REVIEW OF COLLEGIATE DECISIONS: JUDICIAL PROTECTION FOR 'PISSANTS'[1]

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Why review administrative decisions?

The rule of law

Every day, administrative decision-makers make decisions that affect the rights and expectations of individuals, corporate bodies and the community in general. While the merits of a decision can often be challenged,[2] the review of administrative decisions by a superior court[3] at common law[4] is concerned only with their 'lawfulness'[5] rather than their merits.[6]

This supervisory role of the courts can be seen as the enforcement of the rule of law over administrative decision-making[7] but it is necessarily a limited one.[8] Only those decisions where administrators have exercised their discretion outside the framework set down by the relevant legislation may be impugned.[9] The courts will not set aside decisions 'within the bounds of the discretion entrusted to the decision-maker'.[10]

Furthermore, courts have a duty to uphold a rule of law, which recognises not only their own autonomy, but that of the legislature and the executive.[11] This body of administrative law may have developed to cover the perceived deficiencies of the political and legal systems,[12] notwithstanding purported accountability mechanisms such as the doctrine of ministerial responsibility.[13]

Judicial review

Judicial review has long been seen as the enforcement of the rule of law over administrative decision-making.[14] While inherently limited to the review of specific situations,[15] it is a means by which administrative action is prevented from exceeding the powers and functions assigned by the law.[16] This 'control … of statutory power by the courts' is justified in terms of the doctrine of parliamentary supremacy[17] and is seemingly authorised by the statute itself.[18]

Under the rule of law, assumed by the *Constitution,*[19] the courts interpret and apply the law[20] but are constrained from involving themselves in the activities of the legislature or the executive.[21] Consequently, judicial review is portrayed as simply giving effect to the 'limitations inherent in the legislation that created the [administrative action] in the first place,'[22] thereby protecting the interests of individuals.[23]

The judicial review of administrative action may go beyond interpretation of the statute, even to the core of the substantive decision.[24] Using the concept of '*Wednesbury* unreasonableness',[25] for example, the courts have the capacity to strike down decisions considered so unreasonable[26] as to constitute an abuse of power.[27] The concept also allows judicial review and controversy to be avoided where substantive decisions are merely 'unreasonable'.[28] Furthermore, some of the more sophisticated implied limitations, such as

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the ground of taking into account an irrelevant consideration[29] or the 'no evidence rule'[30] can easily be manipulated to achieve a 'public interest'[31] outcome or to set aside an 'unsatisfactory' decision.[32]

While judicial review purports to be a process which will set aside an administrative decision only when the 'exercise of power is excessive or otherwise unlawful',[33] its very nature allows discretion to strike down decisions which are considered unjust or inappropriate.

Councils - a law unto themselves?

The 'anxious consideration' of decisions

Courts do not intervene in administrative decision-making merely because a decision is 'unfair on the merits', since to do so would be a failure to recognise the autonomy of the three branches of government. A court cannot do the very thing which is to be done by the repository of power[34] and invalidate a decision just because 'minds might differ and conclude otherwise.'[35] Judicial review must remain as 'scrutiny of lawfulness rather than of the merits,'[36] notwithstanding the difficulty of avoiding questions of merit.[37]

Nevertheless, 'unreviewable administrative action is a contradiction in terms, at least in the exercise of statutory power'.[38] Consequently, a local government authority, being a public body, must exercise powers given by parliament for the purpose for which they were given and only for the public good.[39] If a local authority exercises its powers reasonably and bona fide, its decisions and action will not be interfered with by the courts.[40] Councils have a wide discretion in making decisions and courts will only infer invalidity after 'anxious consideration'[41] and where the error is 'material', though not necessarily of 'critical or decisive significance'.[42]

The real question is whether judicial review is more tightly constrained for local government authorities than is the case for other administrative decision-makers.[43] If so, what part does the collegiate and political nature of a council play in this?

The collegiate mind

The review of the lawfulness of council decisions presents a number of difficulties, particularly when the statute requires that certain matters 'be considered', the decision-maker 'be satisfied' or the decision-maker is required to 'form an opinion' in regard to various matters. While it may be relatively easy for a court to consider all the written material placed before a council, it is far more problematic 'to get ""inside" mind and thinking process' of a group of decision makers[44] and demonstrate a 'collegiate mind'.[45]

The problem is that a collegiate body such as a council has a 'mind' only in a fictional sense[46] and the court is generally not entitled to have regard to what is in the mind of individual councillors.[47] It is the collective decision of the council that is relevant. In this context, a council's desires, intentions, purposes, motives and beliefs may therefore simply represent convenient shorthand for consideration for the processes leading to an administrative decision.[48] Establishing these will necessarily be more difficult than for the single decision-maker.[49] I

The courts use a variety of tools to draw inferences and to impute attitudes[50] in regard to the collegiate mind. Proof of a state of mind is difficult and onus on the challenger of a council decision is 'heavy'[51] and 'most difficult'.[52] Council's state of mind must be proved by inference from objective evidence[53] of what it does or says or omits to do or say,[54] rather than as an 'exercise in speculation'.[55]

Material from which state of mind can be inferred is not limited to that actually or constructively before the decision-maker.[56] A court may also look beyond the resolutions of council to the actions and memoranda of senior management to determine a state of mind of the collegiate body.[57] Reports from council officers, in absence of indication to the contrary, may reasonably be inferred to have been the basis of council resolutions. Such reports may therefore reveal council intentions, purposes, motives, beliefs and hence a state of mind.[58] In addition, individual councillors do not make decisions in a vacuum but have local knowledge and general knowledge that may be relevant to the collegiate decision.[59]

Collegiate decisions and relevance

Logical inference, not suspicion

What factors a decision-maker is bound to consider in making a decision is 'determined by construction of the statute conferring the discretion'.[60] Beyond this restriction, 'it is largely for the decision-maker' to determine the matters which are regarded as relevant and the comparative importance to be accorded to these matters.[61] Furthermore an administrative decision is invalidated via a process of judicial review only if the failure to take into account the relevant factor is serious in relation to the totality of other relevant factors.[62]

Courts do not lightly conclude failure to consider a relevant factor by local government authorities reaching such a conclusion by inference, not suspicion.[63] In the absence of evidence to the contrary, there is a presumption that a council has given consideration to all matters relevant to making a particular decision.[64] Neither does the need to take into account a particular consideration require the exact detail to be determined before it is weighed against other factors. Much local government decision-making is multi-factorial, complex and necessarily impressionistic[65] so it is not appropriate for the decision-maker to set out in writing every matter which has been taken into account.[66]

Nevertheless, the decision-maker must give 'proper, genuine and realistic consideration'[67] to the merits of the particular case in a real sense[68] and all relevant matters must be taken into account in a 'real and conscientious way'.[69] It should be noted, however, that such consideration might invoke 'language of indefinite and subjective application' in which the decision-making procedures and the substantial merits may be scrutinised.[70]

Councils must therefore have an understanding of the issues and the significance of the decision to be made sufficient to characterise a matter as being taken into consideration.[71] A 'mere assertion by the decision-maker' that a relevant factor has been taken into account is insufficient to establish that it has.[72] Conversely, a finding of a failure to take into account a relevant matter must be based on 'legitimate inference' rather than 'an exercise in speculation'.[73]

Furthermore it is generally up to the decision-making body as to what weight is attached to the various relevant matters that must be considered. A misallocating of weight may be a mistake of planning principle, for example, but not necessarily an error of law.[74] *In Mahoney v Industrial Registrar*[75] an assessor had an obligation to deal with each matter listed in s 90(1) of the *Environmental Planning and Assessment Act* 1979 (NSW) (EPAA) but was entitled to accord to those he found to be relevant the weight considered appropriate.[76] Only a 'quite disproportionate' weight given to one factor would leave a decision susceptible to invalidation by the court.[77]

External evidence may be considered

In establishing the validity of a decision, the court can look beyond the actions of the decision-maker to the actions and memoranda of senior management.[78] Departmental

briefing papers, including summaries, can constitute proper consideration of a relevant matter. These must include the 'salient facts'[79] though 'insignificant or insubstantial' matters can be omitted.[80] The adoption of an officer's report dealing with a particular matter, for example, may be sufficient, in the absence of contrary evidence, to give rise to the inference that a matter was taken into account by a council.[81] Consequently there is a lot more than the council's own resolution that can be considered by the court in reviewing a council's decision.

In addition, some probative weight attaches to discussions antecedent to a council decision.[82] A council may be held to have taken into account a relevant factor if the matter was before it on a previous occasion though the particular issue must be addressed and 'enlivened' in the decision process.[83] Similarly, a matter may have been taken into account if it is uncomplicated and within the general knowledge of the council members.[84] It is presumed, for example, that a local government decision-maker has knowledge of the subject matter of its decision including relevant provisions of its Local Environmental Plan (LEP).[85]

The broader interpretation by the courts of what constitutes acceptable 'consideration' by a collegiate body of a relevant matter may go beyond the general rules of administrative law. It is generally required, for example, that briefing papers and reports on which an administrative decisions are based contain 'the most recent and accurate information that [is] at hand … [ie] the most current material available to the decision-maker'.[86] In *Chisholm*[87] cl 32 of a LEP specified that the council must not grant consent to a development application '… until it has considered a conservation plan that assesses the impact of the proposal on the heritage significance'. There was no such conservation plan available to council at the time it made its decision to grant development consent. However, the decision was held to be valid on the basis that the heritage significance of the conservation area had been clearly identified 'over the period of years' leading up to the meeting where the decision was made.[88]

This case appears to support the principle that council decisions may rely on less-than-recent information. However, the court justified its finding in *Chisholm* on the grounds that the council also had available 'a wealth of other reports,' some referring to the heritage significance of the area subject to the development application.[89] Talbot J held that although the elements of the aim of clause 32 were not brought together in one document, they were nevertheless before council for the purposes of the legislation.[90] In any case there was some doubt that a decision made in breach of the legislation would necessarily be invalid.[91]

Similarly, in *Marnal*[92] council granted development consent for a supermarket pursuant to LEP 56. The development consent was challenged on the ground that there was no material before the council or the Minister when the subject land was rezoned to allow for commercial development. This was rejected by Hemmings J who held that the council had before it sufficient information to determine the matter. This included 'not only the opinion of its servants but submissions from the public and the applicant'.[93] A comprehensive, albeit general, study of all commercial centres was also available, so council was 'relieved of the necessity to require a further study'.[94]

The approach adopted by the judicial review of local government collegiate decisions in this regard may be contrasted with that of other collegiate bodies. In the *Tobacco Institute*[95] case, for example, a ten member working party made recommendations to update a report on the effects of passive smoking. A total of 54 submissions were received as part of the public consultation process and the Working Party was required to 'have regard' to these by s 12 of the *National Health and Medical Research Act* 1992 (Cth).[96]

Summaries of each submission made by academic researchers were provided to the members of the working party who were also able to gain access to the full submissions if they were considered of interest. Nevertheless, Finn J held that in making its recommendations to the council the working party had to give 'positive consideration to… [the] contents …[of the submissions] … as a fundamental element in its decision-making'.[97] This was required to involve an 'active intellectual process' directed at the submissions[98] and is not to be treated as a mere formality.[99]

The court held that while effective summaries may be of some value to the members of the collegiate body, the community was not invited to make submissions to the academic researchers, but to the working party.[100] It could be reasonably expected that the working party would be 'fully aware of the actual contents of all or virtually all submissions received'.[101] There was no evidence that the members had read the submissions and all had chosen not to give evidence on the matter.

Despite there being no obligation by the working party to give any weight at all to the submissions,[102] the recommendations on the passive smoking report were consequently held to be invalid. This could be seen as a harsh result, particularly if it is accepted that statutory terms such as 'have regard' are neutral terms that do not expand the obligation on a collegiate decision-maker but are merely steps in a process.[103]

Proper and genuine consideration interpreted broadly

While all decision-makers are required to take matters into consideration in 'a real and conscientious way',[104] the courts adopt a broad interpretation of this requirement in relation to the council decision-maker. In addition, a rudimentary 'paper trail' is often sufficient for councils to be found to have 'considered' a relevant matter.

In *Norsmith Nominees,*[105] for example, consent for a large residential development was challenged on the basis that council had failed to take into account its effect on the views of neighbours and the effect of the development when viewed from the water.[106] None of the councillors on the Building Development Committee, which had recommended that development consent be granted, were called to give evidence of what was discussed at the meeting.

The applicant argued that the inference should be drawn that their evidence would not have assisted the council case in regard to proper consideration of the relevant matter in accordance with the rule of *Jones v Dunkel.* Stein J rejected this proposition pointing out that the council's planner, who had been present at the Committee meeting, did in fact give evidence and there was no requirement for a response from the councillors.[107]

In reaching his decision, Stein J relied on the fact that the Committee had available before it all council files and officer reports on the proposal, two sets of photos, drawings and plans as well as a scale model and shadow diagrams to illustrate the impact of the development. In addition, the council planner gave evidence that he had explained to the Committee the impact of the development on adjoining owners and the wider neighbourhood in reference to the 'main themes' of views, privacy, height etc.

In *Boulton*[108]*,* council granted consent to itself for the development of a child-care centre. A number of residents challenged the decision on the basis of a failure to give 'real' consideration to relevant matters such as noise levels, parking requirements and traffic flow.

The court rejected the argument on the ground that council imposed conditions on the approval which dealt directly with most of the relevant matters as required by s 90 of the

EPAA.[109] In this case the approval conditions were sufficient to constitute proper and genuine consideration of the relevant matters.

The council decision was also challenged on the basis that it was made to avoid losing a Commonwealth grant for the child-care centre. Hemmings J held that a 'request for early or earliest possible' determination did not suggest a failure by council to consider the application properly. Furthermore, such a matter was held to be a relevant matter, which could be considered by council.[110]

It therefore seems that invalidity based on a failure to take into account a relevant matter requires an almost complete absence of material referring to the particular matter. In *Noble v Cowra Shire Council,*[111] for example, a development application for a proposed development was categorised as a dairy but it also fell within the description of a cattle feedlot under a State Environmental Planning Policy (SEPP 30). Under the EPAA the council was required to take into account[112] the 'provisions of any environmental planning instrument'. The council approval was challenged on the basis that it had failed to do so.

The court held that the council was bound to consider which, if any, provisions in the environmental planning instrument were relevant, and to take them into account. This was particularly in view of the fact that the development was unusual with many environmental and planning consequences.[113] Even though the town planner's report highlighted the potential relevance of SEPP 30, Pearlman J stated that, 'one searches in vain in the council files and reports for any reference as to whether the provisions were in fact relevant'.[114] Furthermore, the minutes of the meeting where the decision was made, made no mention of SEPP 30 and the court inferred that the 'missing parts would not have shown anything different'.[115] The court held that the issue of buffer zones was significant in the environmental and planning assessment of cattle feedlots and council's failure to take SEPP 30 into consideration invalidated its decision.[116]

Similarly in *Schroders,*[117] a decision was challenged on the basis that council had failed to consider a relevant matter. In this case there was no evidence that councillors had directly addressed whether a supermarket development was consistent with zoning requirements. However, the decision was held to be valid because it was sufficient that the matter was canvassed in council files that were 'available in the council chambers' at times when the development was under consideration.[118]

Even where there is some evidence that a relevant factor has not been taken into account, council decision-makers may be given the benefit of the doubt. In *Hospital Action Group,*[119] for example, development consent for a privately operated hospital was challenged on the ground that the council had failed to give 'real' consideration to a relevant consideration as required by s 90(1) of the EPAA.

It was contended that council had not taken into account 23 submissions on the hospital proposal lodged under s 87 of the Act because of erroneous advice given by the council's town planner and solicitors. In particular, it was suggested that the advice indicated that council could only take into account planning matters and not the results of an earlier poll of ratepayers strongly against the private hospital. Pearlman J rejected this argument on the basis that the advice was ambiguous and not an unequivocal direction to council to ignore the poll results.[120]

The duty to inquire

The circumstances under which a decision is invalid for failure to inquire are strictly limited.[121] The duty to inquire is often cast by the legislative framework[122], but there is no general obligation on a council to seek out information in addition to that normally available

to it when making a decision. However, if the council does not bother to check on the existence or significance of additional material that is 'readily available' and 'centrally relevant' to the decision,[123] then the decision may be invalidated. In these circumstances such behaviour may be found to be consistent with the proposition that minds had closed 'and conclusions had been formed.'[124] A court may hold, for example, that a council is unprepared to consider a relevant matter if it 'refuses, declines, or omits to receive or consider, without apparent reason' additional information or representations.[125]

Another challenge to development consent was made in *Hospital Action Group*[126] on the grounds that the council had failed to consider the social and economic effect of the proposal as required by s 90(1) of the EPAA. The challenge to the council decision was rejected [127] since the town planner's report expressly dealt with these matters which were therefore regarded as having been taken into account.[128]

Pearlman J also rejected any suggestion of an 'amplified duty to inquire' in planning decisions which have a wider impact, particularly on third parties, but considered the more restricted obligation on council.[129] Firstly, the applicant submitted that the council should have made inquiries about a taxation constraint preventing the operator of the hospital from providing certain community health services. Pearlman J found that the departmental document dealing with the taxation issue was neither 'centrally relevant' to council's decision nor was it 'readily available' to council.[130] There was more than one way of providing the community health services and the tax constraint was merely seen as 'another factor to be taken into account'.[131]

Secondly, the applicant argued that the contractual arrangements between the private operator of the hospital and the Department of Health provided no certainty that these services would be available at the new facility. Once again invalidation of the council decision based on a breach of the duty to inquire was rejected. The court found that, even if council did have available the final contracts between the private operator and the Department of Health when it made the decision, this would not have advanced its state of knowledge since the matter of community health services was 'far from settled'.[132]

In *Lakeside Plaza,*[133] a council decision approving the expansion of a shopping centre was challenged on the basis of a failure to consider the adverse economic impact on a competing centre some 4 km away.[134] Council had before it competing claims relating to the economic impact of the proposed development and its reporting officer was 'unable to support or refute the competing claims'.[135]

Stein J stated that proof of such claims is extremely difficult and lacking in precision but the council was not required 'go out and get its own independent report' on the matter.[136] Neither was the council criticised for making its decision without the benefit of a report promised by the applicant four months before and which had never been provided. In this case councillors and its officers were found to have had a general awareness of material in other applications, previous town centre studies and environmental planning as well as knowledge of the ongoing competition and hierarchy between the competing shopping centres. According to Stein J, this was sufficient to find that the council had adequately considered the economic impact of the proposal.

While it appears that there is some latitude extended to council decision-makers in regard to the duty to inquire, it may not be significant. Both cases demonstrate that councils, like other decision-makers, must simply comply with a quite limited duty to inquire as proposed in *Prasad*.[137]

Pre-conditions and the exercise of power

A presumption of regularity

Like other administrative decision-makers, collegiate bodies have the benefit of the presumption of regularity.[138] Courts therefore presume that all necessary conditions and formalities have been satisfied until the contrary is proven.[139] Consequently, the presumption is not applied where there is documentary evidence to show otherwise.[140] The key issue is whether the presumption of regularity gives collegiate bodies and councils in particular, a greater advantage in regard to the obligation to take into account considerations relevant to a particular decision.

In *Franklins*[141] cl 32 of LEP 231 required that the council be satisfied that not less than 60% of goods be sold before granting consent for a proposed cash and carry warehouse. Neither the development application, nor council officer reports on the proposal made any express reference to cl 32. Furthermore, council failed to produce any evidence on this point from the officers who reported on the development application or from any councillors who were present at the meeting at which it was approved.

At first instance, Bignold J rejected the proposition that an inference could be drawn that the council had not considered cl 32 when granting development consent or that it could be more confidently drawn in view of the lack of rebuttal evidence provided by council.[142] He considered that there was 'very considerable doubt' to presuppose that the documentary material 'relevantly records and reveals the entirety of the [council's'] collegiate mind' when it determined the development application. While the documentary evidence was held to be 'incomplete in respect to this all-important question', the inference could not be drawn 'as a matter of probability'.[143]

Bignold J then pointed to passages in council reports which he claimed 'expressly adverted' to cl 32. This included a reference to 'wholesale and retail warehouse', an expression found only in cl 32, and a number of other references to LEP 231. As a result it was inferred, consistent with the presumption of regularity,[144] that the council had considered cl 32 in granting the development consent.[145]

On appeal, it was held that the presumption of regularity has no place where certain preconditions must be satisfied before power can be exercised.[146] In these circumstances, the courts require some positive indication that the matter has been considered by the collegiate body. Furthermore, the local knowledge of council was held to be irrelevant since actual knowledge of the 'existence of the mental state of satisfaction' was a pre-condition to the grant of development consent.[147]

Similarly, in *Currey*[148] the council was required under s 91(2) of the EPAA to refuse a development application for the subdivision of land if it contravened a planning instrument. Clause 19 of the LEP entitled 'Foreshore Building Lines' specified that an application must be refused unless the council was satisfied certain offending buildings in the foreshore zone would be removed within a reasonable time. This was subject to exceptions in those cases where the council was satisfied that removal of the buildings would be inconsistent with the objectives of the clause, or unnecessary to achieve those objectives, or unreasonable in the circumstances. It should be noted that one objective of the clause was that there should be no development below the foreshore line 'other than that excepted by this clause', seemingly a rather circular approach.

Once again, at first instance Pearlman J found that there was enough material before council to enable it to be satisfied that removal of an existing boatshed in the foreshore zone was unnecessary to achieve the objectives of cl 19. In this regard, references in reports by

council officers regarding the renovation of the boatshed and a reduction in its size were highlighted.

Furthermore, it was held that individual councillors had a general knowledge of the provisions of the LEP, the history of the development and the contents of a previous development application.[149] The officer's report on the development application noted that 'the land is also affected by a 30m Foreshore Building Line pursuant to cl 19 of SEPP 1993'. Consequently the inference could not be drawn that the council had failed to properly consider cl 19.

However, Stein JA, on appeal, considered that neither the development application itself nor the council officer's report properly canvassed 'cl 19 or the foreshore building line'.[150] In particular, council had an obligation to consider the policy objective of cl 19, which was to enhance waterfront land and to reduce the number of buildings below the water line.[151] While it was reasonable to assume that councillors would have a general knowledge of their principle planning instruments, this did not suggest that such knowledge extended to the detailed provisions and processes of cl 19.[152] Neither was the previous decision sufficiently explicit on the relevant issue.

Consequently the court held that the council had failed to address the precondition set out in cl 19 which mandated that the development be refused or the offending building be removed.[153] Moreover the reference to this process would have suggested that the operation of cl 19 was in fact, not an issue at all.

The approach adopted by the court in both *Franklins* and *Currey* was reinforced in *Weal*[154] where Giles JA held that taking matters into consideration calls for 'more than simply adverting to them'.[155] While the presumption of regularity was insufficient to assist the council decision-makers in these cases, it is nevertheless difficult to argue that councils are required to meet a particularly demanding standard of 'consideration' of relevant matters. It is unlikely that either decision would have been held to be invalid if there were even a rudimentary paper trail in council reports that specifically referred to the relevant clauses of the LEPs. This would have provided a perceived understanding of the relevant matter and the significance of the decision sufficient to warrant the description of the matter being 'taken into account'.[156]

A 'general' or 'special' precondition

The exact nature of a precondition to the exercise of power is also important in regard to the judicial review of a council decision. In *Noble v Cowra Shire Council,*[157] for example, it was alleged that council had failed to take into account cl 9(3) of the Cowra LEP 1990 (the LEP) in granting development consent for a dairy. This required that council 'shall have regard to whether … the development is consistent with the objectives of the zone…'[158]

The challenge was rejected with a finding that there was some evidence that consideration had been given to the consistency of the proposed development with the stated zone objectives.[159] The court was unable to ascertain whether the council had found that the development was in fact consistent with the objectives but this was not significant since cl 9(3) did not require the formation of such an opinion. What was required was consideration of the issue and the formation of an opinion was not a condition precedent to the exercise of power by the council.[160]

Bignold J went on to hold that even if there had been no evidence at all that the cl 9(3) consistency issue had been raised in the documentary material before council, the presumption of regularity would have ensured that the matter had been considered by council.[161] In addition, since cl 9(3) had been generally applied for more than a decade, there

was an inference that the council 'would have been routinely aware of and taken into account, the requirements of [the provision]'.[162]

In any case, the court held a failure to take into account cl 9(3) 'would not have justified setting aside the impugned decision because of the limited nature of the obligation' imposed by the provision.[163] This reasoning is difficult to fault in view of the fact that only 'motor showrooms' and 'residential flat buildings' were prohibited in the relevant zoning.[164]

Noble[165] can be distinguished from other cases where provisions in local environmental plans have in fact operated as conditions precedent to the exercise of power by councils. In *Manly Council v Hortis,*[166] for example, development consent was forbidden '…unless the council..[was] …of the opinion that … the development … [was] consistent with the objectives of the zone…'.[167] Another provision required that the council not grant consent 'unless it..[was]..satisfied' that the development would not have a detrimental effect on the amenity of the foreshore area.[168] Sheahan J, at first instance, concluded that there was no real evidence, either in the minutes of the meeting that granted approval or in the reports that were presented to council, that the council had satisfied the preconditions contained in the planning instrument.[169] The council had therefore committed an error of law and the development consent was held to be invalid.[170]

On appeal, the court held that the 'consistency' provision of cl 10(3) was a general pre-condition to the exercise of power since it applied to all zones.[171] That the council was aware of the issues relevant to this consistency clause may have been sufficient for a court to hold that it was in fact, considered.[172]

However, cl 17 of the LEP, requiring consideration of the detrimental effect of the development on the foreshore area, was found to be similar to the precondition in both *Franklins* and *Curry*.[173] It was also characterised as a *special precondition* in that it contained special provisions that prohibited certain developments in regard to the Foreshore Scenic Protection Area.[174] There was a strict obligation upon the council to consider this issue before the power was exercised. Consequently, the absence of any material to suggest that council had considered the application and significance of cl 17 was sufficient to invalidate the decision.

On the basis of the current case law, it is clear that where there is a *general precondition* to the exercise of power, judicial scrutiny of a council decision is not particularly rigorous. Councillors can be deemed to have constructive knowledge of such provisions. Consequently, there is an inference that a general precondition has been taken into account where it is 'a conventional type of clause' contained in a planning instrument, particularly where it has been 'applied by the council regularly and frequently'.[175]

Degree of compliance with the statute

The degree of compliance with statutory and other requirements demanded by the courts may also illustrate important differences between the judicial review of council decisions and other administrative decisions.

In *Everall,*[176] council initially rejected a development application for the addition of a second storey and carport at an existing residence. Major concerns were inadequate set back, the 'bulky' nature of the development and non-compliance with council's Development Control Plan No 6 (DCP No 6) to do with the maintenance of amenity of the area. Council later reversed its decision but this was challenged on the basis that the opinion expressed by the council planner as to compliance with a building height restriction was erroneous.

Hemmings J accepted the proposition that whether the development complied with DCP No 6 was a relevant fact for evaluation by council but this was not reviewable by the court.[177] However, a decision could be challenged if the council had misdirected itself as to such a fact.[178] Since council may rely on the 'inquiry, advice and recommendations of its officers',[179] such misdirection by the council planner may also invalidate the council decision.[180]

In this case the court held that compliance with the building height restriction was a complex matter which required the selection and application of appropriate data by council officers. Furthermore, the building height was only one of many matters that the council had to consider and weigh up in making its decision.[181] Hemmings J considered that, in these circumstances, 'mere mathematical compliance with the provisions of a discretionary code would have been of lesser significance than the actual impact of the proposed structure on the amenity of adjoining premises'.[182] Consequently the building height restriction was not of such significance to warrant invalidation of the council decision.

The latitude given in *Everall*[183] may be attributed to some extent to the discretionary nature of the council's own DC P. However, it is clear that the courts are prepared to give council decision-makers significant leeway in how they comply with legislation. What is also clear is that the demands upon other decision-makers in regards to compliance with legislation can be particularly onerous as is illustrated in the following cases. In *Minister for Aboriginal and Torres Strait Islander Affairs v State of Western Australia*[184], for example, the Minister was requested to protect a site near Broome under the *Aboriginal and Torres Strait Islander Heritage Protection Act* 1984 (Cth) (the Act). A detailed report on the site was prepared and a submission was received from an Aboriginal community confirming the cultural significance of the site.

Consideration of the representations contained in the submission was mandatory under s 10(1)(c) of the Act and was therefore a statutory precondition to the exercise of power by the Minister.[185] This was also a personal non-delegable task and the failure to discharge it could invalidate the Minister's decision to declare the heritage site.[186]

While the Minister's senior adviser maintained in evidence that the Minister had a practice of 'reading everything', the adviser could not say what the Minister had actually done to consider the representations.[187] The court accepted that the adviser had himself read the representations but there was no evidence to suggest that the Minister had discussed the representations with him. Neither had a summary of the representations been prepared for the Minister.[188]

The court concluded that the task of considering the representations would have taken some days prior to the declaration and there was no evidence that the Minister was in his office at this time. There was no discussion with his adviser and no apparent means by which the Minister could have informed himself of the contents of the representations.[189] In short, the court held that the Minister did not have the opportunity to read the representations and this was given further support by the failure of the Minister to adduce evidence to suggest otherwise.[190] Consequently, the Minister's decision was invalidated by his failure to consider the representations.

This is at odds with other areas of administrative law, such as natural justice, where a decision-maker does not have to discharge an obligation personally as long as the decision-making process overall is fair.[191] However, it may be appropriate that a decision-maker personally 'considers' a relevant matter if it is particularly sensitive and the statute has removed the process from the general rule established in *FAI v Winneke.*[192]

The Minister was also required to consider representations prior to the declaration of an Aboriginal heritage area at Hindmarsh Island in *Tickner v Chapman*.[193] In this case more

than 400 submissions had been received and were attached to a mandatory report to the Minister on the desirability or otherwise of making the declaration.

While the court conceded that the degree of effort would vary according to length, content and relevance, it found that the Minister had an obligation to consider each representation.[194] Furthermore, in view of the fact that the declaration prohibited the construction of a planned bridge to the island seriously affecting the rights of certain individuals, this task was non-delegable by the Minister.[195] This did not mean that the Minister was denied assistance by personal or departmental staff who 'might sort the submissions into categories' or prepare 'effective summaries'.[196]

The court concluded that the Minister had not considered the submissions, despite the fact that his Ministerial adviser had read them. This may appear somewhat harsh but the submissions were received only one day before the declaration was made and were located in Canberra, while the Minister was in Sydney. The claimed discussions between the Minister and the adviser were also held to be 'vague and nebulous'.[197] In these circumstances the court had little option but to hold that the declaration was invalid.

Natural justice - a question of bias

Courts are increasingly imposing the doctrine of natural justice[198] on decision-makers as a 'condition on the valid exercise of power'[199] and implying limitations on the exercise of statutory power.[200] While no inflexible rule can be laid down in relation to bias,[201] justice in administrative decision-making[202] must not only be done but should 'manifestly and undoubtedly be seen to be done'.[203] In applying the rules, the 'whole of the circumstances in the field of inquiry are of importance' and this includes the nature of the jurisdiction and the statutory provisions under which the decision-maker acts.[204]

If the nature of the decision-making body affects the 'precise ambit and nature of the principles' applied in relation to the exercise of powers,[205] the question arises as to how the bias of individual councillors impacts on the validity of council decisions.

Since councils are elected to represent their communities, they are expected to have particular views as to what is in the best interest of the community.[206] Councils are charged with developing and applying broad lines of action in matters of public concern, including creating new rights or modifying existing rights. Consequently, it might be expected that some members might express 'more or less tentative views' on the desirability of change.[207] The very nature of the role of a councillor means that an individual member of council should 'apply [his or her] mind constantly' to general questions of policy, though this scope for the 'formation and expression of opinion' should not undermine confidence in the body by raising a 'suspicion of bias'.[208]

In addition, it is common for the council collegiate body to consider a matter that has already been considered by individual council colleagues sitting on a sub- committee or other body, which then makes recommendations to the full council. An apprehension of bias[209] may therefore arise through institutional loyalty, a 'built-in tendency' of a collegiate body to support previous decisions by individual members of the group.[210] While it may generally be seen as sufficient in these circumstances, for those members to refrain from participating in the later decision,[211] this rarely occurs in the context of council decision-making.

Nevertheless, where councils have statutory powers, these must be exercised in accordance with the law. In particular, a decision cannot be predetermined in the sense that the members of the council must be capable of being persuaded.[212] Hence, a councillor who has already decided a matter before council considers it[213], or gives reason to fair- minded

persons that he or she had already decided the matter[214] is disqualified from participating in the decision.[215]

Nonetheless, the way in which the courts interpret and apply the rules relating to bias and fettering appears to give considerable latitude to council decision-makers. In *IW v City of Perth*[216] for example, a community association sought development approval for a 'drop-in' centre to cater for people living with AIDS. Council's Town Planner recommended that approval be granted but the Town Planning Committee recommended that council refuse the application. The full council subsequently refused the application thirteen votes to twelve.

Following a complaint, the Equal Opportunity Tribunal of Western Australia found that the votes of five councillors in the majority had been based on 'the AIDS factor' in contravention of s 66 of the *Equal Opportunity Act 1984* (WA).

The Supreme Court subsequently held that the Tribunal had erred in law in finding against the council. The High Court upheld this decision, holding that the council decision could only be tainted in a manner similar to that applying to bias in administrative law. In other words, the council decision would not be invalid if a minority of the majority voting to refuse the development application had voted in a discriminatory manner, and hence illegally.[217]

This reasoning does not acknowledge the fact in these circumstances that if the five discriminatory councillors were precluded from voting because of their bias, the application would have been approved twelve votes to eight. Toohey J recognised this point when he agreed with the reasoning of the Tribunal. In particular he claimed that the vote of every member of the majority was 'causative' in the sense that the development application would not have been refused 'but for' each of these votes.[218] Kirby J also rejected the Supreme Court argument that the council decision could only be tainted if it were established that a majority of councillors or a majority of the majority acted unlawfully in reaching their decision.[219]

In contrast, a sitting councillor, Cr Gerrity, in *R v West Coast Council*, made a formal objection to a development application for an advertising sign.[220] His main concern was that the advertising sign was 'not in keeping with the town plan and not in keeping with the town character and development'.[221]

Under s 57(5) of the *Land Use Planning and Approval Act 1993* (Tas) the Council was required to take all objections into account in deciding whether to approve or refuse the development application. In the event that approval was given, the person who made the objection could appeal to the Resource Management and Planning Appeal Tribunal.

Council subsequently approved the application for the sign and only Cr Gerrity voted against it. The court held that, as a result of his formal objection, Cr Gerrity could be seen to have committed himself to a position and that he had closed his mind to doing anything other than voting against the development application.[222] In doing so he had moved from the position of an elected decision-maker, albeit one with strong views, to effectively be a party to the development application.[223] As a consequence the court found that Cr Gerrity was, at least to some extent, a judge in his own cause and his participation vitiated the entire decision-making process.[224]

There is little doubt that Zeeman J in *R v West Coast Council*[225] was able to invalidate the council decision on the basis that Cr Gerrity's submission on the development application had 'statutory significance'. Without that peculiarity, on the reasoning of *IW v City of Perth*[226], the decision would not be set aside because Cr Gerrity was the only vote against the application; hence not even part of the majority vote let alone a majority of members of the collegiate body.[227]

On the other hand, in *Livesey*[228] two judges, in an earlier Supreme Court case, had expressed the view that a barrister may have participated in a 'corrupt scheme' to secure the release of his client on bail. In subsequent proceedings to strike off the barrister, the two judges sat with one other to consider that matter.

The High Court invalidated the decision to strike off the barrister holding that it was not a matter of whether the two judges could 'put from [their] mind evidence heard and findings made in a previous case'.[229] The reasonable observer would assume that a judge would act to ensure 'both the appearance and substance of fairness and impartiality'.[230] This could not possibly be the case in these circumstances since the two judges had already previously decided one of the matters at issue in the Bar Association proceedings.[231] In view of the fact that the collegiate body consisted of judges in this case, it is likely that the fettering of a decision by a minority of one judge would have been sufficient to invalidate the decision.

An even more stringent standard in regard to fettering applies where there is a single decision-maker. In *Aksu*[232], for example, the Minister for Immigration had issued a policy document, Direction No 17, giving guidance to decision-makers in refusing or cancelling visas. This listed three primary considerations to be taken into account[233] in such a decision, stating that 'no [other] individual consideration can be more important than a primary consideration'. In considering whether to cancel a particular visa, the Minister was sent a departmental briefing paper, which indicated that he was bound by Direction No 17 in making the decision.

The court acknowledged that policy might be used to guide the exercise of discretion in the interest of good government and consistency, particularly in high- volume decision-making.[234] However, each administrative decision must be made individually in a fair and impartial manner[235] and could not be fettered by the policy guidelines contained in the Ministerial direction.[236]

In view of the fact that the Minister had 'adopted' Direction No 17 in giving reasons for cancelling the visa, the court held that the Minister had fettered the discretion provided by s 501 of the *Migration Act 1958* (Cth). As a result, the placing of more weight on the primary considerations was based on the policy document and not on the assessment of the individual case.[237] By confirming that he had adopted the document, the Minister was held to have been bound by it, thereby fettering his discretion. This is a curious result in view of the fact that the Minister was not bound by the document and would have known in any event that departmental advice can be accepted or rejected.

The case law illustrates that, while a decision made by a collegiate body where one or more of the members are disqualified for bias is liable to be set aside[238], this generally does not occur in relation to local government decision-makers. Where bias is established only in relation to a particular member or members, such bias will not taint the collegiate body as a whole.[239] This means that council decision-making is not invalidated by virtue of biased decision-making by a minority of the individual members.[240] Clearly, this is a less rigorous approach than that applied by the courts to other administrative decision-makers.

Irrelevance

A council decision may also be invalidated if the collegiate body takes into account 'impermissible' considerations such as possible commercial implications or because of possible legal action.[241] Evidence of debate at the meeting where a decision is made is relevant to whether council has taken into account irrelevant considerations.[242] Nevertheless, an irrelevant factor may be so insignificant that taking it into account could not have affected the decision in a way that would require it to be set aside.[243]

Concern that council might be sued for negligence if it did not approve a dairy proposal was the irrelevant consideration at issue in *Noble v Cowra Shire Council.*[244] The applicant had sworn in an affidavit that a number of councillors had made statements reflecting such concerns at the meeting at which the dairy was approved and claimed that the development consent had been 'impermissibly and improperly influenced'.[245] The decision to approve the development had previously been held to be invalid based on a failure to take into account a relevant consideration.[246]

The court accepted that evidence of what was said by the councillors during the debate was relevant and probative in deciding whether council took into account an irrelevant consideration.[247] However, it failed to find that the statements could support a finding by inference sufficient to invalidate the council decision to regrant the development consent.[248] This was despite council failing to call any witnesses to establish what was said in the debate, and the court finding that an inference favourable to the applicant's version of events could be more favourably drawn.[249] In addition, though the three councillors had allowed this irrelevant consideration to influence their decision, they were in a minority, and this 'fell short of a finding that the collegiate decision was materially influenced by the irrelevant consideration'.[250]

In *Hayden Theatres Pty Ltd v Penrith City Council*[251] a decision to grant development consent for a cinema complex was challenged on the basis that the council took into account an earlier Australian Labor Party caucus decision taken by five of the thirteen councillors.[252] Based on what these five councillors said at the meeting where the decision was made and subsequent comments made by another councillor in the media and in answer to interrogatories, the appellant claimed that the councillors had misunderstood their statutory obligation.[253] In particular, objection was taken to the councillors' 'refrain during the debate that it was not Council's function to be a referee in the market place'.[254]

Bignold J found that some of the evidence by the councillors was not satisfactory[255] but failed to find that the council itself had misunderstood its statutory obligation.[256] Furthermore, it was held that even if the five councillors had misunderstood their statutory obligation, this would not legally taint the collegiate decision to grant development consent since 'they did not command a majority in the vote'.[257] This conclusion was reinforced by the fact that the council decision was, in any case, a unanimous one. Furthermore, there was nothing 'improper or wrong' in the five councillors in a caucus meeting resolving to support the staff report in favour of the development.[258]

In *Hill v Woollahra Municipal Council and Anor*[259]*,* a decision was challenged on the grounds that the council took into account an irrelevant consideration. Specifically, it was claimed that the Mayor believed that council policy required him to approve a development application where the applicant was considered to have a better than 50% chance of success on appeal to the Land and Environment Court. The Mayor subsequently exercised a casting vote in favour of the development application, though this occurred some three months after the conversations that allegedly demonstrated such a belief.

The applicant argued that in exercising the casting vote, the Mayor represented the 'controlling mind of the council' thereby impugned the whole of the decision making process.[260] Talbot J held that there was no evidence that such a policy did, in fact, exist apart from the comments of the Mayor. In any case there was held to be no contemporaneous evidence that the Mayor had maintained such a belief up until the time when the application was determined.

The question as to whether the Mayor's casting vote represented the controlling mind of the council was therefore not determined in this case. Nevertheless, on the reasoning of the majority in *IW v City of Perth,*[261] even if the Mayor's vote were tainted by his belief, the

council decision would not have been invalidated since the vote did not represent a majority of councillors or even a majority of the majority.[262]

Good administrative decision-making

Whether a collegiate body has to act rationally

The primary task of a court in reviewing any administrative decision is to satisfy itself that 'the decision-maker has acted within the bounds of …discretion'.[263] This paper has shown that the standard by which a court will determine whether the bounds have been exceeded appears to be less rigorous for a council decision-maker. One explanation for this difference could lie in the notion of rationality.

It is arguable that rationality is a universal legal requirement of good decision-making.[264] The requirement for rationality in administrative decision-making is generally seen to derive from the implied limits set by the legislature in granting the powers to the decision-maker.[265] There is also some suggestion that these 'common law principles apply of their own force and not on the basis of the intention of parliament'.[266]

This concept requires 'rationality in the exercise of statutory powers based on findings of fact and the application of legal principles to those facts.'[267] Consequently, a 'failure to take into account relevant factors or the taking into account of irrelevant factors' may result in a lack of rationality and 'stigmatise …the decision as so unreasonable that it is beyond power'.[268] A judicial tribunal, for example, 'must act rationally and reasonably' by having regard to 'material considerations' and ignoring irrelevant considerations.[269] A decision-maker must also 'direct himself properly in law' and desist from doing things that 'no sensible person could ever dream … lay within the powers' granted by statute.[270] An error of law will therefore be found if the decision-maker fails to follow a 'logical' process of reasoning that it is bound to follow.[271]

The requirement for rationality in regard to council decisions may simply be seen to have a slightly different flavour than for other administrators. In relation to the specific questions of relevance, irrelevance and bias considered in this paper, this perspective may assist in explaining the apparently different standard adopted by the courts in the review of council decisions. In other words, what constitutes a rational process of decision-making may impliedly take into account that a decision-maker is a collegiate body where individual members are elected and where decisions are made that only affect individuals within a defined community. Such an approach may therefore set the council decision-maker apart from a single unelected decision-maker whose actions may impact on a broader community.

It therefore may be considered rational for a council collegiate decision-maker to have 'considered' a heritage conservation plan even though no single document existed on the basis that other documents existed and the heritage significance of the area in question had been identified over a period of years.[272] Similarly, it could hardly be said that a council had acted irrationally in not specifically referring to zoning objectives when it was routinely aware of such a provision and had taken it into account routinely in previous decisions.[273] Both cases may reflect the reality of what may be seen as a rational decision in the context of the 'grass roots' nature of local government.

Local government as a reflection of the local community

Even if rationality cannot explain away the less rigorous standard of judicial review of council decisions, there are sound practical reasons why such a difference might exist. Local government is there to make a myriad decisions at a local level. In view of the fairly intimate nature of local representation, particularly in the smaller local government areas, the community expects these decisions to be made fairly and quickly. An overly-rigorous process of judicial review would see decision-making bogged down with the courts constantly looking over the shoulder of councils. This would tend to defeat the very purpose and benefits sought from local government.

Expressing views, for example, is part of the electoral process and a councillor should only be disqualified from the decision-making process if the views indicate that the councillor was not prepared to listen to any contrary arguments.[274] To hold otherwise would mean that members of council would have to adopt standards of conduct that may be almost impossible to achieve[275] and would disqualify most councillors.[276] Clearly the legislature can be assumed to have been aware of the hybrid political and statutory role of councillors and could not have intended that expressions of opinion, which would disqualify a member of a judicial tribunal, would also be sufficient to disqualify a local government councillor.[277]

It can therefore be seen as appropriate, that the High Court in *IW v City of Perth* required a much less stringent filter than we might expect for other administrative decisions. So many council decisions are evenly balanced and it would be easy to find bias or illegality in regard to one or two members of the collegiate body sufficient to tip the decision over the edge of invalidity.

Individual or groups of councillors might be expected to express strong personal views on what ought to happen in a particular situation prior to a decision being taken by the collegiate body. Such views may merely indicate that the individuals are 'politically disposed' in favour or against a particular decision and therefore more likely to vote accordingly.[278] In any case, in a smaller local community, councillors will have an opinion on most things. Much less would get done if they were excluded from decision-making.

It is arguable that the task of the courts in upholding the rule of law need not be as rigorous in circumstances where there is a collegiate decision-maker whose members are elected by the community for whom they make decisions. This notion may be supported by the fact that councillors are subject to additional scrutiny, beyond judicial review of their administrative decisions, in the sense that they can be voted out of office every four years.

In the area of council decision-making in particular, perhaps it is appropriate that a court should not be as concerned with 'looseness in the language…or with unhappy phrasing' associated with administrative decisions.[279] It serves no purpose for such decisions to be considered 'minutely' with the objective of uncovering 'the perception of error'.[280] In view of the fact that individual councillors have been elected, it is also appropriate that administrative decisions not be scrutinised via over-judicial review seeking to glean some inadequacy.[281]

Courts do treat councils differently, and do demonstrate a reluctance to interfere with the processes and decision-making of councils. But it is only through such reluctance by the courts that a review of council decisions upon proper principles will be prevented from constituting a reconsideration of the merits of a decision.[282] This, after all, is a fundamental tenet of judicial review.

Endnotes

1 'You are local government pissants' - alleged statement by former Mayor of Sydney Mr Frank Sartor to Mayor Lucy Turnbull after a City of Sydney decision to oppose a government amalgamation proposal; 'Dirty Talk': *Stateline,* ABC, Sydney, 7.30pm, 13 February 2004.
2 In the absence of special statutory provisions such as the *Administrative Appeals Tribunal Act* 1975 (Cth), there is no review of the merits of the decision at common law.
3 In view of their responsibility for interpreting and enforcing all law, the courts have themselves chosen to review administrative decisions to ensure that they also conform to the 'ordinary law of the land': Freker J, *Towards a Modern Federal Administrative Law*, Law Reform Commission of Canada, Ottawa, 1987 at 5.
4 Judicial review can also be codified under statute: eg the *Administrative Decisions (Judicial Review) Act 1977* (Cth) for decisions made under a Commonwealth 'enactment'.
5 This also covers 'the fairness of the procedure adopted… rather than the fairness of the outcome': *Re Minister for Immigration and Multicultural Affairs; Ex parte Lam* (2003) 195 ALR 502 at 528 per McHugh and Gummow JJ.
6 *Warringah Shire Council v Pittwater Provisional Council* (1992) 76 LGRA 231 at 249 per Kirby P.
7 Selway B, 'The Principle Behind Common Law Judicial Review of Administrative Action-The Search Continues' (2002) 30 *Fed L Rev* 217 at 218.
8 *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24 at 40 per Mason J.
9 *Associated Provincial Picture House v Wednesbury Corporation* [1948] 1 KB 223 at 228 per Lord Greene MR.
10 *Hill v Woollahra Municipal Council & Anor* [2002] NSWLEC 69 (7 May 2002) at [48] per Talbot J.
11 *Attorney-General for the State of New South Wales v Quin* (1990) 170 CLR 1 at 38 per Brennan J.
12 *Ridge v Baldwin & Ors* [1963] 2 All ER 66 at 76 per Lord Reid.
13 *Brown v West & Anor* (1990) 169 CLR 195 at 205 per Mason CJ, Brennan, Deane, Dawson and Toohey JJ.
14 Selway B, op cit n 7 at 218.
15 Freker J, op cit n 3 at 6.
16 *The Church of Scientology Inc & Anor v Woodward* (1982) 154 CLR 25 at 70 per Brennan J.
17 Cane P, *An Introduction to Administrative Law*, Clarendon Press, Oxford, 1986 at 12-13.
18 *Craig v State of South Australia* (1995) 131 ALR 595 at 600-604 per Toohey, Gaudron, McHugh and Gummow JJ.
19 *The Australian Communist Party & Ors v The Commonwealth & Ors* (1951) 83 CLR 1 at 193 per Dixon J.
20 *Corporation of the City of Enfield v Development Assessment Commission & Anor* (2000) 199 CLR 135 at 152-153 per Gleeson CJ, Gummow, Kirby and Hayne JJ.
21 *Abebe v The Commonwealth of Australia* (1999) 162 ALR 1 at 47 per Gummow and Hayne JJ.
22 Selway B, op cit n 7 at 218.
23 *The Church of Scientology Inc & Anor v Woodward* (1982) 154 CLR 25 at 70 per Brennan J.
24 Aronson M, 'Unreasonableness and Error of Law' (2001) 24 *UNSW L Jo* 315 at 318.
25 *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223 at 234 per Lord Greene MR but compare with Attorney-*General (NSW) v Quin* (1990) 170 CLR 1 at 36 per Brennan J.
26 *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24 at 41 per Mason J.
27 *Nottinghamshire County Council v Secretary of State for the Environment* [1986] AC 240 at 249.
28 Cane P, op cit n 17 at 18.
29 Allars M, *Introduction to Australian Administrative Law*, Butterworths, Sydney, 1990.
30 *Australian Broadcasting Tribunal v Bond & Ors* (1990) 170 CLR 321 at 356 per Mason CJ.
31 *Attorney-General for the State of New South Wales v Quin* (1990) 170 CLR 1 at 36 per Brennan J.
32 Basten J, 'Judicial Review: Recent Trends' (2001) 29 *Fed L Rev* 365 at 390.
33 *Attorney-General for the State of New South Wales v Quin* (1990) 170 CLR 1 AT 36 per Brennan J.
34 above, 33, at 37- 38 per Brennan J.
35 *Bentham & Anor v Kiama Municipal Council & Ors* (1986) 59 LGRA 94 at 98- 99 per Stein J.
36 *Warringah Shire Council v Pittwater Provisional Council* (1992) 76 LGRA 231 at 249 per Kirby P.
37 *Hortis v Manly Council* (1999) 104 LGERA 43 at 44 per Sheahan J.
38 *Warringah Shire Council v Pittwater Provisional Council* (1992) 76 LGRA 231 at 247 per Kirby P.
39 *R v Tower Hamlets London Borough Council; Ex p Chetnik Developments Ltd* [1988] AC 858 at 872 per Lord Bridge.
40 *Westminster Corporation v London and North- Western Railway Company* [1905] AC 426 at 430 per Lord Macnaghten.
41 *Parramatta City Council & Anor v Hale & Ors* (1982) 47 LGRA 319 at 345 per Moffitt P; *Boulton & Ors v Burwood Municipal Council* (1988) 66 LGRA 131 at 135 per Hemmings J.
42 above, 41, at 335 per Moffitt P.
43 *North Sydney Municipal Council v PD Mayoh Pty Ltd* (1988) 66 LGRA 352 at 358 per McHugh JA.
44 *Norsmith Nominees Pty Limited v Woollahra Municipal Council & Anor* [1989] NSWLEC 14 (7 March 1989) at 6 per Stein J.
45 *Hospital Action Group Association Inc v Hastings Municipal Council* (1993) 80 LGERA 190 at 194 per Pearlman J.

46 *Tooth & Co Ltd v Lane Cove Municipal Council (No 4)* (1968) 2 NSWLR 17 at 19-20 per Street J.
47 *Kimber v Ku-Ring-Gai Municipal Council* (unreported), The Land and Environment Court, NSW, Cripps J, No 40057 1990, 5 December 1990).
48 *Dunlop v Woollahra Municipal Council* [1975] 2 NSWLR 446 at 485 per Wootten J.
49 *Warringah Shire Council v Pittwater Provisional Council* (1992) 76 LGRA 231 at 248 per Kirby P.
50 *Kelly & Anor v Raymor (Illawarra) Pty Ltd* (1981) 1 NSWLR 720 at 722 per Mc Lelland J.
51 *Boulton & Ors v Burwood Municipal Council* (1988) 66 LGRA 131 at 134 per Hemmings J.
52 *Somerville v Dalby & Ors* (1990) 69 LGRA 422 at 428 per Hemmings J.
53 *Hospital Action Group Association Inc v Hastings Municipal Council* (1993) 80 LGERA 190 at 195 per Pearlman J.
54 *Boulton & Ors v Burwood Municipal Council* (1988) 66 LGRA 131 at 135 per Hemmings J.
55 *Noble v Cowra Shire* [2003] NSWLEC 178 (31 July 2003) at page 15 per Bignold J.
56 *Minister for Aboriginal Affairs and Another v Peko-Wallsend Limited &Ors* (1986) 162 CLR 24 at 31 per Gibbs CJ;*Hospital Action Group v Hastings Municipal Council* (1993) 80 LGERA 190 at 195 per Pearlman J.
57 *Ishac v David Securities Pty Ltd (No 6)* (1992) 10 ACLC 652 at 653 per Young J.
58 *Dunlop v Woollahra Municipal Council* [1975] 2 NSWLR 466 at 485 per Wootten J.
59 *Lakeside Plaza Pty Ltd v Legal and General Properties No2 Ltd and Wyong Shire Council* (1992) 76 LGRA 60 at 65 per Stein J.
60 *Minister for Aboriginal Affairs & Anor v Peko-Wallsend Limited & Ors* (1986) 162 CLR 24 at 39 per Mason J.
61 *Sean Investments Pty Ltd v Mackellar* (1981) 38 ALR 363 at 375 per Deane J.
62 *Everall and Another v Ku-ring-gai Municipal Council & Ors* (1991) 72 LGRA 369 at 374 per Hemmings J.
63 *Parramatta City Council & Anor v Hale and Others* (1982) 47 LGRA 319 at 345 per Moffitt P.
64 *Jang Investments Ltd v Sutherland Shire Council* (LEC(NSW), Hemmings J, No 40048/89, 8 September 1989, unreported).
65 *Weal v Bathurst Council & Anor* (2000) 111 LGERA 181 at 186 per Mason P.
66 *Marnal Pty Ltd v Cessnock City Council* (1982) 68 LGRA 135 at 139 per Hemmings J; also *Somerville v Dalby & Ors* (1990) 69 LGRA 422 at 429 per Hemmings J.
67 *Khan v Minister for Immigration and Ethnic Affairs* (1987) 14 ALD 291 at 292 per Gummow J.
68 *Hindi v Minister for Immigration and Ethnic Affairs* (1988) 91 ALR 586 at 599 per Sheppard J.
69 *Mendoza v Minister for Immigration, Local Government and Ethnic Affairs & Ors* (1991) 31 FCR 405 at 420 per Einfeld J.
70 McMillan J, 'Judicial Restraint and Activism in Administrative Law', (2002) 30 *Fed L Rev* 335 at 336 citing *Minister for Immigration and Multicultural Affairs v Anthonypillai* (2001) 106 FCR 426 at 442 per Heerey, Goldberg and Weinberg JJ.
71 *Currey v Sutherland Shire Council& Ors* (1998) 100 LGERA 365 at 374- 375 per Stein JA.
72 *Turner v Minister for Immigration and Ethnic Affairs* (1981) 55 FLR 180 at 185- 186 per Toohey J.
73 *Noble v Cowra Shire Council* [2003] NSWLEC 178 (31 July 2003) at [53] per Bignold J.
74 *Ladhams v State Planning Authority* (1982) 52 LGRA 32 at 35 per Wells J.
75 *Mahoney v Industrial Registrar of New South Wales* (1986) 8 NSWLR 1.
76 ibid at 4 per Samuels JA.
77 *BP Australia v Campbelltown City Council* (1994) 83 LGERA 274 at 277 per Mahoney JA.
78 *Ishac v David Securities* (No 6) (1992) 10 ACLC 652 at 653 per Young J.
79 *Minister for Aboriginal Affairs & Anor v Peko-Wallsend Limited and Others* (1986) 162 CLR 24 at 66 per Brennan J.
80 ibid at 31 per Gibbs CJ.
81 *Parramatta City Council & Anor v Hale and Others* (1982) 47 LGRA 319 at 346 per Moffitt P.
82 *Tooth & Co Ltd v Lane Cove* (1967) 87 WN (NSW) 361 at 363 per Street J citing *Municipal Council of Sydney v Campbell* (1925) AC 338.
83 *Currey v Sutherland Shire Council & Ors* (1998) 100 LGERA 365 at 374 per Stein JA.
84 *Parramatta City Council and Another v Hale and Others* (1982) 47 LGRA 319 at 339- 340 per Moffitt P.
85 *Lakeside Plaza Pty Ltd v Legal and General Properties No2 Ltd and Wyong Shire Council* (1992) 76 LGRA 60 at 65 per Stein J.
86 *Minister for Aboriginal Affairs & Anor v Peko-Wallsend Limited & Ors* (1986) 162 CLR 24 at 44- 45 per Mason J; *X v Minister for Immigration and Multicultural Affairs* (2002) 67 ALD 355 at 359 per Gray J.
87 *Chisholm v Pittwater Council and Another* [2000] NSWLEC 143 (11 July 2000).
88 ibid at [79] per Talbot J.
89 Ibid at [67].
90 Section 8 of the *Interpretation Act* 1987 (NSW) construes the word 'document' to include reference to a number of documents.
91 *Project Blue Sky Inc & Ors v Australian Broadcasting Authority* (1998) 194CLR 355 at 390 per McHugh, Gummow, Kirby and Hayne JJ.
92 *Marnal Pty Ltd v Cessnock City Council & Anor* (1989) 68 LGRA 135.
93 ibid at 140 per Hemmings J.
94 Ibid 140.
95 *Tobacco Institute of Australia Ltd & Ors v National Health and Medical Research Council & Ors* (1996) 71 FCR 265.

96 In addition, the Second Reading speech in regard to the legislation stated that the NH&MRC would 'operate in a public and open matter': *Tobacco Institute of Australia Ltd & Ors v National Health and Medical Research Council & Ors* (1996) 71 FCR 265 at 273-274 per Finn J.
97 ibid at 277 per Finn J.
98 *Tickner & Ors v Chapman & Ors* (1995) 57 FCR 451 at 462 per Black CJ.
99 See *TVW Enterprises Ltd v Duffy (No 2)* (1985) 60 ALR 687 at 694 per Toohey J.
100 *Tobacco Institute of Australia Ltd & Ors v National Health and Medical Research Council & Ors* (1996) 71 FCR 265 at 278 per Finn J.
101 Ibid.
102 Ibid at 279.
103 McMillan J, op cit n 71 at 359.
104 *Mendoza v Minister for Immigration, Local Government and Ethnic Affairs & Ors* (1991) 31 FCR 405 at 420 per Einfeld J.
105 *Norsmith Nominees Pty Limited v Woollahra Municipal Council & Anor* [1989] NSWLEC 14 (7 March 1989).
106 A head of consideration under s 90 of the EPAA (NSW).
107 *Norsmith Nominees Pty Limited v Woollahra Municipal Council & Anor* [1989] NSWLEC 14 (7 March 1989) at 6 per Stein J.
108 *Boulton & Ors v Burwood Municipal Council* (1988) 66 LGRA 131.
109 These included the impact of noise, traffic etc; ibid at 136-137 per Hemmings J.
110 ibid at 137 per Hemmings J.
111 (2001) 114 LGERA 440.
112 *Minister for Aboriginal Affairs & Anor v Peko-Wallsend Limited & Ors* (1986) 162 CLR 24 at 39 per Mason J.
113 *Noble v Cowra Shire Council* (2001) 114 LGERA 440 at 445 per Pearlman J citing *Parramatta v Hale* (1982) 47 LGRA 319 at 340-341 per Moffit P.
114 *Noble v Cowra Shire Council* (2001) 114 LGERA 440 at 447-448 per Pearlman J.
115 Not all Council Minutes for the meeting where the decision was made were available to the Court; ibid at 448 per Pearlman J.
116 ibid at 449 per Pearlman J.
117 *Schroders Australia Property Management Ltd v Shoalhaven City Council* (1999) 110 LGERA 130.
118 Ibid at 138 per Pearlman J.
119 *Hospital Action Group Association Inc v Hastings Municipal Council* (1993) 80 LGERA 190.
120 ibid at 199-200 per Pearlman J.
121 *Prasad v Minister for Immigration* (1986) 65 ALR 549 at 563 per Wilcox J.
122 eg matters required to be taken into consideration by s 90(1) of the EPAA (NSW): see *Hospital Action Group Association Inc v Hastings* (1993) 80 LGERA 190 at 194 per Pearlman J.
123 *Prasad v Minister for Immigration* (1986) 65 ALR 549 at 563 per Wilcox J.
124 *Parramatta City Council & Anor v Hale and Others* (1982) 47 LGRA 319 at 326 per Street CJ.
125 ibid at 341 per Moffit P.
126 *Hospital Action Group Association Inc v Hastings Municipal Council* (1993) 80 LGERA 190.
127 ibid at 200 per Pearlman J.
128 *Parramatta City Council and Another v Hale & Ors* (1982) 47 LGRA 319 at 346 per Moffit P.
129 *Hospital Action Group Association Inc v Hastings v Hastings Municipal Council* (1993) 80 LGERA 190 at 196 per Pearlman J.
130 Ibid at 201.
131 Ibid.
132 *Hospital Action Group Association Inc v Hastings v Hastings Municipal Council* (1993) 80 LGERA 190 at 201- 202 per Pearlman J.
133 *Lakeside Plaza Pty Ltd v Legal and General Properties No 2 Ltd and Wyong Shire Council* (1992) 76 LGRA 60.
134 As required under s 90(1)(d) of the EPAA (NSW).
135 *Lakeside Plaza Pty Ltd v Legal and General Properties No 2 Ltd and Wyong Shire Council* (1992) 76 LGRA 60 at 65 per Stein J.
136 Ibid.
137 *Prasad v Minister for Immigration* (1986) 65 ALR 549 at 563 per Wilcox J.
138 *Australian Posters v Leichhardt Council* (2000) 109 LGERA 343 at 352 per Bignold J.
139 see *Industrial Equity Limited and Another v Deputy Commissioner of Taxation & Ors* (1990) 170 CLR 649 at 671 per Gaudron J.
140 *P Bartol & Associates Pty Ltd v Randwick City Council* (unreported 26 April 1998) at 6 per Bignold J.
141 *Franklins Limited v Penrith Council* [1996] NSWLEC 273 (10 December 1996).
142 *Jones v Dunkel* (1959) 101 CLR 298 at 306 per Kitto J.
143 *Franklins Limited v Penrith Council* [1996] NSWLEC 273 (10 December 1996) per Bignold J.
144 *Attorney-General (ex rel Goddard) v North Sydney Municipal Council & Anor* (1971) 22 LGRA 225 at 235 per Hope J.
145 *Franklins Limited v Penrith Council* [1996] NSWLEC 273 (10 December 1996) per Bignold J.
146 Whether a fact is a jurisdictional fact preliminary to the exercise of statutory power is dependent on the proper construction of the relevant statute: *Timbarra Protection Coalition Inc v Ross Mining NL* (1999) 46 NSWLR 55 at 65 per Spigelman CJ.

147 *Franklins Limited v Penrith City Council and Campbells Cash and Carry Pty Limited* (CA 40115 of 1997, 13 May 1999) at [28] per Stein JA.
148 *Currey v Sutherland Shire Council & Ors* (1998) 100 LGERA 365.
149 Ibid at 371 per Stein JA (Mason P and Handley JA agreeing).
150 Ibid.
151 Ibid at 372.
152 Ibid at 373.
153 Or an exception be made under clause 19(2).
154 *Weal v Bathurst City Council and Another* (2000) 111 LGERA 181.
155 ibid at 201 per Giles JA.
156 *Currey v Sutherland Shire Council and Others* (1998) 100 LGERA 365 at 374-375 per Stein JA (Mason P and Handley JA agreeing).
157 [2003] NSWLEC 178 (31 June 2003).
158 *Noble v Cowra Shire Council* [2003] NSWLEC 178 (31 July 2003) at [59] per Bignold J.
159 Ibid at [63].
160 Ibid at [69].
161 *Hill v Woollahra Municipal Council & Anor* [2002] NSWCA 106 at [50]-[52] per Hodgson JA).
162 *Noble v Cowra Shire Council* [2003] NSWLEC 178 (31 June 2003) at [74] per Bignold J.
163 Ibid at [78].
164 See *Minister for Aboriginal Affairs & Anor v Peko-Wallsend Limited & Ors* (1986) 162 CLR 24 at 40 per Mason J.
165 *Noble v Cowra Shire Council* [2003] NSWLEC 178 (31 June 2003).
166 (2001) 113 LGERA 321.
167 Clause 10 of the Local Environmental Plan.
168 Clause 17 of the Local Environmental Plan.
169 *Hortis v Manly Council & Anor* [1999] NSWLEC 151 (2 July 1999) at [171] per Sheahan J.
170 Ibid at [172].
171 *Manly Council v Hortis & Anor* (2001) 113 LGERA 321 at 329-330 per Powell, Giles and Fitzgerald JJA.
172 Ibid at 334.
173 Ibid at 330.
174 Ibid at 329-330.
175 *Schroders Australia Property Management Ltd v Shoalhaven City Council* (1999) 110 LGERA 130 at 137 per Pearlman J and affirmed in *Schroders Australia Property Management Ltd v Shoalhaven City Council* (2001) NSWCA 74.
176 *Everall & Anor v Ku-ring-gai Municipal Council & Ors* (1991) 72 LGRA 369.
177 *Minister for Aboriginal Affairs & Anor v Peko-Wallsend Limited & Ors* (1986) 162 CLR 24 at 40 per Mason J.
178 *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014 at 1047 per Lord Wilberforce.
179 *Parramatta City Council & Anor v Hale & Ors* (1982) 47 LGRA 319 at 346 per Moffitt P.
180 *Everall & Anor v Ku-ring-gai Municipal Council & Ors* (1991) 72 LGRA 369 at 373 per Hemmings J.
181 Ibid at 374.
182 Ibid.
183 ibid.
184 *Minister for Aboriginal and Torres Strait Islander Affairs v State of Western Australia and Others* (1996) 67 FCR 40.
185 *Tickner v Bropho* (1993) 40 FCR 183 at 209 per Lockhart J.
186 *Minister for Aboriginal and Torres Strait Islander Affairs v State of Western Australia and Others* (1996) 67 FCR 40 at 60 per Black CJ, Burchett and Kiefel JJ.
187 Ibid at 61.
188 Ibid.
189 ibid at 63 per Black CJ, Burchett and Kiefel JJ.
190 *Jones v Dunkel & Anor* (1959) 101 CLR 298 at 320-321 per Windeyer J.
191 *FAI Insurances Ltd v Winneke & Ors* (1982) 151 CLR 342 at 350 per Gibbs J.
192 *Tickner & Ors v Chapman & Ors* (1995) 57 FCR 451 at 462 per Black CJ.
193 Ibid .
194 ibid at 462-463 per Black CJ.
195 Parliament provided for decision-making to be made at the highest level since a declaration 'very seriously affects the interests of third parties'; ibid at 462 per Black CJ.
196 ibid at 465 per Black CJ.
197 Ibid at 464.
198 A term often used interchangeably with 'procedural fairness' in regards to administrative law: see *Laws v Australian Broadcasting Tribunal* (1990) 93 ALR 435 at 439.
199 *Kioa & Ors v West & ANor* (1985) 159 CLR 550 at 582 and 609.
200 *Attorney-General for the State of New South Wales v Quin* (1990) 170 CLR 1 at 36.
201 *Livesey v New South Wales Bar Association* (1983) 151 CLR 288 at 300 per Mason, Murphy, Brennan, Deane and Dawson JJ.

202 The rules also apply to arbitral and administrative decisions; *Builders' Registration Board v Rauber* (1983) 57 ALJR 376 at 385 per Brennan J.
203 *R v Sussex Justices; Ex parte McCarthy* [1924] 1 KB 256 at 259 per Lord Hewart CJ.
204 *R v Commonwealth Conciliation and Arbitration Commission; Ex parte Angliss Group* (1969) 122 CLR 546 at 553 per Barwick CJ, McTiernan, Kitto, Taylor, Menzies, Windeyer and Owen JJ.
205 *R v West Coast Council; Ex parte The Strahan Motor Inn* (1995) 87 LGERA 383 at 389 per Zeeman J.
206 Ibid.
207 *R v Commonwealth Conciliation and Arbitration Commission; Ex parte Angliss Group* (1969) 122 CLR 546 at 553 per Barwick CJ, McTiernan, Kitto, Taylor, Menzies, Windeyer and Owen JJ.
208 Ibid.
209 Apparent bias is generally easier to establish than actual bias; *R v Watson; Ex parte Armstrong* (1976) 136 CLR 248 at 258- 262 per Barwick CJ, Gibbs, Stephen and Mason JJ.
210 *Hannam v Bradford Corp* [1970] 1 WLR 937 at 946 per Widgery LJ.
211 *Casey v Australian Broadcasting Tribunal* (1988) 16 ALD 680 at 685 per Wilcox J.
212 *Old St Boniface Residents' Association Inc v City of Winnipeg* (1990) 75 DLR (4th) 385 at 408- 409 per Sopinka J.
213 *Re Macquarie University; Ex parte Ong* (1989) 17 NSWLR 113 at 135 per Hope JA.
214 *R v Watson; Ex parte Armstrong* (1976) 136 CLR 248 at 262- 263 per Barwick CJ, Gibbs, Stephen and Mason JJ.
215 *Stollery v The Greyhound Racing Control Board* (1972) 128 CLR 509 at 517 per Barwick CJ.
216 *IW v City of Perth and Others* (1997) 191 CLR 1.
217 Ibid at 51 per Gummow J.
218 Ibid at 33 per Toohey J.
219 Ibid at 66 per Kirby J.
220 *R v West Coast Council; Ex parte The Strahan Motor Inn* (1995) 87 LGERA 383.
221 Ibid at 384 per Zeeman J.
222 Ibid at 393.
223 Ibid.
224 *Stollery v The Greyhound Racing Control Board* (1972) 128 CLR 509 at 519-510 per Barwick CJ.
225 *R v West Coast Council; Ex parte The Strahan Motor Inn* (1995) 87 LGERA 383.
226 *IW v City of Perth & Ors* (1997) 191 CLR 1.
227 Ibid at 51 per Gummow J.
228 *Livesey v New South Wales Bar Association* (1983) 151 CLR 288.
229 ibid at 298 per Mason, Murphy, Brennan, Deane and Dawson JJ.
230 Ibid at 299.
231 One of the issues for the Bar Association proceedings concerned whether the money lodged by the barrister's client was her own. The two judges had previously decided that it was not.
232 *Aksu v Minister for Immigration and Multicultural Affairs* (2001) 65 ALD 667.
233 These were the protection of the community, the expectation of the community and the best interests of any children involved..
234 *Minister for Immigration, Local Government and Ethnic Affairs v Gray* (1994) 50 FCR 189 at 206-207 per French and Drummond JJ.
235 *Stringer v Minister for Housing and Local Government* [1970] 1 WLR 1281 at 1298 per Cooke J.
236 *Re Drake and Minister for Immigration and Ethnic Affairs (No 2)* (1979) 2 ALD 634 at 640-641 per Brennan J.
237 *Aksu v Minister for Immigration and Multicultural Affairs* (2001) 65 ALD 667 at 676 per Dowsett J.
238 *Builders Registration Board of Queensland & anor v Raub*er (1983) ALJR 376 at 385 per Brennan J.
239 *Laws v Australian Broadcasting Tribunal* (1990) 170 CLR 70 at 92 per Deane J; also see Casey.
240 *IW v City of Perth & Ors* (1997) 191CLR 1 at 46 per Gummow J but cf Toohey J at 31-3 and Kirby J at 61-66.
241 *Noroton Holdings v Friends of Katoomba Falls Creek Valley Inc* (1996) 98 LGERA 335 at 351-352 per Priestly J.
242 *Emeritus Pty Ltd v South Sydney* (Unreported 1 Feb 1990 per Cripps CJ).
243 *Minister for Aboriginal Affairs v Peko-Wallsend* (1986) 162 CLR 24 at 40 per Mason J.
244 *Noble v Cowra Shire Council* [2003] NSWLEC 178 (31 July 2003).
245 Ibid at [49] per Bignold J.
246 ibid at 448 per Pearlman J.
247 *Emeritus Pty Ltd v South Sydney* (Unreported 1 Feb 1990 per Cripps CJ); *Tooth & Co Ltd v Lane Cove Municipal Council* (1967) 87 WN (NSW) 361 at 363 per Street J.
248 *Noble v Cowra Shire Council* [2003] NSWLEC 178 at [53] per Bignold J.
249 ibid at [52] per Bignold J citing *Jones v Dunkel* (1959) 101 CLR 298 at 306 per Kitto J.
250 ibid at [54] per Bignold J.
251 [1998] NSWLEC 50 (1 April 1998).
252 There were two additional challenges based on a failure to take into account a relevant consideration and on manifest unreasonableness.
253 Imposed predominantly by s 90(1)(d) of the *Environmental Planning and Assessment Act* (1979) (NSW).
254 *Hayden Theatres Pty Ltd v Penrith City Council* [1998] NSWLEC 50 (1 April 1998) at 15 per Bignold J.

255 Ibid at 15.
256 Ibid.
257 Ibid at 16.
258 Ibid at 17.
259 [2002] NSWLEC 69 (7 May 2002).
260 This was distinguished from *Parramatta City Council & Anor v Hale Ors* (1982) 47 LGRA 319 at 335 where Moffitt P held that the court is not entitled to consider the vote of one councillor..
261 *IW v City of Perth & Ors* (1997) 191 CLR 1.
262 ibid at 51 per Gummow J.
263 *Brind v Secretary of State for the Home Department* (1991) 1 All ER 720 at 738 per Lord Lowry.
264 Airo-Farulla G, 'Administrative Law-Rationality and Judicial Review of Administrative Action' (2000) 24 *Melb U L Rev* 543 at 574.
265 *Kruger v Commonwealth* (1997) 190 CLR 1 at 36 per Brennan CJ; *Minister for Immigration and Multicultural Affairs v Eshetu* (1999) 197 CLR 611 at 650 per Gummow J.
266 Spigleman JJ, 'Foundations of Administrative Law: Toward General Principles of Institutional Law' (1991) 58 *Aust Jo of Pub Admin* 1 at 4.
267 *TCN Channel Nine Pty Ltd v Australian Broadcasting Tribunal & Anor* (1992) 28 ALD 829 at 861 per French J citing *Othman v Minister for Immigration and Ethnic Affairs* (1991) 24 ALD 707 at 711 per French J.
268 ibid .
269 *Australian Broadcasting Tribunal v Bond & Ors* (1990) 170 CLR 321 at 367 per Deane J.
271 *Associated Provincial Picture House v Wednesbury Corporation* [1948] 1 KB 223 at 229 per Lord Greene MR.
271 *Abebe v The Commonwealth of Australia* (1999) 197 CLR 511 at 545 per Gleeson CJ and McHugh J.
272 *Chisholm v Pittwater Council and Another* [2000] NSWLEC 143 (11 July 2000).
273 *Noble v Cowra Shire Council* [2003] NSWLEC 178 (31 June 2003) at [74] per Bignold.
274 *R v West Coast Council; Ex parte The Strahan Motor Inn* (1995) 87 LGERA 383 at 392 per Zeeman J.
275 *R v Amber Valley District Council: Ex parte Jackson* [1985] 1 WLR 298 at 308- 309 per Woolf J.
276 *Old St Boniface Residents' Association Inc v City of Winnipeg* (1990) 75 DLR (4th) 385 at 408- 409 per Sopinka J.
277 *R v West Coast Council; Ex parte The Strahan Motor Inn* (1995) 87 LGERA 383 at 392 per Zeeman J.
278 *R v Amber Valley District Council: Ex parte Jackson* [1985] 1 WLR 298 at 308- 309 per Woolf J.
279 *Collector of Customs v Pozzolanic* (1993) 43FCR 280 at 287 per Neaves, French and Cooper JJ.
280 Ibid.
281 *Minister for Immigraton v Wu Shan Liang and Others* (1996) 185CLR 259 at 272 per Brennan CJ, Toohey, McHugh and Gummow JJ.
282 ibid.