed period as the requirement leads to an unreasonable insurance requirement.

4. Common Property

After a masterplan was lodged in 2002.the years 2005 to 2006 saw the lot owners burdened with “Common Property”. This “Common Property” is an integral part of the Golf Course and thus an operating Golf Course needs as yet not established leases (fortunately possible via Section 14) for air rights where bridges cross common property.

There is as far as I know no list like the land Victoria paper on “Acceptable Easement Purposes and Easements that can be accepted with further qualification” that applies to Common Property; and there is no definition of common property in the Victorian legislation. However, section 20A of the Subdivision Act 1988 ("the Act") requires written advice from a licensed surveyor that roads and reserves are marked out and the boundaries of the land, lots and common property are also marked out and defined in the plan of subdivision. This has created serious problems for this owners corporation.

Q 3 Fortunately they may be soluble by the application of Section 14 the power to Lease or Licence common property.

The developer built a pump house on common property to draw water and agin has no lease for that land but could be negotiated (fortunately possible via Section 14)

Our advice is that the water in our lakes is water in the works of an authority as the lakes are integral to the municipalities storm water plans so will need to apply to the Minister for a licence that then can be transferred to the Golf Course operator. Section 8 4 (c) of the Water Act 1989 appears to give a person (including incorporated entity such as an owners corporation) the right to use rainwater on common property for any purpose on any land. In the case of our estate this certainly applies to rain water storage tanks on any residential lot. However the water in our lakes being the works of an authority and the use of the water is irrigation of a golf course rather than domestic and stock use.

Q 7 Owning “common property” which is unusable by the owners of that property is an inequitable and unreasonable unintended outcome of the lack of guidance on what may become common property compared to easements. Thus is especially so as all the benefit of that so called common property accrues to one lot owner.

Inclusion in the Act or in Model Rules that enshrine access to common property (or because of a section 14 lease to a third party give the lessee sole access) will assist in preventing unreasonable outcomes.

5. Services

There exist a large diverse range of benefits that can be provided as a service subject to the ability to pass a special resolution to provide that service. Two pairs of distinctions would add clarity and prevent unreasonable misuse of the act / rules.

Services conducted on common property vs services conducted off common property.

Services considered “essential”, or “optional”. As an OC is prohibited from running a business any service will be provided by a service provider. Beneficiary Pays unless totally impractical. As an example although compulsory gym membership is non discriminatory (it applies to all) is can be OPPRESSIVE to lot owners with a disability unable to benefit from the service; it needs to be seen as a non essential service with user pays metering.

Q 7

Q 55

See table overleaf

Service Classification

	Essential Service on Common	Optional Service on Common	Essential Service off Common	Optional Service off Common
Lease of Common	Service Provider is Lessee	Service Provider is Lessee	Not applicable	Not applicable
Cost division	Lot Liability	Low cost option (access) by Lot Liability, Use is “metered” user pays	Lot Liability	Low cost option (access) by Lot Liability, Use is “metered” user pays
Examples	Multi story Lift Maintenance	Pool / Gym Access on Common	Is it possible to have this?	• Security patrols broad acre development • Gym Membership

Q 7
Q 55

To achieve the ‘liveability’ of owners corporations communities the beneficiary pays principle is more important than the convenience of Lot Liability is substantial subdivisions