LEGISLATIVE COUNCIL STANDING COMMITTEE INTO VICTORIAN GOVERNMENT DECISION MAKING, CONSULTATION AND APPROVAL PROCESSES

WITNESS STATEMENT OF YEHUDI BLACHER

I, Yehudi Blacher, of Level 12, 1 Spring Street, Melbourne, state as follows:

1. I am the Secretary of the Department of Planning and Community Development (DPCD).

2. I attend before the Standing Committee in my capacity as a member of the Victorian Public Service. I am an employee of the Crown and appear on behalf of the Minister for Planning.

3. I have been provided with a copy of:
   3.1 the terms of reference of the Standing Committee;
   3.2 the Government's Guidelines for Appearing before State Parliamentary Committees, dated October 2002;
   3.3 the Legislative Council Select Committees and Legislation Committee “Guidelines for Protection of Witnesses”; and
   3.4 the Code of Conduct for Victorian Public Sector Employees (No 1) 2007.

4. I have come here today to discuss the Windsor development but before I do that I would like to briefly explain the underpinnings of the planning system.
Planning and Environment Act 1987

5. The Planning and Environment Act 1987 establishes a framework for planning the sustainable use, development and protection of land in Victoria, and provides an appropriate balance between community involvement in the planning process and decision-making. Planning, by its nature, is a highly contested area of public administration and the Act reflects a system of checks and balances which provide for transparent and accountable planning decisions.

6. Some of these checks and balances will be touched upon in my outline of the Windsor Hotel redevelopment process.

Windsor Hotel redevelopment process

7. The site which is the subject of the Windsor Hotel redevelopment proposal is known as 137 Spring Street and 1-7 Bourke Street, Melbourne. As the proposed development has a gross floor area exceeding 25,000 square metres, Clause 61.01 of the Melbourne Planning Scheme provides that the Minister for Planning is the responsible authority in relation to the permit application. I note that the Minister has been the responsible authority in relation to these major development applications since 1986.

8. On 28 July 2009, Windsor Hotel Holdings Pty Ltd lodged an application for a permit for the use and development of the site. The application was registered on the Department’s Planning Permit Applications Tracking System (PPATS) in accordance with standard procedure. The Department provides public access to the register of permit applications for consideration of the Minister as responsible
authority and provides contact details for members of the public who may wish to view the application.

9. Following registration, on 4\textsuperscript{th} August 2009, the Department acknowledged receipt of the application. Upon registration, the application was given reference 2009/001687 and allocated to a case officer within the Department.

10. The application proposes "part demolition of the existing buildings and construction of new buildings and works including varying the applicable preferred height control". In particular, what is proposed by the application is part demolition of the rear and side sections of the existing hotel building on the site fronting Windsor Place, construction of a new 26 storey 'tower' on Windsor Place, a new 'corner building' on the Bourke-Spring Streets corner, and construction of a services and recreation 'stick' on the new corner building that would project over Windsor Place.

11. Following consideration of the documentation submitted with the application, on 24\textsuperscript{th} August 2009 the Department sent a letter to the Applicant requesting more information in order to deal with the application (s54). This information was provided on 18\textsuperscript{th} September 2009.

12. On 25\textsuperscript{th} September 2009, the Department sent a further letter to the Applicant setting out details of the notification requirements in relation to the application (s52). The applicant was required to:

(a) display a copy of an enclosed public notice on the land for a minimum period of fourteen days;
(b) send a copy of an enclosed public notice to owners and occupiers of adjacent properties as set out in an attached list; and

(c) publish a copy of the enclosed public notice in the Public Notice section of *The Melbourne Times* for one issue and *The Age* on a Wednesday for one issue.

The Applicant confirmed by Statutory Declaration on 23rd October 2009 that it had complied with the notification requirements.

13. On 23rd September 2009, the Department provided a copy of the application to The Director of Public Transport as a referral authority in relation to the application (s55).

14. On 23rd September 2009, DPCD also gave notice of the application to the City of Melbourne (s52(1)(b)).

15. On 13th October 2009, the Department briefed the Minister in relation to the application.

16. On 27th October 2009, the Minister established an Advisory Committee and requested it:

   (a) to provide a recommendation and reasons in relation to the determination of the application;

   (b) include recommendations as to whether a permit should issue and, if so, on what terms.

17. On 10th December 2009, the Advisory Committee held a public hearing and heard from the National Trust of Australia (Victoria), the Melbourne City Council, and the Applicant.
18. On 8th February 2010, the Advisory Committee delivered its report to the Minister's Office. As is usual with such correspondence, the Advisory Committee report was referred to the Department.

19. I would like to spend some time now explaining to the Standing Committee the next steps in the planning process because, as the Committee will understand, this process is yet to be completed. The Act requires that before deciding the application, the Minister, as responsible authority, must consider:

(a) the relevant planning scheme; and

(b) the objectives of planning in Victoria; and

(c) all objections and other submissions which it has received and which have not been withdrawn; and

(d) any decision and comments of a referral authority which it has received; and

(e) any significant effects which the responsible authority considers and use or development may have on the environment or which the responsible authority considers may have on the use or development.

(s 60)

20. The Minister may decide to grant a permit; grant a permit subject to conditions; or to refuse to grant a permit on any ground he thinks fit (s61).

21. If the Minister decides to grant a permit:

(a) he must give notice of his decision to the applicant and each objector; and

(b) a permit must not be issued until the end of the period within which an objector may apply to VCAT for a review of the decision to grant the permit; or

(c) if an application for review is made until the application is determined by VCAT or withdrawn.
22. If the Minister decides to refuse to grant a permit in relation to the Application, he must give notice of his decision to the Applicant and each objector.

23. Objectors have a right of review to VCAT of the Minister’s decision (s82).

24. The Applicant has a right to review to VCAT in relation to the Minister’s decision to refuse to grant a permit, fail to determine the application, or any conditions attached to the grant of a permit (ss78, 79 & 80).

25. I think it is also worth noting at this point a number of additional mechanisms in the Act which ensure the transparency of planning decisions. In particular:

(a) Responsible authorities are required to keep a register of permit applications, and all decisions and determinations relating to permits (s49);

(b) The President of VCAT can require public notice to be given of an application if he considers the notice given was inadequate or not given and should have been given (s83B);

(c) VCAT can cancel or amend a permit where there is an error or procedural failure underpinning it. Such an application can be made by an objector even if the person was not given notice but believes they should have been given notice (s87);

(d) Any person has a right to apply in VCAT for an enforcement order for contravention of the Act (s114);

(e) A person who is substantially or materially disadvantaged by a failure to comply with the public notice and hearing requirements in relation to the preparation and approval of a planning scheme amendment can apply to VCAT for a remedy (s39);

(f) VCAT has a general power to make declarations concerning any power under the Act that may be subject of an application to VCAT or anything done by a responsible authority under the Act (s149B);
(g) Parties to proceedings in VCAT may apply to have questions of law which have arisen in those proceedings to be decided by the Supreme Court or the Court of Appeal (s148, VCAT Act);

(h) Planning scheme amendments must be laid before both Houses of Parliament after they are approved, and either House of the Parliament may revoke an amendment wholly or in part by resolution (s38).

**Heritage Act 1995**

26. I would now like to briefly turn to the permit process under the *Heritage Act 1995* because it is also relevant to the Windsor Hotel proposed redevelopment. The Hotel Windsor is a registered place on the Victorian Heritage Register (ref H764). Therefore a heritage permit is required to carry out the proposed works and activities on the site (ss64 & 67).

27. The permit application is considered by the Executive Director in accordance with the process set out in the *Heritage Act 1995* (HA). Similar to the Planning Department, Heritage Victoria has a central system for recording and registering heritage permit applications known as the Hermes Database. The statutory process applying to heritage permits includes similar notification, consultation and review rights for applicants and objectors as the planning system, however, the processing and determination of the heritage permit application is discrete from the planning permit application.

28. If the applicant or an objector is aggrieved by the Executive Director’s decision on the application for a heritage permit, then there are rights of review to the Heritage Council and or VCAT.
Conclusion

29. Let me conclude by confirming that the planning process applied to the Windsor redevelopment proposals has in all respects been the usual process used for major developments in this State, and as indicated above, the Committee should also note that the process is as yet incomplete.

30. I have now come to the end of my presentation. I am happy to take any questions the Committee may have.