ADJUDICATOR'S ORDER

Office of the Commissioner
for Body Corporate and Community Management

CITATION:	*Kirribilli Heights* [2021] QBCCMCmr 293
PARTIES:	Consolidated Gold Coast Holdings P/L (**applicant**)
	Body Corporate for Kirribilli Heights CTS 37540 (**respondent**)
	All owners (**affected persons**)
SCHEME:	Kirribilli Heights CTS 37540
JURISDICTION:	*Body Corporate and Community Management Act 1997* (Qld) (**Act**), sections 227(1)(a) and 229(3)(a)
	Body Corporate and Community Management (Accommodation Module) Regulation 2008 (**Accommodation Module 2008**)
	Body Corporate and Community Management (Accommodation Module) Regulation 2020 (**Accommodation Module**)
APPLICATION NO:	0693-2020
DECISION DATE:	15 June 2021
DECISION OF:	S. Barry, Adjudicator
CATCHWORDS:	VOUTE OUTSIDE COMMITTEE MEETING – whether the circumstances call for the meeting to be voided – effects of non-compliance with notice requirements of meeting – ratifying earlier decisions made by committee composed of different members.
	GENERAL MEETING – whether an extraordinary general meeting of the body corporate should be voided – whether the meeting was lawfully called – whether prejudice is proved that requires intervention – whether only 'minor' non-compliance can be excused.
	Accommodation Module 2008, ss 45, 54, 55, 63.

ORDERS MADE:

The application for final orders is dismissed.

I HEREBY CERTIFY this is a true copy of the order and reasons for decision.

Dated this 15th day of June 2021.

S. Barry, Adjudicator

REASONS FOR DECISION[1]

Overview[2]

[1] On 18 June 2020, I dismissed an interim application in this dispute.[3] In the amended application of 17 June 2020, the applicant sought an interim order preventing an extraordinary general meeting from proceeding (on the same date as my order), "because the calling of it was done at an invalid meeting being 25 May 2020 VOC Meeting.[4]

[2] The applicant seeks 3 final orders (which are a little convoluted), that the:

a. "25 May 2020 VOC Meeting / Minutes be declared invalid and the calling of the EGM scheduled for 18 June 2020 (which was called from the 25 May 2020 VOC), is cancelled"[5] – **Order 1**

b. "Committee should convene all of its meetings according to … [the legislation]. Further, the Committee should organise a proper committee meeting including notice and voting for resolutions relating to the business that was included in the 25 May 2020 VOC Minutes." – **Order 2**

c. "EGM Notice be issued after a proper resolution is passed at a duly held committee meeting" – **Order 3**

[3] The applicant complains about the events surrounding the conduct of an extraordinary general meeting (**EGM**), the calling of that meeting, and the conduct of a vote outside committee (**VOC**) (and those meetings in a more general sense). The background is unfortunate. The body corporate admits it has been at times legislative non-compliant and in 2020 it conducted some activities to try and rectify historical problems as well as a more recent error in an insurance budget and contributions motion from the 2020 AGM.

[4] The Commissioner in practice direction 14 stresses, in effect, that the obligation to prove a case falls to an applicant. My responsibilities are to observe the rules of natural justice,[6] to act quickly with as little formality and technicality as possible,[7] and when doing so, I am "not bound by the rules of evidence."[8] I "may make an order that is just and equitable in the circumstances … to resolve a dispute."[9] When doing so, I employ "a rational process of decision-making according to law",[10] utilising the three necessary stages of "fact-finding; rule-stating and rule application."[11]

[5] Ultimately, I dismiss the application, for the reasons I provide.

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[1] This amended application was lodged on 17 June 2020. On 1 March 2021, the revised Accommodation Module commenced. In dealing with this dispute, I refer to the 'old' sections of the legislation, as part of 'the Accommodation Module 2008', as this was the regulation in force when the events in this dispute occurred.
[2] The applicant is represented by Burns and Associates, at least following the lodging of the application. I am provided with 2 additional written submissions, dated 3 November 2020 and 9 February 2021. The respondent's lawyers are Mahoneys, and they supplied written submissions dated 25 September 2020, and 23 December 2020. A representative of the scheme's body corporate manager's office also provided an email on 29 September 2020, indicating they support the respondent's submission of 25 September 2020.
[3] *Kirribilli Heights* [2020] QBCCMCmr 329.
[4] Applicant's BCCM Form 15 Adjudication Application Form, section 8.
[5] Applicant's BCCM Form 15 Adjudication Application Form, section 7.
[6] Act, s 269(3)(a).
[7] Act, s 269(3)(b).
[8] Act, s 269(3)(c).
[9] Act, s 276(1). This power has been said to be very wide, but of course is not unfettered, see: *Body Corporate for Palm Springs Residences CTS 29467 v J Patterson Holdings Pty Ltd* [2008] QDC 300, para 98; *Finger v Dickie* [2015] QCATA 113, paras 14, 15, 35, 36.
[10] *Kostas v HIA Insurance Services Pty Ltd* [2010] HCA 32, para 16.
[11] *Walden v Body Corporate for Broadwater Tower* [2015] QCATA 166, para 23.

Background

[6] The applicant is a company (Consolidated Gold Coast Holdings Pty Ltd), which is also a lot owner in the scheme (lot 444). Additionally, it holds a "Management Agreement with the Body Corporate."[12] From what I can see on titles information and aerial photographs of the scheme, the applicant currently retains a majority of the land in the development, their lot being comprised of bushland (see Figure 1). Mr Bap Romano is a corporate owner nominee of the company (as is Mr Alan Buckle), so when I speak of 'applicant' I am generally referring to Mr Romano, who through his corporate entities is the developer of the scheme. In the lead up to the application, Mr Romano communicated with the body corporate and the body corporate manager (**BCM**).[13]

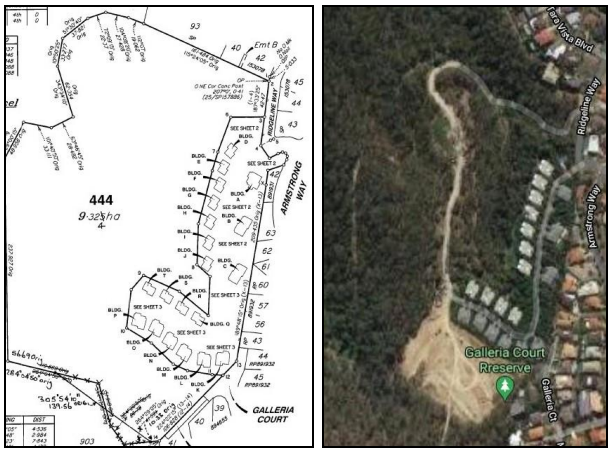

Figure 1 – Plan and aerial view of the scheme and lots

[7] On 26 May 2020, the applicant (like others owners I imagine) received an email from the BCM, attaching a notice informing him that an extraordinary general meeting (**EGM**) had been called for the 18 June 2020. The email also included a copy of the minutes from a vote outside committee meeting (**VOC**), dated 25 May 2021.[14]

[8] The receipt of the meeting notice caused Mr Romano to send a letter by email to the BCM on 4 June 2020. In that letter, the applicant expressed some concerns, and also challenged the validity of the VOC and the notice of meeting for the EGM.[15]

[9] The applicant's key points from the letter of 4 June 2020 concerning the VOC were:

a. there was no notice of the VOC, required under the provisions of section 54 of the Accommodation Module 2008

b. the resolutions from the VOC did not comply with Section 55 of the Accommodation Module 2008

c. the votes recorded in the VOC minutes included some decisions by past committee members

d. the EGM "which if invalid, can't comply with Section 63(1) of Accommodation Module [2008]"

[10] Mr Romano received a reply to his letter from the BCM's office, on 8 June 2020. According to the applicant, a "key statement" in the reply from Ms Pratt of the BCM's office was:

[12] Letter from Bap Romano to the body corporate manager, 4 June 2020, applicants' bundle – attachment 4.
[13] I am supplied with a BCCM Form 8 in which Mr Romano and Mr Alan Buckle are listed as nominees of Consolidated Gold Coast Holdings Pty Ltd, applicant's bundle – attachment 9.
[14] Applicant's bundle, 17 June 2020 – attachments 1, 2, 3.
[15] Applicant's bundle, 17 June 2020 – attachment 4.

> As you are aware, the Extraordinary General Meeting has already been called, it is to rectify a past error which was identified by yourself and to void the meeting now would only result in additional unnecessary costs to all owners. Given that you agree the meeting needs to take place, it would be counterproductive, and a waste of owners money, for you to lodge a dispute with the Office of the Body Corporate Commissioner to have the meeting declared invalid.[16]

[11] Mr Romano seizes on the comments as "an acknowledgement that the EGM Notice is incorrect." I noted in my interim decision that he did not contest the fact that the "past error" concerning the scheme's insurance was one he identified that needed to be corrected.

[12] The outcome was that Mr Romano sent a further email to Ms Pratt on 9 June 2020, again reinforcing that the "EGM Notice is flawed and illegal" and expressing his disdain with being asked to ignore illegality, and querying as a result, "what actions the Committee will take."[17] I take it that no response was received and Mr Buckle sent a follow up SMS text on 12 June 2020,[18] and a telephone call was also made on 15 June 2020, neither of which yielded a response.

[13] The BCM sent an email on 16 June 2020, simply saying "thank you for your correspondence, it has been noted by the Committee."[19]

[14] The applicant concluded his submission on the interim application by arguing:

> Therefore, we request the Interim Order to stop the EGM as allowing the EGM to proceed when it has been incorrectly called, would make any resolution potentially unenforceable. This is a concern as the reason for the EGM is to set an insurance levy. An owner may rightly refuse to pay an insurance levy and body corporate may not be able to enforce its payment because the EGM was not properly organised and held.

[15] There were tight time restraints provided for me to determine the interim decision, and so I did not provide an opportunity for the scheme's committee to be heard. I dismissed the application for an interim order, in part, because:

> In this case, the applicant has not satisfied me on a prima facie basis that the issues it raises about the EGM, justify the interim order. The problem for the applicant's case is a blurring of the holding of the two meetings, the VOC and the EGM. Issues surrounding the VOC are not really part of this application, except the applicant argues it improperly authorised the calling of the EGM. For me, the one central purpose of the EGM is to adjust insurance levies (motion 2) due to a miscalculation at the AGM earlier this year, an important issue for any scheme, for legislative and practical reasons.[20]

[16] Before I begin my analysis, I wish to point out I have done my best to separate the issues involved with the claims behind the 3 orders sought by the applicant. They are not independent and are entwined legally and factually, and it has been challenging to individually separate them based on the case presented to me.

Analysis

Order 1 – The VOC of 25 May 2020 (and its minutes) and the EGM of 18 June 2020 be declared void (called the 'validity order' by the respondent)

[17] At the interim stage, the applicant argued:

> With the above background, we have made a number of attempts to have the committee realise there was an error in the VOC Minutes and the calling of the EGM. At no stage has the committee advised why they will void the Minutes or cancel the EGM.[21]

[18] At the outset of a later submission, the applicant points out he:

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[16] Applicant's bundle, 17 June 2020 – attachment 5.
[17] Applicant's bundle, 17 June 2020 – attachment 6.
[18] Applicant's bundle, 17 June 2020 – attachment 7.
[19] Applicant's bundle, 17 June 2020 – attachment 8.
[20] *Kirribilli Heights* [2020] QBCCMCmr 329, para 20.
[21] Applicant's amended application grounds, 17 June 2020.

> Is both caretaker's representative and owner of lot 444's representative so is by statute a non-voting member of the body corporate committee and is also a lot owner in the scheme. As such the Applicant has concerns in relation to the meetings and VOC of the committee.[22]

[19] The applicant expresses concerns he has "suffered prejudice and unfairness", due to the following 4 concerns raised regarding committee meetings and the VOC, namely:

a. not providing him with written notice of forthcoming meetings and VOCs[23]

b. holding meetings without notifying him, when as a non-voting member of the committee, he is able to participate

c. not providing copies of the minutes of committee meetings or records of VOCs[24]

d. the VOC record from 25 May 2020 was not "full and accurate"[25] in that "the date notice of motion was given" was not provided[26]

[20] The respondent notes that the applicant complains of four issues, I have listed above in paragraph 9.[27] Overall, argues the respondent, the application:

> Does not contain any substantive submissions to advance why the outcome sought should be granted – as it only lists some "background facts"; and … raises technical compliance issues with the Accommodation Module and then leaps to a conclusion that any non-compliance leads to any relevant decision being invalid.[28]

[21] According to the respondent, "non-compliance with the Accommodation Module is not always fatal, particularly when the body corporate is acting in good faith", something I am reminded I pointed out in my interim decision.[29] In sum, contends the respondent, "as detailed in the remainder of this submission, the Application does not identify any prejudice or unfairness that has been caused with respect to the VOC or EGM such that neither the VOC or EGM ought to be invalidated."[30]

[22] In his first reply to the submissions made by the respondent, the applicant makes some points about "prejudice and unfairness" he alleges was suffered by him in the facts of this dispute.

[23] He argues that "excluding" him from committee meetings (and also not providing minutes within 21 days) isolates him as the caretaking service contractor from having input to decision-making processes of the scheme.[31] The committee "has kept secret what matters it has made determinations on, and when any such determinations were made", between October 2018 and May 2020, in contravention of the legislation.[32] The applicant points to motion 1 from the VOC as an example.[33] According to the applicant, this lack of communication has "unfairly caused the Applicant additional cost for obtaining advice, making complaints to the committee and trying to have the committee's breaches rectified."[34]

[24] In answer to these claims of delays in providing records by the applicant, the respondent "acknowledges that reauthorising decisions does not overcome the original failure" but the

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[22] Applicant's outline, 3 November 2020, para 1.
[23] Accommodation Module 2008, ss 45(1), 45(3)(b).
[24] Accommodation Module 2008, ss 55(1)-(2).
[25] Accommodation Module 2008, ss 55(5).
[26] Applicant's outline, 3 November 2020, para 2.
[27] Respondent's outline, 25 September 2020, para 3.
[28] Respondent's outline, 25 September 2020, para 4.
[29] Respondent's outline, 25 September 2020, paras 5-6. The respondent refers to *Wei-Xin Chen v Body Corporate for Wishart Village CTS 19482*, Appeal 4080 of 2000, District Court Brisbane, 29 May 2001 (Unreported).
[30] Respondent's outline, 25 September 2020, para 7.
[31] Applicant's outline, 3 November 2020, paras 14-15.
[32] Applicant's outline, 3 November 2020, para 16.
[33] Applicant's outline, 3 November 2020, para 17.
[34] Applicant's outline, 3 November 2020, para 19.

outcome the applicant requires also does not achieve that result. Instead, "ratifying the original failure" deals with the situation,[35] and the body corporate is unsure of an alternative.[36]

[25] In this case, the applicant argues he was not notified of the relevant VOC creating a notice issue, with their representative being a non-voting committee member at the relevant time. The respondent concedes that in accordance with section 54 of the Accommodation Module 2008, a notice of a VOC is to be given to all committee members with advice of the VOC being sent to all owners.[37]

[26] The respondent explains that a "significant portion of the VOC" was aimed to deal with a number of decisions of what I might term, 'legacy problems'. It says, "it is unfortunate that these decisions were not recorded closer to the time of the decisions being made." The only course for the body corporate, it contends, was to follow the path that it chose, otherwise it would not have recorded "the decisions in any capacity" making it even less legislatively compliant, potentially causing further complaint from the applicant.[38]

[27] I am referred to the decision of *Grand Pacific Resort*[39] by the respondent, and it argues "in circumstances where the committee has the power to make a decision (as opposed to requiring a general meeting, as was the case in Grand Pacific Resort) it is appropriate for that decision to be made by the committee." It also concedes that the body corporate should have "it should have sent notice and advice of the VOC to all committee members and owners."[40]

[28] Despite any problems identified by the applicant:

> The Respondent, nor to the Respondent's knowledge, any other owner, who has made any meaningful submission taking issue with the content or consequences of the VOC resolutions. Accordingly, there is no identified prejudice or unfairness that has been caused and the Respondent ought not to be put to the unnecessary consequence of then having to reissue the VOC and EGM on the exact same terms, but just with notice and advice of the VOC being provided in advance.[41]

[29] In its final reply submission, the respondent repeats its argument that the applicant simply continues to plead technical deficiencies about some committee resolutions, which have not led to any demonstrable prejudice. Further, that any claims of prejudice now raised by the applicant are simply in response to the respondent's earlier written submissions of 25 September 2020 and he "is not entitled to the relief sought unless (among other things) the Applicant can demonstrate that [he] has suffered prejudice and unfairness."[42]

[30] In response to the applicant's concerns (e.g. that he could not participate in meetings), the applicant argues potential prejudice, and "failed to actually identify any prejudice and unfairness", other than he may have incurred some costs, but the latter is a decision taken of his own accord when seeking legal advice and could have been avoided if he simply allowed the body corporate to ratify the earlier decisions. It "acknowledges that the Applicant was not provided the opportunity to participate in committee meetings or made aware of decisions that have been made", but he is now only taking issue with them because he has been made aware of them.[43]

[31] The applicant counters the respondent's argument, because in his words, it "distorts the true situation." Instead, he took advice and incurred costs

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[35] *Grand Pacific Resort* [2010] QBCCMCmr 437.
[36] Respondent's outline, 23 December 2020, paras 21-22.
[37] Respondent's outline, 25 September 2020, para 8.
[38] Respondent's outline, 25 September 2020, para 9.
[39] [2010] QBCCMCmr 437.
[40] Respondent's outline, 25 September 2020, paras 11-12.
[41] Respondent's outline, 25 September 2020, para 13.
[42] Respondent's outline, 23 December 2020, paras 5-6.
[43] Respondent's outline, 23 December 2020, paras 7-9, 11.

> Over the infringements of the regulations by the body corporate, not because they were simply failure by the body corporate to abide by its regulatory framework, but because those failures subverted the purpose of the provisions in the Accommodation Module and hampered the open and accountable governance of the body corporate. Those provisions are intended to be observed and even though the impact of an inadvertent infringement of some aspect of the provisions may be assuaged by a subsequent "correction", (as set out in *Grand Pacific Resort* [2010] QBCCMCmr 437) systematic and long term failure to abide by the regulatory provisions needs to be stopped.[44]

[32] In relation to whether the body corporate has kept a full and accurate record of the VOC, the respondent concedes that section 55 of the Accommodation Module 2008 required "the committee to keep a full and accurate record of each motion voted on at a VOC which is defined to include" a number of issues detailed in the section.[45] Again, the respondent says that the applicant does not show in the application how the minutes of the VOC failed to comply with the legislation.[46]

[33] The respondent concedes the record of the VOC "does not include the date notice of the motion was given to committee members", but again, there is "no identified prejudice or unfairness" and the body corporate should not be put through the inconvenience of repeating the process, on the same terms.[47]

[34] The applicant contests that the VOC record could have been a full and accurate account. Justifying this argument, he directs me to a 'circular memorandum' that was sent to lot owners from the committee secretary and the BCM on 6 May 2020.[48] The circular is devoted to seeking the support of lot owners to move towards electronic communication, but the theme of the document is not the issue. The applicant points out that the "the persons named as officers and committee members were not the persons elected to office at the Annual General Meeting held on 31 January 2020, but were different persons."[49] Instead, "The officers and members listed in the 6 May 2020 email were those who, according to the VOC Record of 25 May 2020 were appointed into those positions on 25 May 2020."[50]

[35] In response, the body corporate contends the applicant's argument is this regard cannot be sustained, because "the resolutions the Application seeks to challenge which was a few weeks after the circular explains the committee composition had changed. The resolution merely records this change."[51] Additionally, former committee members did not make decisions after their tenure, but there was just "recording of former committee decisions … after the tenure of those committee members", a "distinction" ignored by the applicant.[52]

[36] In his 'further submissions in response to final order', the applicant repeats some earlier concerns, and wishes to draw my attention "to the change of officers and committee membership in 2020 apparently without meetings being held or decisions being recorded."[53] Supporting the contention the applicant maintains that:

a. committee members were elected at the AGM on 31 January 2020

b. the body corporate communicated with owners on 6 May 2020 and in the email showed a different list of committee members

c. there was no indication of a meeting or VOC that had brought about changes

d. then the notice was provided to owners on or about 25 May 2020 that the VOC had resolved to appoint the new committee members, but there was no mention that this was to confirm an earlier decision

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[44] Applicant's outline, 9 February 2021, para 17.
[45] Respondent's outline, 25 September 2020, para 15.
[46] Respondent's outline, 25 September 2020, para 16.
[47] Respondent's outline, 25 September 2020, para 17.
[48] Applicant's outline, 3 November 2020, attachment A.
[49] Applicant's outline, 3 November 2020, para 6.
[50] Applicant's outline, 3 November 2020, para 6.
[51] Respondent's outline, 23 December 2020, paras 12-13.
[52] Respondent's outline, 23 December 2020, paras 18-19.
[53] Applicant's outline, 9 February 2021, para 16.

e. he appreciates informal decisions might be made and later formally ratified formally at the next meeting, but he has no evidence this is what occurred in this case[54]

[37] The concerns held by the applicant are that due to the absence of records and compliance with the legislation, "the actions of the committee in managing the affairs of the body corporate put it beyond scrutiny", as members "have developed a habit of ignoring the procedures required" by the legislation and "making decisions in ways that defy scrutiny."[55]

[38] As an example supporting his arguments, the applicant contends that because no notice of the 25 May 2020 VOC was provided to him (nor any for the previous 2 years), he "is not able to provide evidence to support which particular VOC agenda items were submitted for vote at the 25 May 2020 VOC, and if and when previous VOC had occurred and were now being 'ratified' by the VOC on 25 May 2020."[56] The applicant refers to motion examples in the record of the VOC (motion 1 for example),[57] which were ratifying decisions as far back as 2018. This means, he says:

> In the absence of any record of that committee's decision and the date on which such a decision was made, the Applicant has been disadvantaged in its dealings with the body corporate because it was unknown whether or not the body corporate was acting with authority or not. In the absence of facts, the Applicant had assumed that the body corporate's representatives were acting with the support of the committee, but faith and trust are hard to maintain when the committee officers wilfully disregard the rules under which they are supposed to operate.[58]

[39] Not surprisingly the respondent disagrees the committee is acting "beyond scrutiny". Rather, it adopts the cumulative views by adjudicators "that inconsequential and technical noncompliance ought not to invalidate decisions of the Respondent." The outcome the applicant seeks will not assist him, says the respondent, and the body corporate in the circumstances was trying "to regularise (as best as possible) previous decisions that were made", and the alternative "is hardly a better outcome."[59]

[40] Although the applicant recognises that as the caretaking service contractor he "was in dispute" with the body corporate in 2018 and so apparently probably should not have been involved with motion 1, he should still have been notified of the VOC outcomes.[60] In fact he should have been notified of any other vote outside committee outcomes for the two years before the VOC, in the form of minutes.[61]

[41] The respondent notes again that the VOC dealt with "historical decisions" made by a previous committee and so the composition of the committee differed. It submits there is no restriction in the Accommodation Module preventing such an approach "particularly when the VOC minute specifically details who the committee members were for each resolution." In any case, this should not result in voiding the VOC.[62]

[42] On a final issue wrapped into the complaints made by the applicant surrounding the proposed order 1, the respondent notes that in a case such as the current matter, a committee resolution is required to call a general meeting. The applicant's case on this aspect, argues the respondent, "appears to be that if the VOC is invalid, as a natural consequence, the EGM is not properly authorised."[63] Conversely, the respondent says that as the VOC was not invalid, the applicant's argument must fail. If it is incorrect, then no identified prejudice or unfairness

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[54] Applicant's outline, 9 February 2021, para 16.
[55] Applicant's outline, 3 November 2020, para 7.
[56] Applicant's outline, 3 November 2020, para 9.
[57] This motion was passed into a committee resolution in terms "That the Committee ratify the appointment of David Leary to undertake the preparation of a schedule of duties for the purpose of informing the Body Corporate Owners in relation to the QCAT application and proposed NBA."
[58] Applicant's outline, 3 November 2020, para 10.
[59] Respondent's outline, 23 December 2020, paras 15-16.
[60] Applicant's outline, 3 November 2020, para 11.
[61] Applicant's outline, 3 November 2020, para 12.
[62] Respondent's outline, 25 September 2020, paras 20-22.
[63] Respondent's outline, 25 September 2020, para 23, per Accommodation Module 2008, s 63.

has been caused, and so the body corporate should not be put to the inconvenience of running the process again.[64]

Determination – Order 1

[43] There are a number of complaints raised by the applicant supporting his claims surrounding order 1, some are clear, some are meshed into others. At the outset, I indicate I am not satisfied that the applicant has proved his case to the required standard and I will not be making order 1. I dismiss that aspect of the application.

[44] There are anomalies identified here, there were problems and there are mistakes conceded by the body corporate. I need to look at the facts as I can find them, apply the law and then decide whether it is just and equitable to make the order sought. In a general sense, I am not satisfied that the applicant has proved that he or his company has suffered prejudice that would cause me to intervene.

[45] Much of what he argues concentrates on 'potential' prejudice and unfairness. If that was the measure in bodies corporate, we would never keep up with the number of dispute applications. If the applicant sought legal advice and incurred some costs, I agree that is unfortunate, but as the respondent says, he could have simply allowed the decisions to stand without complaint. I cannot avoid the observation that the EGM, for example, was called to deal with an AGM error identified by the applicant himself.

[46] The first of the four aspects of the case supporting order 1 is what the respondent calls, the notice issue, in that there was not notice of the VOC provided in accordance with section 54 of the Accommodation Module 2008.

[47] Section 54(1) of the Accommodation Module 2008[65] provides that a committee resolution is valid, even though it was not decided at a meeting, provided the notice of motion is provided to all committee members and there is a majority vote in support of it. The outcome needs to be confirmed at the next committee meeting.[66]

[48] I am satisfied that the applicant was notified of VOCs, when he should have been so notified, something conceded by the respondent. The respondent appears contrite and I hopefully now appropriate notice is provided to the applicant. It is on notice about providing notice. The question is whether that would cause me to void the VOC, which in turn means the calling of the EGM might come into question. I will not be acting on that concern. This situation has not been ideal, but I cannot see why forcing the body corporate back to meetings now, assists anyone, including the applicant. The converse seems more likely to be the case to me.

[49] I am unsure what any order from me regarding this aspect of the dispute will achieve. As an owner and a non-voting committee member, the applicant holds rights within the legislation and no doubt the body corporate has been respecting those in the last year and will continue to do so in the future. My comments also apply to the supply of minutes of VOCs and meetings. If the body corporate was unaware of its legislative obligations, I am sure that is now not the case.

[50] I will shortly have something to say about non-compliance with the legislation in such circumstances, which has general application in all aspects of instances of non-compliance in this dispute.

[51] The committee must also ensure that full and accurate minutes of each motion from its meetings are recorded.[67]

[52] This has been a problem for the body corporate in the past, leading up to the events of 2020. Again, the body corporate concedes past non-compliance and one of the intentions of the VOC was to ratify or 'tidy up' past indiscretions (my words).

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[64] Respondent's outline, 25 September 2020, para 25.
[65] Now effectively sections 60 of the Accommodation Module 2020, although amended.
[66] Accommodation Module 2008, s 54(6).
[67] Accommodation Module 2008, s 55(1), now section 63 of the Accommodation Module 2020.

[53] The respondent body corporate argues that in situations where the committee has the power to make a decision, it should be the committee that does so later to remedy past errors. That is why so many of the motions from the VOC were devoted to ratification. From my reading of the minutes from the VOC there were 18 motions, 11 ratified earlier actions, one called the EGM, 5 appointed committee members and one (motion 12) approved an engineer to provide a report on the stability and eroded banks under the houses and uncontrolled filled banks.

[54] The respondent refers to the decision of *Grand Pacific Resort*,[68] in particular where the adjudicator said:

> Even if Fuss Law were not appropriately authorised, any irregularity could be remedied by ratifying the engagement at a subsequent meeting. The ability of the Body Corporate in general meeting to ratify expenditure incurred by the committee has been confirmed by the Court of Appeal in *Warren v Body Corporate for Buon Vista* where it was held that the Body Corporate in general meeting could validly ratify past irregular conduct such as the engagement of lawyers in circumstances where the legal fees incurred exceeded the relevant limit for committee spending.[69]

[55] I have written elsewhere about the body corporate, or its committee's ability, to ratify decisions (and I rely on my those comments here),[70] I will not repeat those principle here, except to refer to one comment from Judge McGill DCJ, where he pointed out that ratification "is an incident of the law of agency" and:

> There is nothing I can see in the Act which would prevent the general principle of ratification from applying to the operation of a body corporate under the Act, and in my opinion, it does apply under the Act. Insofar as the appellant's arguments are based on the contrary proposition, I reject them.[71]

[56] Suffice to say it is possible to ratify issues, it is not an ideal situation and one hopes that general resort to ratification is not necessary, and does not become a matter of practice for this or any other body corporate.

[57] Again, in regard to this aspect of this dispute, the situation was not ideal in the past and I can understand why the committee's approach might have caused the applicant consternation, given the developing state between them. The question that needs to be generally asked (and one for the applicant) is if the committee does not take actions to try and bring the body corporate into compliance, would it then be criticised for its inaction? I will not make an order on the basis of this aspect of the argument advanced by the applicant.

[58] The votes recorded in the VOC minutes included some decisions by past committee members (composition decision).

[59] I am of the view the applicant has not sufficiently proved his case to the required standard regarding this aspect of his case, and I will not be making an order based on the arguments.

[60] I have discussed the committee's response to this argument above and I agree with it. It dealt with these legacy lapses and the original decisions were made by committees with different members. This is noted in the minutes of the VOC and it is certainly not something the 2020 committee was trying to conceal from owners, the opposite in fact.

[61] I keep saying the situation was not ideal and I do not know what returning any of this for further decision making would achieve. The respondent argues the legislation does not appear to restrict this approach. It does not. The legislative regime is certainly extensive, but it fails to anticipate many issues. If committees 'get it right', so to speak, at first instance, this will not be necessary.

[62] The last aspect of the applicant's arguments supporting order 1 is that the EGM was not properly authorised, in that the VOC did not lawfully call it. The argument then is if the VOC

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[68] [2010 QBCCMCmr 437.
[69] Respondent's outline, 25 September 2020, para 10.
[70] *Syncarpia* [2019] QBCCMCmr 578, paras 79-83.
[71] *Warren v Body Corporate for Buon Vista*, para 35. His Honour goes on to discuss a number of other cases (including those involving bodies corporate) that support his arguments, see paras 36-38.

failed in its role, the EGM must be voided. The respondent says I should not void the meeting as there is no identified prejudice or unfairness. The respondent makes a valid point.

[63] I have said I do not accept the argument that the VOC was sufficiently irregular for me to void it and its outcomes, so the resolutions decided at are still valid. In this case the EGM was called according to resolution 18 of the VOC. That motion provided, "that the Committee approve to call an Extraordinary General Meeting, to be held on 18 June 2020, for the purpose of amending the Insurance Levy motion approved at the 2020 Annual General Meeting."

[64] A general meeting may be called by a committee member, as long as the person is authorised by a resolution of the committee to do so.[72] In the usual course of events, the committee secretary is authorised to call a meeting, but that is more a practice, rather than something ordained by legislation. That did not occur in this case, so I need to ask what I should do as a result. This leads me to a discussion about irregularities in the processes and whether the legislation requires me to do so, or I have discretion to allow the decisions to stand. Although I have already dealt with the VOC, the principles that follow, apply to my determination of that matter as well.

[65] There is a long history of adjudicators not voiding meetings if 'minor', 'insubstantial' or inconsequential irregularities have taken place. I am of the view the discretion is wider than that for sound practical reasons, which have been alluded to by appeals in various jurisdictions.

[66] The applicants in *Parkwood Villas*[73] challenged a number of matters, including the appointment of a returning officer, which they argued should have been fatal to the voting process. They contended the body corporate did not appoint a returning officer using a resolution of the body corporate or the committee, and that there was no instrument of appointment to the returning officer. The adjudicator followed the solid line of authority that:

> The courts have recognised that the detailed provisions of the body corporate regulations make non-compliance almost inevitable from time to time. It has been held that minor instances of non-compliance will not invalidate a decision, particularly where a committee has acted in good faith. Therefore, meetings and decisions should be preserved despite minor errors, omissions or other procedural irregularities in meeting procedures, unless it can be shown that there has been some fundamental disadvantage to voters.[74] (reference removed, my emphasis)

[67] In this quote, the adjudicator referred to the often-cited decision of *Wei-Xin Chen v Body Corporate for Wishart Village CTS 19482* (also referred to by the respondent).[75] The Judge in that matter recognised that mistakes occur and it is the integrity and reliability of the overall vote that is important, or put another way by an adjudicator:

> In general, in order to invalidate a vote, there must be some evidence of malpractice or mistake, something which gives rise for a real concern that the votes counted are not as cast by owners. Mere non-compliance with the legislation, if proven, will not necessarily invalidate the voting tally or the motion.[76] (my emphasis)

[68] In *Lovel v The Body Corporate for The Reserve (No 2)*,[77] the Learned Member referred to the decision of *Wei-Xin Chen*. He quoted Judge Bolton's comments at paragraph 27 of *Wei-Xin Chen*, where His Honour said:

> The very detailed provisions of the standard module regulation to which I have referred above make it almost inevitable that from time to time there will be non-compliance. Equally though the provisions of the Act make it clear that non-compliance of an insubstantial nature will not be allowed to imperil the actions of bodies corporate or their committees, particularly in the instance of committees where actions are taken bona fide.[78] (my emphasis)

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[72] Accommodation Module 2008, s 63(1), now section 72 of the Accommodation Module 2020.
[73] [2016] QBCCMCmr 161.
[74] *Parkwood Villas*, para 28.
[75] Appeal 4080 of 2000, District Court Brisbane, 29 May 2001 (Unreported).
[76] *Surfers Beachcomber* [2016] QBCCMCmr 443, para 32.
[77] [2018] QCATA 169.
[78] *Lovel*, para 32.

[69] I think many are seized by the words "non-compliance of an insubstantial nature" and refer to them on a routine basis. That, however, is not the end of the argument.

[70] Member Roney QC in *Lovel* also noted:

> It does not appear from those reasons that His Honour was taken to any particular authority in expressing the conclusions that he did as to the operation of those provisions. Nor does the reference in [27] of His Honour's reasons to the Act make it clear that the proposition discussed concerning non-compliance 'of an insubstantial nature' was based upon or referenced to any identified legal principle or authority. It appears to me that His Honour was really paraphrasing and identifying an example of one of the circumstances in which an Adjudicator might decide to declare a meeting or a resolution passed as valid, notwithstanding that there were irregularities. One of those might be that the non-compliance was of an insubstantial nature, however it does not follow that it is only in circumstances in which the non-compliance is in insubstantial nature that an Adjudicator might exercise any of the powers vested in Adjudicators to validate irregular acts.[79] (my emphasis)

[71] This means that some prefer the 'narrower' view of dealing with non-compliance, where others such as Member Roney QC indicate a 'wider' view is also permissible. I prefer the latter interpretation, based on my knowledge of the Act and regulation modules and the relevant appeal authorities.

[72] Whether non-compliance is 'insubstantial' or not is a matter of opinion an interpretation, but I think little turns on it here. I agree with the thrust of the arguments put by the Member Roney QC in *Lovel*, which in effect support the view that cases are factually dependent. The principle from *Wei-Xin Chen*, although still relevant, is often quoted too narrowly and out of context, a context identified in *Lovel*.

[73] I think what is important here is that the committee voted to call the EGM in good faith, it did not just occur. Just because they did not go the extra step of formally authorising one of their number to call the meeting, will not cause me to void the meeting. The body corporate will know better next time.

[74] I am unable on the evidence presented to me to conclude that any lot owner, including the applicant, was prejudiced or disadvantaged. Indeed, the way that earlier decisions were made in the VOCs demonstrate greater irregularity (if such a description is possible) and it appears the body corporate in 2020 was attempting to regularise its decision making processes. It still did not get them quite right, but that does not cause me to interfere with the outcomes of their actions.

[75] There is nothing to be achieved by me forcing the body corporate back to another general meeting. It must also be remembered the EGM was conducted a year ago. The applicant has not demonstrated any prejudice to me regarding this aspect of his arguments. I note that not a single other lot owner provided me with a submission about this dispute. No other owner is apparently troubled enough about this dispute to record concerns. I am not suggesting that is the end of the matter, but it is an issue I take into account. No other owner argues they have suffered prejudice by the events surrounding the VOC and EGM. Finality is important here. I am not approving the past conduct of the committee and the body corporate.

[76] On a final issue regarding the arguments by the parties, the applicant made this point:

> That concern in relation to the EGM has been overcome by the Adjudicator's Interim Order, but the Applicant remains concerned about the operations of the committee and its officers as revealed by the misleading statements made about the 2020 office bearers in its 6 May 2020 email.[80]

[77] This point is made more than once by the applicant and appears to concede that was abandoning this aspect of application. In any case, I have dealt with it on its merits.

[78] It strikes me, like it usually does, that although the community titles legislative regime is voluminous, complex and apparently prescriptive, cases are often factually dependent and where possible, those hearing reviews are loathe to 'fence in' body corporate disputes.[81]

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[79] *Lovel*, para 34.
[80] Applicant's outline, 3 November 2020, para 6.

[79] Flexibility is required in these disputes for a number of reasons, including issues such as legislative complexity, costs, and encouraging principles involved in self-management. Many of the disputes referred to us about meetings are simply pointless. This is not a carte blanche authority to act outside the legislation or for a committee or body corporate to act outside the legisaltion, it is a statement of reality. Conversely, enough adjudicator decisions invalidating motions or meetings exist (including from me), showing that not all transgressions will be excused. I will not make an order on the basis of this aspect of the argument advanced by the applicant.

[80] The application for order 1 is dismissed.

Order 2 – The Committee convene meetings in accordance with the provisions of the legislation, and organise a proper committee meeting including notice and voting for resolutions relating to the business that was included in the 25 May 2020 VOC Minutes (called the 'meeting order' by the respondent)

[81] The respondent body corporate explains it is "not necessarily opposed" to the first part of this order sought as "this is simply a statement of the Respondent's obligations which are not disputed", but that it is "unnecessary and of no utility".[82] The second aspect, contends the respondent, relates to the body corporate being forced to reconsider the motions from the VOC, which it has already addressed.[83]

[82] The applicant concludes his first reply submission (in a general sense) by reiterating these points that underlie his request for order 2 (I think), in that I should (in sum):

a. note the committee and its members have breached the legislation "since at least October 2018 in connection with convening, conducting and reporting on the outcomes of committee meetings and VOC"

b. note that breaches have the potential to cause prejudice and unfairness to the lot owners not informed of meeting outcomes

c. require the secretary provide "the date on which the notice of each motion [from the VOC] was given"

d. require committee members to "abide" by the legislation "in their management of the body corporate's affairs"[84]

Determination – Order 2

[83] I have already explained by views and findings regarding the historical legislative non-compliance of the previous committees and the body corporate. The applicant is correct in many of his assertions and the respondent concedes the difficulties.

[84] The body corporate's previous non-compliance is now on the record. My comments are also now on the record. Although not binding a subsequent adjudication application (hopefully that will not be necessary), the respondent may have difficulties explaining later non-compliance after what has occurred in the past.

[85] I am not in the practice of making orders that simply require a party to comply with the legislative regime, when they are required by the legislation to comply with the legislative regime. Such orders are usually superfluous.

[86] I have already indicated why I will not require the body corporate to revisit the issues from the VOC and I will not repeat them.

[87] I refuse the application for order 2.

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[81] See my comments in *Watermark Residences* [2021] QBCCMCmr 202, paras 58-76, concerning 'mandatory' or 'imperative' requirements and effects on outcomes.
[82] Respondent's outline, 25 September 2020, paras 27-28.
[83] Respondent's outline, 25 September 2020, para 29.
[84] Applicant's outline, 3 November 2020, para 23. The applicant ends his final reply dated 9 February 2021, by repeating these points, in paragraph 20.

Order 3 – The EGM notice be issued after a proper resolution is passed at a duly held committee meeting (called the 'further notice order' by the respondent)

[88] The respondent argues that if I refuse order 1, then this argument must consequently fail. Again, it says "such an outcome is unnecessary and would serve no utility."[85] I am inclined to agree with the body corporate, but I actually feel that the request for order 3 is repetitive and that I have already dealt with the issues surrounding it.

[89] From the respondent's perspective, it thinks the "only material concern" the applicant might possibly be raising is an owner might refuse to pay levies (if the EGM was not properly called) and as the VOC dealt with "historical decisions", they might prevent an owner addressing or challenging a decision.[86] The outcomes of the EGM stands and the body corporate may rely on them.

[90] The respondent refers to words from my interim decision, where I said, inter alia:

> [20] … Issues surrounding the VOC are not really part of this application, except the applicant argues it improperly authorised the calling of the EGM. For me, the one central purpose of the EGM is to adjust insurance levies (motion 2) due to a miscalculation at the AGM earlier this year, an important issue for any scheme, for legislative and practical reasons.
>
> [21] The applicant does not argue against the substance of the body corporate's arguments in the explanatory note regarding motion 2 of the EGM. If the VOC that called it had some technical issues authorising the EGM, it is entirely likely I would not interfere with the process. Adjudicators have made it clear, time and time again, they will not interfere unless some prejudice or unfairness has been caused. That is not what is argued by the applicant. If a lot owner believes they do not have to accord with the outcome of the EGM, they may be sadly disappointed.[87]

[91] As a result, the respondent argues the "levy issue" is not a "genuine concern" for the applicant and should not affect the validity of the VOC or EGM,[88] but:

> Rather, and incongruously, the reason for the EGM to consider the relevant EGM motions is as a direct result of the Applicant's precious requests and demands to do so, which the Applicant now is seeking to challenge.[89]

[92] The applicant disputes the respondent's views concerning the "levy issue", arguing they are "contrary to the facts".

[93] On both cases, the applicant raised what is conceded to be a valid concern about the insurance levy, approved at the 2020 AGM. He asserts it "was incorrect and imposed, contrary to law, an unfair financial burden on the Applicant." This led to the committee wishing to take remedial action at the EGM. Motion 2 was entitled "Rescinding – Insurance Recovery Budget and Contributions", designed to rescind motion 5 from the AGM on 31 January 2020. In its stead, motion 3, entitled "Insurance Recovery Budget and Contributions – Lots 1 – 40", was proposed by the committee.[90] I sought the minutes from the BCM and I thank them for providing them.

[94] The minutes from the adjourned EGM from 25 June 2020 (insufficient quorum of owners was present on 18 June) indicate support for both motions 2 and 3. Motion 2 was supported by owners, 23 votes to nil, with no abstentions. The same result was recorded for motion 3. Mr Romano was present at the meeting and the minutes do not record a vote against either motion by him.

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[85] Respondent's outline, 25 September 2020, paras 31-32.
[86] Respondent's outline, 25 September 2020, para 33.
[87] *Kirribilli Heights* [2020] QBCCMCmr 329, paras 20-21.
[88] Respondent's outline, 25 September 2020, para 36.
[89] Respondent's outline, 25 September 2020, para 37.
[90] Applicant's bundle, 17 June 2020 – EGM Notice – attachment 2.

[95] I remain unclear about any actual prejudice the applicant might have suffered from this course of events. Instead he relies on "potential to cause prejudice and unfairness to the lot owners of the scheme",[91] or in more detail:

> The Applicant's concern was that if the EGM was incorrectly called and conducted, any decision of the EGM may be challenged by disgruntled lot owners and the Applicant would be further disadvantaged by not having the matter resolved by a valid EGM.[92]

[96] I note all other owners are silent.

[97] The applicant then argues, however:

> The adjudicator's interim order in support of the validity of the EGM's subsequent decision has provided certainty to ensure that its decision is not potentially invalid due to the inadequacies of the process for calling the EGM. The Applicant accepts the adjudicator's decision in relation to the validity of the EGM.[93]

[98] Although a little unclear, it appears to me that after reading my interim decision the applicant is abandoning his argument concerning the unlawful calling of the EGM. The respondent also notes in one of its submissions that the applicant appears to contradict himself, and that in one argument "there was no need for the Application to be made in the first place."[94]

[99] Last, it is the respondent's contention that in relation to the VOC's "historical decisions", this can only be a live issue "if there was something patently wrong with the decisions being recorded in the VOC" and in any case, no owners have challenged the content or consequences, so I should not interfere with the outcome, as "no identified prejudice or unfairness" has taken place, and so the body corporate should not have to repeat the process.[95]

Determination – Order 3

[100] The respondent:

> Acknowledges that in the past it did not precisely comply with the decision making requirements of the Accommodation Module. However, the Respondent has subsequently recognised this and taken the only steps available to it to regularise those decisions. The Applicant takes issue with this course of action for technical reasons and provides no solution other than to seek to invalidate the remedying steps that were taken.[96]

[101] In my view the respondent makes valid points.

[102] The applicant at the end of his final submission refers to the body corporate's concessions it has in the past not acted in accordance with the legislation and was trying to remedy past wrongs, but then he contends he "brought this application as a means of trying to bring the body corporate into regular observance of its regulatory framework."[97] That seems to have occurred. The applicant continues he "is most desirous of a future situation in which the body corporate recognises and complies with its regulatory obligations."[98]

[103] The applicant appears not be pursuing this order any longer. If I am incorrect in that conclusion, I still refuse to make the order.

[104] I have already discussed the effects of the respondent's earlier legislative non-compliance and its attempt to rectify the situation. The EGM was one such attempt to achieve that objective.

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[91] Applicant's outline, 3 November 2020, para 23b.
[92] Applicant's outline, 3 November 2020, para 20.
[93] Applicant's outline, 3 November 2020, paras 20-21. This is reiterated by the applicant in his final submission of 9 February 2021, para 12.
[94] Respondent's outline, 23 December 2020, para 24.
[95] Respondent's outline, 25 September 2020, paras 38, 40, per *Grand Pacific Resort* [2010] QBCCMCmr 437.
[96] Respondent's outline, 23 December 2020, para 25.
[97] Applicant's outline, 9 February 2021, para 18.
[98] Applicant's outline, 9 February 2021, para 20.

The applicant drew the error to the attention of the body corporate but remains dissatisfied with the process. He attended the EGM and did not vote against the motions

[105] I cannot see how the applicant has been materially disadvantaged, suffered any prejudice or been treated unfairly (except in the ways I have described). No other owner complains. I have already made these points ad nauseam. I will not make order 3.

Conclusion

[106] This is an application by a lot owner concerning an EGM, the calling of that meeting and the conduct of VOCs. The background is unfortunate. The body corporate admits it has been at times legislatively non-compliant and in 2020 it conducted some activities to try and rectify historical problems as well as a more recent error in an insurance budget and contributions motion from the 2020 AGM.

[107] I have provided detailed arguments about all the issues raised. The applicant seeks 3 orders and I have found that on balance he has not proved his case. No other owner from over 40 lots complains to me about the events of 2020. The applicant has not proved to me he has suffered prejudice or 'unfairness' sufficient for me to intervene in last year's events.

[108] That is not to say that the applicant does not raise valid concerns about how past committees have dealt with meetings and the body corporate is on notice that it must comply with the legislation. If sufficient non-compliance occurs again, it cannot plead ignorance. The applicant has rights as an owner and caretaking service contractor and they need to be respected.

[109] I refuse the orders sought by the applicant and the application is dismissed.

[110] I realise my decisions are not made in a vacuum. They have effects on bodies corporate, on owners, on those owning management rights, and others.

[111] It is time for the parties to move on, and work to re-establish a basis for trust from which they can plan into the future. My orders to void meetings will not assist those goals. Again, (as I usually point out), my views are factually and case dependent.

[112] This office cannot ultimately solve internal problems within schemes; instead this is a matter for owners. I agree with Carmody J, when he warned that in community titles disputes, "orders cannot change human nature or impose good will and cooperation where there is none."[99]

[99] *Campbell v The Body Corporate for 70 Bowen St CTS 15330 & Ors* [2019] QCATA 69, para 36.