CORRECTED VERSION

STANDING COMMITTEE ON FINANCE AND PUBLIC ADMINISTRATION

Inquiry into Victorian government decision-making, consultation and approval processes

Melbourne — 12 March 2010

Members
Mr G. Barber          Mr P. Kavanagh
Ms C. Broad           Mr G. Rich-Phillips (Chair)
Mr M. Guy             Mr M. Viney (Deputy Chair)
Mr P. Hall

Substituted members
Mr B. Tee for Ms C. Broad

Staff
Secretary: Mr R. Willis
Research Assistant: Mr S. Marshall

Witness
Mr Y. Blacher, Secretary of the Department of Planning and Community Development (affirmed).
The CHAIR — I declare open this hearing of the Legislative Council Standing Committee on Finance and Public Administration. On 3 March the committee resolved:

To inquire into and report on Victorian government decision-making, consultation and approval processes, and any knowledge and/or involvement of ministers, ministerial staff and/or Victorian government officers since 1 December 2006 and in particular issues arising from media plans prepared within the Victorian government since 1 December 2006.

The initial focus of the inquiry is to be the Windsor Hotel redevelopment process. The committee has resolved to take evidence from the Honourable Justin Madden, MLC, Minister for Planning; Mr Yehudi Blacher, the Secretary of the Department of Planning and Community Development; Mr David Hodge of the Department of Planning and Community Development; Ms Peta Duke, media adviser; Mr George Svigos, Premier’s media unit; and Ms Fiona Macrae, Premier’s media unit.

This first hearing this morning is with Mr Yehudi Blacher, the Secretary of the Department of Planning and Community Development. For the information of witnesses and the committee, we have one substitution this morning: Mr Tee is substituting for Ms Broad.

All evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and further subject to the provisions of Legislative Council standing orders. Any comments made outside the precincts of the hearing are not protected by parliamentary privilege. All evidence is taken under oath or affirmation and is being recorded. Witnesses will be provided with a proof version of the transcript in the next couple of days.

I now ask the committee secretary to swear in the witness, please.

Mr VINEY — Just before you do, Chair, I have an issue. I just want some clarity as to what the purpose of this is. We have already convicted and sentenced the minister, so what is the purpose of holding these hearings? There is absolutely no point.

The CHAIR — Mr Viney, as you well know — —

Mr GUY — Nice stunt to start with.

Mr VINEY — This is in the classic witch-hunt tradition, is it? We have convicted him and now we are going to go through the process of gathering the evidence.

Mr GUY — Nice stunt to start with.

The CHAIR — Mr Viney, as you well know, the committee has resolved to have these hearings, and the hearings will proceed as planned.

Mr GUY — On a point of order before we start, Chair. Just on Mr Viney’s point, I wonder if — —

Mr VINEY — This whole thing is a stunt.

Mr GUY — Speaking of stunts, Mr Viney, with you and your minister here, I wonder if we could actually have some clarity about the process of inviting the minister to these hearings. Could you clarify for this committee’s own information as to the process, the letters that were sent to the minister’s officers and when the minister will actually be appearing?

The CHAIR — Mr Guy, as committee members are aware, the committee has resolved to take evidence from departmental officers and ministerial staff and then take evidence from the minister. That is the basis on which the hearing is proceeding this morning with the secretary of the department.

Mr GUY — And I am correct in saying that this was communicated to the minister’s office?

Mr TEE — The minister has been denied — —

The CHAIR — It has been communicated to the office.

Mr GUY — No, Mr Tee, actually he was advised — —
Mr TEE — Not to attend.

Mr GUY — Before.

Mr VINEY — What are you trying to do, shut the thing down? Then shut it down.

The CHAIR — Order!

Mr GUY — So the truth — —

Mr VINEY — You are accusing us of a stunt.

Mr GUY — I would like the truth.

The CHAIR — Mr Guy!

Mr VINEY — This whole thing is a stunt. It is a complete and total political stunt.

The CHAIR — Mr Viney!

Mr VINEY — Don’t try to close me down, Chair!

The CHAIR — Mr Viney!

Mr VINEY — This whole thing is a stunt — —

The CHAIR — Order! Mr Viney, we will not be going down this path.

Mr VINEY — For you to come in here and try to close us down. You want to set up a political stunt and you don’t want take a little bit back.

Mr GUY — Come on.

The CHAIR — Mr Guy, Mr Viney, please show some respect to the witness. Mr Blacher has rearranged his diary so that he could be here this morning to appear before the committee. I ask all committee members to show due respect to him during his appearance this morning.

Mr Blacher, would you like to make an opening statement before the committee proceeds to questions?

Mr BLACHER — Thank you, Chair. I, Yehudi Blacher, of level 12, 1 Spring Street, Melbourne, state as follows: I am the Secretary of the Department of Planning and Community Development. 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.

I have been provided with a copy of the terms of reference of the standing committee; the government’s guidelines for appearing before state parliamentary committees, dated October 2002; the Legislative Council select committees and legislation committee guidelines for the protection of witnesses; and the Code of Conduct for Victorian Public Sector Employees 2007.

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 here in Victoria. 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 subsequent 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. Some of these checks and balances will be touched upon in my outline of the Windsor redevelopment process.

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 development applications since 1986.

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, 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.

Following registration, on 4 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.

The application proposes, and I quote, ‘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.

Following consideration of the documentation submitted with the application, on 24 August 2009 the department sent a letter to the applicant requesting more information in order to deal with the application. This information was provided on 18 September 2009.

On 25 September 2009 the department sent a further letter to the applicant setting out details of the notification requirements in relation to the application. The applicant was required to: display a copy of an enclosed public notice on the land for a minimum period of 14 days; send a copy of an enclosed public notice to owners and occupiers of adjacent properties as set out in an attached list; and publish a copy of the enclosed public notice in the public notices section of the Melbourne Times for one issue and the Age on a Wednesday for one issue.

The applicant confirmed by statutory declaration on 23 October 2009 that it had complied with the notification requirements.

On 23 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.

On 23 September 2009 also the department gave notice of the application to the City of Melbourne.

On 13 October 2009 the department briefed the minister in relation to the application.

On 27 October 2009 the minister established an advisory committee and requested it: to provide a recommendation and reasons in relation to the determination of the application; and include recommendations as to whether a permit should issue and, if so, on what terms.

On 10 December 2009 the advisory committee held a public hearing and heard from the National Trust of Australia, the Melbourne City Council and the applicant.

On 8 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.

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: the relevant planning scheme; the objectives of planning in Victoria; all objections and other submissions which it has received and which have not been withdrawn; any decision and comments of a referral authority which it has received; and 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.

The minister may decide to grant a permit, to grant a permit subject to conditions, or to refuse to grant a permit on any ground he thinks fit.
If the minister decides to grant a permit: he must give notice of his decision to the applicant and each objector; and 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 if an application for review is made, until the application is determined by VCAT or withdrawn.

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.

Objectors have a right of review to VCAT of the minister’s decision.

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.

I think it is also worth noting at this point a number of additional mechanisms in the act which ensure transparency of planning decisions. In particular: responsible authorities are required to keep a register of permit applications and all decisions and determinations relating to permits; 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; and 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; any person has a right to apply in VCAT for an enforcement order for contravention of the act; 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; 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; 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; and finally, 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.

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 Windsor Hotel is a registered place on the Victorian Heritage Register, reference no. H764. Therefore a heritage permit is required to carry out the proposed works and activities on the site.

The permit application is considered by the executive director in accordance with the process set out under the Heritage Act 1995. 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.

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

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.

I have now come to the end of my presentation, and I am happy to take questions from the committee.

**The CHAIR** — Thank you, Mr Blacher. The committee appreciates your submission setting out the process. Can I take you to paragraphs 15 and 16 of your submission which relate to the establishment of the advisory committee. Can you outline please the process by which that advisory committee is established? Does the department provide advice to the minister on the composition of that advisory committee, for example?

**Mr BLACHER** — The advisory committee, as is normal with these processes, is established under the Planning Panel Victoria provisions or arrangements. There are standing members who are members of Planning Panel Victoria, and the chair of Planning Panels Victoria nominates members for that purpose.
The CHAIR — How many members were appointed to this particular advisory committee?

Mr BLACHER — Three.

The CHAIR — And that was on the advice of the chair?

Mr BLACHER — That is right.

The CHAIR — What is the process for handling the advisory committee report after it has been prepared? You have indicated it goes to the minister. Is that accompanied by advice from the department?

Mr BLACHER — No. The normal process is that the minister’s office receives a report, it then goes back to the department, the department gives consideration to that report and then in due course provides advice to the minister.

The CHAIR — Who in the department provides that advice? Is it the person who has been case managing the application?

Mr BLACHER — Ultimately the advice is signed off by the deputy secretary of the department.

The CHAIR — Who would that be?

Mr BLACHER — That is Prue Digby.

The CHAIR — What type of assessment does the department undertake with respect to that report? What types of factors are considered?

Mr BLACHER — The department will take account of all the various factors that the minister might need to take into consideration in making his decision. It will also assess the advisory committee’s report against the legislative provisions that effectively govern the process and then provide advice to the minister.

The CHAIR — How wide is that process within the department? You said Ms Digby ultimately signs off on it.

Mr BLACHER — There will be officers in the department who will examine the report and prepare advice.

The CHAIR — Is it a closely held document within the department?

Mr BLACHER — Indeed.

The CHAIR — Once it is received?

Mr BLACHER — Yes.

The CHAIR — So it is not in common circulation?

Mr BLACHER — No.

The CHAIR — You would be able to identify which officers had access to that report after it was received back from the — —

Mr BLACHER — Officers could be identified, but at the end of the day a range of officers prepare input into advice and then essentially the advice is signed off by the responsible officer. It is the responsible officer who essentially is responsible for that advice.

The CHAIR — And then the panel report and the department’s advice go to the minister for his decision?

Mr BLACHER — For his consideration, that is right.

The CHAIR — Is there a statutory time frame for the minister to make his decision after he has received the panel report?
Mr BLACHER — No.

The CHAIR — Is there further consultation between the minister’s office and the department once you have tendered your formal advice?

Mr BLACHER — I think it is important for the committee to understand that there are continual discussions that occur between ministers’ offices and departments. That is in the nature of public administration. Without referring to this one in particular because in fact it is still sitting with the department, our conversations occur on all range of matters. It is essentially at the discretion of minister whether he wants to have further discussions with the department based on advice or whether he makes a decision, and it is at his discretion as to when he makes that decision.

The CHAIR — Sorry, when you just said it is still with the department, you mean the department has yet to give its advice to the minister? Is that correct?

Mr BLACHER — The report is still with the department.

The CHAIR — Pending your advice to the minister’s office?

Mr BLACHER — The process, as you are aware, has in a sense halted whilst we do an audit of the process to date, so the report is still with the department.

The CHAIR — Thank you.

Mr TEE — Thank you for your evidence this morning. I want to start with your evidence in relation to the transparent and accountable planning decisions and the process that that involves. Someone such as yourself has been involved in the public service for a considerable period of time, would it be your experience that over time the planning process has become, in essence, more accountable, more transparent, more open? Would you say that today we have a more transparent process than we had 10, 15 years ago?

Mr BLACHER — I think there is no doubt about that. It has been the general direction of amendments to the Planning and Environment Act as well as custom and practice of respective planning ministers to put more and more information into the public arena.

Mr TEE — And again in terms of Windsor Hotel redevelopment, it is your evidence that there has been nothing untoward in the process that has been followed?

Mr BLACHER — Indeed.

Mr TEE — The other part that comes through your evidence that I want to check with you is that essentially while the minister is a part of the process, and indeed an important part of the process, there are a number of what I think you referred to as checks and balances, including the review by VCAT, so can I confirm that your position is that the public can have confidence that we have a process that is working well because there are a number of aspects to it and the minister is a part of that but it is open to review?

Mr BLACHER — Yes. Perhaps I could just clarify that point for the committee. As I indicated in my evidence, the minister’s decision is potentially reviewed by VCAT on the part of either applicants or objectors. There are then opportunities, if there is a view of an error in law, to go to the Supreme Court, and ultimately, because it is a planning scheme amendment, that planning scheme amendment is laid before both houses of Parliament and either house can revoke it by resolution, so you are indeed quite correct.

Mr TEE — And the committee, and I suppose the community then, both in relation to the Windsor but also more generally, can have confidence that the planning system in Victoria is transparent, it is accountable and it has a number of checks and balances. Would that be your view?

Mr BLACHER — I believe that to be the case.

Mr BARBER — Thanks, Mr Blacher. At your paragraph 15 where you say the department briefed the minister in relation to the application, is that the point where it is determined whether the decision will be made under delegation or by the minister himself?
Mr BLACHER — The nature of the department’s briefing to the minister, as you would appreciate, is between the minister and the department. I do not actually follow the intent of your question.

Mr BARBER — In a generic sense, there is an instrument of delegation and there are hundreds of planning permit applications for which the minister is the RA. One of them is for a bunch of signs on a bus shelter down in Docklands and one of them is this one. At what threshold is the decision made whether this will be a decision made under delegation or by the minister himself?

Mr BLACHER — Essentially that is a decision for the minister. There are occasions when the department may give advice to the minister on that matter and there are other occasions when the department is silent on it. Whether the department gives advice to the minister or is silent, ultimately the minister in his own person makes that determination.

Mr BARBER — So there is an instrument of delegation that permits him to do that — that formalises that delegation is available — but for each and every planning permit application that comes to the department the minister is at some point in a position to make a decision whether he will personally make it or whether he will put it under delegation?

Mr BLACHER — He does have that discretion. But I should say just as a matter of practice — and that does not just apply to this minister — where you have major redevelopment proposals the ministers generally retain that responsibility as responsible authorities in their own right.

Mr BARBER — In another document that was provided to the Parliament around determining authorisation requests, and this is in relation to planning scheme amendments under section 9, there is a sort of hierarchy of different levels of decision and some guidance there as to how it is expected it will be dealt with. Does the same thing exist in relation to the issue of permits?

Mr BLACHER — I will have to take that question on notice.

Mr BARBER — I mean, he is not going to make the decision about the signs on the bus shelter at the Docklands I imagine — —

Mr BLACHER — Indeed.

Mr BARBER — But that decision must have been transmitted.

Mr BLACHER — That is right.

Mr BARBER — At paragraph 16 you say an advisory committee was established. I presume it was established under section 151 of the act.

Mr BLACHER — I do not have the section in front of me but it was the normal advisory committee process.

Mr BARBER — There are a number of different places in the act where an advisory committee or a panel or whatever can be established, but section 151 appears to be the kind of ad hoc advisory committee: it just says ‘may establish committees to advise on any matters which the minister refers to them’. That is different to, say, a call-in panel, which I think is under section 90 something or other.

Mr BLACHER — Indeed.

Mr BARBER — I wanted to clarify that this was under section 151.

Mr BLACHER — I can give you that precise information if you want it; I will take that on notice.

Mr BARBER — Okay. Section 151 does not actually say what has to happen after such a committee is established, so I presume between 13 October and 24 October, when you say the minister established an advisory committee, a decision was made that there would be this advisory committee. What I want to know is: was the decision taken that the advisory committee would receive and consider objections or do the objections
become something the minister has to consider alongside the advisory committee that is effectively making its
decision on the papers, on the application itself?

Mr BLACHER — Without again going into the specifics of this particular application, advisory committees
do consider any representations made to them.

Mr BARBER — Do they?

Mr BLACHER — Any representation that is made to them. They make the judgement about the
consideration, and the minister, when he finally makes whatever decision he makes, as I indicated to you, is
required to have regard to objections that are made.

Mr BARBER — Yes, of course. But I was specifically asking whether the panel is instructed to also look at
the objections.

Mr BLACHER — Anybody can make a submission to the panel, so people who may object can make
submissions to the panel.

Mr BARBER — Section 151 does not say the committee has to consider those objections.

Mr BLACHER — The practice of panels, for as long as I can remember, is that they hear submissions from
people who both support and oppose applications.

Mr BARBER — That is under the panels section; that is why I was clarifying about 151.

Mr VINEY — Are you bidding for legal counsel to the department?

Mr BARBER — I sat up late last night reading my copy of the act. We get to the Sunday Age of
28 February 2010, Melissa Fyfe, ‘MPs fought Windsor plan’, which states:

A group of Brumby government MPs wrote a passionate joint submission against the $260 million Hotel Windsor redevelopment
and raised concerns with embattled planning minister Justin Madden.

Does that mean they wrote an objection or they wrote a submission to the panel, and/or they met with or had a
discussion with the minister?

Mr BLACHER — That is a multipart question to which I cannot give you an answer.

Mr BARBER — Because you do not have the facts in front of you, yes. I would just like to know what the
status of their raising concern was. Was it as an ordinary objector — —

Mr BLACHER — You are quoting from a media report. I simply cannot respond. Because I simply do not
know what the basis of the media report was.

Mr BARBER — As with all planning permit applications, I have the right to inspect the application but that
does not necessarily mean I get to see other objections, the panel report or the committee report. It is really just
the application itself that I would get to see.

Mr BLACHER — At that point in the process that is absolutely right.

Mr BARBER — So requests for information, other bits of research, considerations the department may
have made — that is not necessarily on the file that I can see, is it?

Mr BLACHER — That is right.

Mr TEE — But the advisory committee within its discretion can add whatever material to its report that it
sees fit.

Mr BLACHER — Indeed. As you can see from the terms of reference, these were the broadest terms of
reference, so essentially the advisory committee could determine whatever process it wanted to use.

Mr BARBER — You have also told us that:
On 8 February 2010 the advisory committee delivered its report to the minister’s office.

So if Ms Duke was writing an email, according to the report updated 24 February, where she — —

Mr BLACHER — I am sorry, who was writing the email?

Mr BARBER — Ms Duke. If she was writing an email that apparently was updated on 24 February, where she says:

Windsor ad c’tee — report due first week of Feb report is expected to recommend that development go ahead —

it is no clearer to us really, is it, as to whether that report was in the minister’s office at the time or whether she had read it or who might have read it?

Mr BLACHER — I really cannot comment on anything she has written.

Mr BARBER — Okay, you tell us that on 13 October the department briefed the minister in relation to the application. Can you tell me whether at any stage there were any other briefings conducted by your department in relation to this application for the minister at another point, a ministerial adviser or a ministerial media adviser?

Mr BLACHER — I can certainly tell you that as a matter of practice my department does not brief either media advisers or ministerial advisers. It certainly never has and whilst I am the secretary never will. Departments do brief ministers all the time. I cannot give you an answer to the question as to whether there were other briefings in relation to this matter.

Mr BARBER — Other briefings of the minister?

Mr BLACHER — Of the minister in relation to the Windsor. That was the first part of your question.

Mr BARBER — You have told us there was one on 13 October.

Mr BLACHER — That is right.

Mr BARBER — Were there any others as we went along?

Mr BLACHER — I am not aware that there were any others.

Mr BARBER — Ms Duke, as a ministerial media adviser, would she be in regular contact with your department’s own communications and media staff?

Mr BLACHER — Generally, no. There may well be contact in relation to events or other matters that are being organised.

Mr BARBER — Well, that is what I am asking. I mean, is she on the phone to them; are they on the phone to her: ‘We need the minister, this is happening, who is responding to this request’?

Mr BLACHER — By and large the interactions between media advisers and communications staff are relatively rare. The interactions are essentially through the minister’s office direct when they occur.

Mr BARBER — So if Ms Duke had any awareness of the pending delivery of the Windsor advisory committee report, she must have got that information from internal to the minister’s office, because you did not brief her and your staff would not be giving her a heads-up.

Mr BLACHER — I cannot comment. You are making a supposition. I will leave that with you to do.

Mr BARBER — Okay, but you were pretty clear that she is not getting her advice from your department because you do not generally brief ministerial advisers.

Mr BLACHER — No.

Mr BARBER — Certainly not ministerial media advisers. Okay. I will pass for a minute and come back.
Mr GUY — Thanks, Mr Blacher, for coming in. Looking at paragraph 18 of your statement, I just want to confirm with you that on 8 February that advisory committee report was delivered to the minister’s private office before it went to the department. Is that correct?

Mr BLACHER — Shall I explain to you how correspondence operates in the department?

Mr GUY — Yes.

Mr BLACHER — Any letters that are addressed to the minister are delivered to the minister’s office. There is then a process of sifting through that correspondence which goes direct to the minister and the correspondence that is referred to the department. That is essentially a technical exercise, and by and large matters like this would go through the minister’s office and then straight into the department.

Mr GUY — Who would make the decision to sift through it — somebody in the minister’s private office?

Mr BLACHER — I presume so.

Mr GUY — So the minister’s private office had access to that report before it was sent to the department.

Mr BLACHER — In the sense that it was delivered to the minister’s office and then came into the department.

Mr GUY — Do you know the date when it was date-stamped that it was actually received by the minister’s office and then received, date-stamped and sent downstairs to the department?

Mr BLACHER — No, I do not.

Mr GUY — So we don’t know. It could have been hours, minutes, it could have been days that that report sat in the minister’s office before it went to the department.

Mr BLACHER — We can provide you that as a matter of fact. I do not have it with me at the moment, but I will easily provide that to you — —

Mr VINEY — So the letter was addressed to the minister.

Mr BLACHER — Sorry? The letter was addressed to the minister, which is why it goes to the minister’s office.

Mr VINEY — Presumably it would be impolite to send it to anyone else.

Mr BLACHER — Indeed.

The CHAIR — Can we just clarify, Mr Blacher? The date you refer to in your statement — —

Mr BLACHER — Is the date of the letter. Thank you.

The CHAIR — Is the date of the letter. Thank you.

Mr GUY — So the point again is that the report was in the private office of the minister on 8 February 2010.

Mr VINEY — Because the minister asked for the advisory committee report.

Mr GUY — Mr Viney, you can put any spin you like on it; I am just asking a question here. I am clarifying that the report was in the minister’s office on 8 February 2010.

Mr VINEY — You are doing your usual witch-hunting.

Mr GUY — I am asking the question.

Mr VINEY — Innuendo and inference to destroy someone’s reputation.

Mr GUY — It is not Mr Blacher’s reputation.
The CHAIR — Mr Guy, your question?

Mr GUY — I am seeking clarification here because the minister said on 26 February, ‘I have not received the panel’s report’. He did not know about the panel’s report. He said, ‘I understand the department has it’. So he knew the department had it but claimed he did not have it, but in fact it was sent to the private office of the minister. Whether it was sifted through or not, it was sent to the private officer of the minister on 8 February 2010. So what I am asking is — —

Mr TEE — Let it go.

Mr GUY — If you could let me finish. So the truth in the report that has been released by the media strategist — —

Mr VINEY — You know full well this is nonsense. You have been in ministerial offices. You know full well — —

The CHAIR — Mr Viney, order! Mr Guy, the question.

Mr GUY — The question is: where the media plan of the government says ‘Report due first week of February’ is accurate, the minister’s saying it is a speculative document with poetic licence is quite inaccurate because we have now confirmed that it was sent to the minister’s office on 8 February — —

Mr TEE — Is this a question?

Mr VINEY — What is your question?

Mr GUY — because there was in fact an ability for somebody in that office to — —

Mr VINEY — You would do Joe McCarthy proud. You really would.

Mr GUY — Mr Viney — —

The CHAIR — Mr Viney! Mr Guy, ask your question.

Mr GUY — I am asking, is there a guarantee that can be provided that no-one in the department, that there was no access to that report’s findings before it was sent to your department?

Mr BLACHER — As I indicated to you in my evidence earlier, and just to clarify that, ministers receive hundreds of pieces of correspondence. The normal practice in ministerial offices, as members of the committee will know, is that that is sifted through at some point in the minister’s office and correspondence, by and large, then goes down to the department for the department to respond.

Mr GUY — I ask you, Mr Blacher: are all independent reports as such sent to the minister’s private office before they are sent to your department?

Mr BLACHER — They are always addressed to the minister, and by definition they have to go to the person to whom they are addressed.
Mr GUY — The reason I seek clarification is, as I said, my interjecting friends over here have said this is a speculative document.

Mr VINEY — There might be laws around that; there might be federal laws around that.

The CHAIR — Mr Viney! As the Hansard reporter indicates, they can only record one voice at a time.

Mr GUY — And at the moment, Mr Viney, it is not yours.

The CHAIR — Mr Guy, do you have a question?

Mr GUY — Mr Blacher, for your information, the reason I ask you this is not indeed to pillory your department but in fact quite the opposite: your department has a process in place. But clearly, as we have stated, that report was sent to the minister before it was sent to your department, so in fact the speculative piece may in fact be a fact.

Mr TEE — And your question is?

Mr GUY — I would just like to ask in relation to public consultation — —

Mr VINEY — After all of that, there was no question.

The CHAIR — Mr Viney!

Mr GUY — I would like to ask, in relation to public consultation — —

Mr VINEY — On a point of order, Chair.

Mr GUY — When is this document, which we have now established has a very strong basis in fact — —

The CHAIR — Point of order, Mr Viney.

Mr VINEY — Now it is my voice, Mr Guy.

Mr GUY — Goodness me, you have piped up!

The CHAIR — What is your point of order, Mr Viney?

Mr GUY — You have had a coffee this morning obviously.

The CHAIR — Mr Guy, order!

Mr VINEY — Chair, I would have thought it was your task as Chair to actually get the members of this committee to ask the witness a question, not to make grandstanding statements.

Mr GUY — Did you see you appearance at the start of the committee?

CHAIR — Mr Viney, I do not need your assistance, particularly given — —

Mr GUY — Do you want a rewind?

The CHAIR — Or yours, Mr Guy.

Mr GUY — Thank you, Chair.

The CHAIR — Your question, Mr Guy.

Mr GUY — I was actually going to ask about public consultation. Unfortunately Mr Viney got in the way.

Mr VINEY — Well, ask, Mr Guy.

Mr GUY — I am just asking, in this situation where the public consultation, say, for this document would to go out or the minister would send this out to public consultation, who would make that decision?
Mr BLACHER — Sorry, I do not understand the nature of your question.

Mr GUY — You have the panel report.

Mr BLACHER — We have the panel report.

Mr GUY — The panel report comes to you. The minister obviously sees it at a later time. Who makes the decision that it goes out for public consultation?

Mr BLACHER — If there is a decision to be made, it is for the minister to make that decision.

Mr GUY — Would the process of public consultation be managed by the minister or managed by the department?

Mr BLACHER — It would be managed by the department. Let me just clarify it for you, because I think your questions probably reflect perhaps a need for me to give you an insight into how departments and ministers operate.

Mr GUY — I am well aware of that. I am just asking about public consultation.

Mr BLACHER — I am happy to take you through it.

The CHAIR — Order!

Mr TEE — Mr Guy, how about hearing the answer to the question?

Mr BLACHER — I have, over three decades, worked with ministers from both sides of politics, so over 25 ministers.

Mr GUY — Terrific!

The CHAIR — Mr Guy!

Mr VINEY — Were any of them witches?

Mr BLACHER — And never have I come across a minister who has in any way sought to encourage any agency not to comply with the letter and the spirit of the legislation they are responsible for, and Minister Madden is no different to that. I would also say that the public service is required the comply with a code of conduct, and that code of conduct is absolutely critical to the way we would operate. So in no way would the department be acquiescent to a process that could be seen to be a sham process. The whole basis of your question, or the implication of your question, I think, is just simply a misunderstanding of the nature of the processes under which we operate.

Mr GUY — What was my question?

Mr BLACHER — Your question was about who would advise in relation to consultation, and it was preambled by some reference to a sham process.

Mr GUY — No, it was not. I did not mention the word ‘sham’, you did.

Mr BLACHER — No, you did.

Mr GUY — No, I did not.

Mr BLACHER — You referred to it earlier.

Mr GUY — Not in the question I just asked you.

Mr TEE — Now you are fighting with the witness.

Mr VINEY — And loading the questions! There is a grand tradition of inquisitions.
Mr GUY — Please, Chair!

The CHAIR — Order! Mr Viney!

Mr GUY — And the question was clear: who manages the public consultation?

Mr BLACHER — If there was a public consultation process, that would be managed through the department, through a number of different processes, including the establishment of some sort of an advisory or panel body to do that.

Mr GUY — That is what I asked you, and that is what I was seeking clarification on. What I actually wanted to know was how long would it take to sort through, say, a submission phase once it closed, who would go through those submissions, who would make recommendations, and is there a process of then giving those on to the minister to have a look at after you?

Mr BLACHER — That would depend on the process that was decided upon by the minister.

Mr GUY — But you would not have a public consultation phase and then do nothing with the public submissions surely?

Mr BLACHER — No, indeed.

Mr GUY — You would actually do something with them.

Mr BLACHER — Indeed, but the processes will vary from circumstance to circumstance.

Mr GUY — Give me an example. I mean, how would you vary a public consultation phase? When you ask for submissions, surely it is about factoring them in either to the draft document or to the decision being made or to a draft bill. Is there a process of the department then sifting through those? I imagine the minister himself would not, obviously, read all of them.

Mr BLACHER — Again hypothetically, if the process was chosen where essentially it was entirely run by the department, then obviously departmental officers would sift through it. If the process was chosen to have third parties undertake that consultation, then it would be their responsibility to do it.

Mr GUY — Sure. So in a case where the department is managing the submission phase — I am just looking at things like the GAIC bill, for example, which had a consultation phase on it — how long would it take usually for a submission phase between closing and some sort of recommendation then going before the minister?

Mr BLACHER — I could not give you a time line on that. I think, as I said, it depends on the process, it depends on the volume of submissions. There are any number of variables.

Mr GUY — Minister Madden said he would seek to appoint or have you appoint a probity auditor to the Windsor process. Have you begun that process?

Mr BLACHER — Yes, we have.

Mr GUY — Did you discuss with the minister about the probity auditor?

Mr BLACHER — No.

Mr GUY — Did you receive any indication from the minister as to what the probity auditor would look at?

Mr BLACHER — No.

Mr GUY — So the minister picked up the phone to you and said, ‘I just need a probity auditor to look at the Windsor’?

Mr BLACHER — I am not prepared to indicate to you my communications with the minister or his with me.
Mr GUY — Clearly the minister would have to have had a conversation with you about a probity auditor being appointed for the Windsor. I mean, it did not come out of thin air. He did not telepathically send you a message saying, ‘Can you appoint a probity auditor to the Windsor’?

Mr VINEY — The witness has indicated he is not prepared to answer the question.

Mr GUY — Was there a phone call? Was there a letter? I mean, is there — —

Mr VINEY — He does not discuss his communication with the minister.

Mr BLACHER — As you know, communications between ministers and officers of departments remain between those two.

Mr GUY — So there are no terms of reference, no report?

Mr BLACHER — I have determined a framework for the conduct of the audit.

Mr GUY — Does it go outside of your department?

Mr BLACHER — No, it does not go outside my department, but it covers the full process involved, which includes the work of the advisory committee as well as the considerations under the Heritage Act.

Mr GUY — So it is looking at the advisory committee’s report, it is not looking at any processes outside of the actual report or the actual planning process. It is not looking at any influences on the planning processes?

Mr BLACHER — It is looking at the end-to-end process from the time that the application was received to where we are now in consideration of the application.

Mr VINEY — Pretty comprehensive.

Mr GUY — Does your department have a media unit?

Mr BLACHER — My department does not have a media unit.

Mr GUY — Is there a publicity office or do you liaise with the government media unit? I mean, does the department itself have one?

Mr BLACHER — No, we do not have a media unit.

Mr GUY — Basically in terms of your contact with the minister, I noted before that you said there was obviously regular contact with the government media office, and I just wondered if there was any — —

Mr TEE — I do not think that is what he said.

Mr BLACHER — No, I did not say that.

Mr TEE — I think you are misquoting him.

Mr GUY — No, I am just asking, Mr Tee. You can calm down a minute. Mr Blacher can look after himself. He does not need you.

Mr TEE — I am just telling you if you are going to ask him a question, you do not have to verbal the witness.

Mr GUY — Thank you.

The CHAIR — What is the question, Mr Guy?

Mr GUY — I just wondered in terms of your own department whether there was any feedback or participation between the department and departmental processes into government strategy. I mean, you are part of the government, so clearly working for governments there is a departmental — —
Mr VINEY — Part of the public service, I think. It is called the separation of powers, Mr Guy.

Mr GUY — Thank you, Mr Viney.

Mr VINEY — Bjelke-Petersen, your hero, did not understand it either.

Mr GUY — Joan Kirner, your hero, didn’t either.

The CHAIR — Mr Blacher, do you wish to say anything?

Mr BLACHER — Perhaps Mr Guy could just repeat his question again.

Mr GUY — I think I will just ask a couple more in the sum-up. I just wanted to ask what levels of departmental staff would have a register of interests declaration.

Mr BLACHER — A register of interests declaration?

Mr GUY — A conflict of interest register of interests.

Mr BLACHER — My department does not just cover planning, but I presume we can just deal with planning. All officers who deal with planning matters provide a declaration of interests in general at senior level, and any non-senior officers, where they are dealing with particular applications, need to be able to attest that there is no conflict of interest in any matter that they are dealing with.

Mr GUY — Who manages it?

Mr BLACHER — That is managed within the department.

Mr GUY — The conflict of interest declaration?

Mr BLACHER — Indeed.

Mr GUY — The ministerial staff who are employed through DPCD sign that as well?

Mr BLACHER — Ministerial staff are not employed by DPCD; they are employed by the minister.

Mr GUY — So how would there be a potential conflict averted from, say, the ministerial staff working on a project? Who would monitor that?

Mr BLACHER — You will have to direct that question elsewhere.

Mr GUY — We don’t know. Thank you for now.

The CHAIR — Thank you, Mr Guy. Mr Hall.

Mr HALL — Thank you, Mr Chairman. Mr Blacher, I want to just make sure my interpretation of your response to a couple of Mr Guy’s questions is accurate. In respect to your comment in paragraph 18 that on 8 February the advisory committee report went to the minister, you said you were not sure when the department then received that report from the minister’s office.

Mr BLACHER — I indicated that the report went to the minister’s office in a letter that was dated 8 February, and I indicated to the committee I would provide it with advice on when it came to the department.

Mr HALL — Yes, you will check up on that. Thank you for that. I think you also responded to a question from Mr Guy which I intended to ask and that was how long it would normally take for the advice to be worked through by the department and provided back to the minister. You said there is a large number of variables —

Mr BLACHER — That is right.
Mr HALL — And therefore it was difficult to determine. On this particular project do you have any time frame as to your expectation as to when a report from your department back to the minister might be forthcoming?

Mr BLACHER — No, I do not at this stage.

Mr HALL — How long would perhaps typically the shortest period of advice — return advice — be compared with the longest? Are we talking about in the shortest time frame weeks or in the longest time frame months or years?

Mr BLACHER — We certainly would not have the longest time frame in years. I am not trying to avoid your question, Mr Hall. There are many applications that require the minister’s consideration, and sometimes they are more easily dealt with and sometimes less. The time frame can be anything from weeks to months.

Mr HALL — Weeks to months, okay. On receiving a report from the advisory committee your department then considers that and ultimately provides further advice to the minister’s office in respect to that advisory committee report. What matters other than those that would have been considered by the advisory committee does the department take into consideration?

Mr BLACHER — Let me speak to the matter in general rather than specifically. There may well be referral authorities that have to have a view, and indeed in relation to the Windsor the director of transport is a referral authority, so we would take account of that view.

Mr HALL — So the advisory committee does not seek a comment from any referral authorities?

Mr BLACHER — They may be aware of the advice from the referral authority if it has come in but the process is a separate process. And it is generally not relevant to the specific considerations. I mean, these become matters where the referral authority may have a view, in this particular case on transport interactions. If that advice has come to the department, then generally it would be made available to the advisory committee. There may well be a range of other statutory matters that need to be taken account of and then advice is prepared in accordance with what the minister is required to address in his decision making and also alerting the minister, which is generally the case, to what his discretions are under the act.

Mr HALL — Would that advice to the minister also perhaps encompass things like precedents or similar applications in the past? I am just trying to understand just what different views — —

Mr BLACHER — It may. There is not a standard format. It may relate to similar decisions that have been made in the past in order to assist the minister to understand the implications of whatever decision he might make.

Mr HALL — And the collation of that and the assessment of that extra information and therefore the advice sometimes still takes months to do.

Mr BLACHER — It can.

Mr HALL — All right. I just want to move on then. Does the department have a designated person to liaise with the office of the minister?

Mr BLACHER — There is not a designated person, no. All departments have departmental liaison officers who essentially manage the paper flow, but essentially the protocol generally is minister’s offices interact as freely as they like with senior officers in the department. The primary interactions are with the senior officers.

Mr HALL — Are you aware if the minister’s office has a person nominated to liaise directly with the department?

Mr BLACHER — As I said, staff from the minister’s office interact in a variety of different ways with the department. That is just part and parcel of good public administration.

Mr HALL — Including media advisers?
Mr BLACHER — Not media advisers.

Mr HALL — They are different. All other ministerial staff would liaise with senior officers of your department but not media advisers.

Mr BLACHER — That is right.

Mr HALL — Why are they different?

Mr BLACHER — The department’s interactions are essentially with the minister and his immediate office in relation to policy and administration matters. Questions in relation to media or so-called media strategy are essentially entirely a matter within the minister’s office. We do not participate in any of that nor interact with any of that.

Mr HALL — If a media adviser wanted to check a matter of fact, for example, they would not as a matter of course contact anyone in the department?

Mr BLACHER — There may be contacts in matters of fact, but they would only be in matters of fact on matters on which there had already been decisions made. They would not be on trying to find out where a particular issue is in the process. That would not be appropriate, and the department would not respond to a media adviser if that were the case.

Mr KAVANAGH — Thank you, Mr Blacher, for your evidence this morning. What you have basically told us is that the processes within planning are transparent and accountable.

Mr BLACHER — Yes.

Mr KAVANAGH — But wouldn’t you say that the planning minister is very powerful, in spite of those processes?

Mr BLACHER — I do not think that is an appropriate question for me to respond to.

Mr KAVANAGH — Isn’t it?

Mr BLACHER — I can respond to you in the context of — —

The CHAIR — If I can just advise Mr Kavanagh: we are not in a position to seek opinions from Mr Blacher.

Mr KAVANAGH — No, I am asking for expert opinion, which is normally admissible in a court of law, for example.

The CHAIR — But as an officer of the public service Mr Blacher is not in a position to offer his opinion.

Mr KAVANAGH — The planning minister has a role in appointing the advisory committee, for example, is that right?

Mr BLACHER — Indeed.

Mr KAVANAGH — And you mentioned the possibility, for example, as part of the transparent and accountable process, that decisions can be disallowed by a house of Parliament, for example.

Mr BLACHER — That is right.

Mr KAVANAGH — And yet you would know that the last disallowance was overcome by the minister by using regulations — the Barwon bridge disallowance by the Legislative Council.

Mr BLACHER — That was not the last one; there was a more recent one that was disallowed.

Mr KAVANAGH — An important one explicitly disallowed by the upper house was overcome by the minister using powers.
Mr BLACHER — Yes.

Mr KAVANAGH — And wouldn’t even an implicit indication by a minister have a powerful effect on people in the department of planning? I mean, if the minister indicates that he wants a certain result, wouldn’t that have a powerful effect on other people within the department?

Mr BLACHER — I am not quite sure how to answer your question other than to say that the public service serves the government of the day — always has and I suspect always will. If a minister indicated a particular disposition that was not in compliance with legislation, either in letter or in spirit, or required the public service to do something that was not consistent with the code of conduct, the public service would not do it.

Mr KAVANAGH — You have indicated already that you have had vast experience in the public service. I think you said 25 years?

Mr BLACHER — Twenty-five ministers; a little longer in years.

Mr KAVANAGH — All right. In your experience in the public service doesn’t the person in charge, the minister, influence the culture of the department?

Mr BLACHER — Actually, no. The cultures of departments are long and deeply embedded. Whilst certainly departments like to be responsive to ministers, those cultures in a sense have their own trajectories that are not really particularly impacted on by ministers.

Mr KAVANAGH — Not particularly, but to some extent?

Mr BLACHER — I am not sure how to respond to that, Mr Kavanagh. I think I have outlined to you the processes of interaction between departments and ministers. I am not sure I can add anything further.

Mr VINEY — It is a 400-year old tradition, the Westminster system.

Mr KAVANAGH — You have indicated that communication with a media adviser is essentially with the minister and that your communication is essentially with the minister, so you are suggesting that you do not often see the communication between a minister and a media adviser, is that right?

Mr BLACHER — That I do not often see the communication?

Mr KAVANAGH — Yes.

Mr BLACHER — Yes, that is right.

Mr KAVANAGH — To the limited extent that you do see the communication, would you say that the email in question of 24 February is an aberration, or have you seen something like that before?

The CHAIR — Again, Mr Kavanagh, you are seeking an opinion from Mr Blacher on that; I do not think we can ask him to address that matter.

Mr KAVANAGH — Is it a matter of opinion or of fact as to whether he has seen a similar email before?

The CHAIR — If the question is, ‘Have you seen a similar email before?’ then that is a question of fact, yes.

Mr KAVANAGH — Have you seen a similar email before?

Mr BLACHER — I have not even seen that email. The only thing I know of that email, so-called, is what I actually read in the media on the weekend following. So the answer is no, I have not seen that, and I have not even seen that email.

Mr KAVANAGH — Do you know of a similar email?

Mr BLACHER — No.
Mr KAVANAGH — Because the question is really, I think, whether this email is an aberration or reflects a culture. Can you shed any light on that from the factual information at your disposal?

Mr BLACHER — I think you are asking me to express an opinion, but as a matter of fact, as best I can answer your question, whatever was in that email would have absolutely no influence on the process that would be used going forward regardless of what the person who wrote the email thought might be the case.

Mr KAVANAGH — In saying that, you are really speaking for the minister, though, aren’t you, rather than yourself?

Mr BLACHER — No, I am speaking for myself.

Mr KAVANAGH — The email was about a media plan. You are not involved in the — —

Mr BLACHER — No, I am not involved in the media plan but I think I am indicating to you that to the extent that the email indicated the view of somebody about a contrived process, that process would not have happened. It would not happen because the public service would not agree to it. The point I am simply making to you is that the email itself is of no relevance to the process relating to the consideration of the Windsor application, whatever the writer thought might be the case.

Mr KAVANAGH — Thank you.

Mr VINEY — I will ask a few questions. Mr Blacher, you have said that you have experience with 25 ministers. I just want to clarify: who has the relationship with the media, the department or the minister’s office?

Mr BLACHER — The minister’s office.

Mr VINEY — So out of the 25 ministers that you have had it would be reasonable to expect that they apply some kind of thinking about that relationship with the media and how that relationship might work. In your experience they would have to do something to have some sort of plan?

Mr BLACHER — I assume so.

Mr VINEY — In mediaeval England, before the advent of due process of law, one of the means of testing the guilt or innocence of persons charged or alleged to have committed crimes was to put them in a river for 10 minutes. If they came out breathing, they were guilty, and if they came out dead, they were innocent. I am wondering: have you got anyone big enough in the department to put a 6 foot 10 inch ex-footballer in the river for 10 minutes to test his guilt or innocence on this matter?

The CHAIR — Relevant to the terms of reference here — —

Mr VINEY — No, do not answer the question.

Mr GUY — What the hell is that all about?

The CHAIR — Do you have questions relevant to the terms of reference, Mr Viney?

Mr VINEY — No.

The CHAIR — Mr Blacher, throughout your presentation you referred to senior officers in your department. By ‘senior officers’ are you referring to people who are at executive officer level as distinct from VPS level?

Mr BLACHER — Yes.

The CHAIR — And you indicated, I think in response to Mr Barber, that your department does not brief ministerial staff or media advisers et cetera, but you have also indicated that there is contact between officers of your department and ministerial advisers. Can you draw the distinction between what you mean by ‘briefing’ those people and the contact that they would have with your departmental officers?
Mr BLACHER — There are a variety of conversations, as there have to be between ministerial staff and ministers and the department, otherwise public administration cannot work. When I referred to briefing ministerial staff I was referring to written briefs to those staff, but there are conversations that go on all the time, as there have to be.

The CHAIR — Would your departmental staff have meetings with ministerial staff that do not include the minister?

Mr BLACHER — Yes, of course.

The CHAIR — Thank you. There were further questions from Mr Barber.

Mr BARBER — In paragraph 18 of your testimony again, Mr Blacher, you confirm that:

On 8 February … 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.

So you mean referred from the minister’s office to your department?

Mr BLACHER — Yes. ‘Referred’ is just a technical word for being sent down to the department.

Mr BARBER — Sure. And when did that happen?

Mr BLACHER — That is referring back to Mr Hall’s question and Mr Guy’s question. I said I would provide you with that information. I do not actually have it with me.

Mr BARBER — Okay, thanks. This proposition that comes out of Ms Duke’s email, that the panel report would be released publicly for public comment — it is not normal for any sort of panel report to be released and for you to then seek further public comment on a panel report, is it?

Mr BLACHER — If you are asking me in relation to my interpretation of what was written in that email, then I do not think I am able to respond. It is not usual for panel reports to be released for further comment. That is the case.

Mr BARBER — Yes. In fact it is more common that the minister releases his decision and the panel report that helped guide the decision simultaneously.

Mr BLACHER — That is normal practice. That is right.

Mr BARBER — As a done deal. If the minister was to seek further input from the public in relation to this Windsor matter, they would really have to have the status of objections under a planning permit section 61 decision, wouldn’t they?

Mr BLACHER — Not necessarily.

Mr BARBER — No?

Mr BLACHER — Not necessarily. The likelihood is that if that was the case, you would get overwhelmingly people who did not support whatever was in the planning report, whether it was positive — for the development — or against the development.

Mr BARBER — No, but what I am saying is: there is a planning permit decision on foot here. The advisory committee’s report is really just another form of input that the minister receives. When he comes to issue the planning permit he must consider all objections received separately.

Mr BLACHER — That is right, as part of his decision-making process.

Mr BARBER — Right. So if we release a panel report — or a committee report in this case — and then ask the public to give us views on that, there would be a lot of confusion about whether they are simply giving us their opinion of the committee report versus lodging an objection to the permit?
Mr BLACHER — I think, Mr Barber, that just makes my point — the point I made earlier — that whatever was in the email just simply was not going to happen because it was an absurd construction.

Mr BARBER — That there is no way to release a panel report and then get further feedback on it.

Mr BLACHER — The department simply would not do that. It is, as you say, an absurd construction. It would create huge confusion and simply would not occur.

Mr BARBER — It would almost bring the planning system into disrepute if it was tried.

Mr VINEY — Do you want to put words in the mouth of the witness?

Mr BARBER — I can put it another way. There is no legal — —

Mr VINEY — Come on, ask a question!.

Mr BARBER — There is nothing in the Planning and Environment Act that really allows for that sort of process. Is that what you are saying?

Mr BLACHER — It simply would not occur.

Mr VINEY — I cannot believe the Greens are participating in a McCarthy witch-hunt. What a disgrace!

Mr BARBER — The minister also has the power under the act to do what is called an appeal call-in — that is, call in and act in the place of VCAT. Is there anything in the act that prevents the minister from doing an appeal call-in when the appeal is against his own decision?

Mr BLACHER — There is nothing in the act that prevents him from doing that.

Mr BARBER — Okay. You also said that you have appointed a probity auditor and that you are creating the framework against which they will do that audit, so clearly they would go through all the documentation associated with this and ensure everything has been done in accordance with the act.

Mr BLACHER — That is right.

Mr BARBER — Will they also ask about external contact that does not fit into the normal planning permit process?

Mr BLACHER — I have put no constraints on the auditors at all. Essentially they are quite at liberty to get any documents they like — indeed we have provided them with all the documents — and to speak to whoever they like. It is an independent audit process, and in order for it to have credibility I have put no constraints on them.

Mr BARBER — But, for instance, if they interviewed the officer responsible for the planning permit file and that officer said, ‘I had a call from a ministerial adviser’, that could form part of the audit.

Mr BLACHER — I am not prepared to respond to particular hypotheticals. They are free to speak to anybody they like, in terms of any determination they like, around the conduct of the audit.

Mr BARBER — It is just that when you say ‘audit’, auditors audit against a standard and so far all you are telling me is that the standard here is that the act was complied with. But the auditor has been appointed in relation to a particular controversy, and the controversy may be that a ministerial staff or others were trying to rig a process. Does it therefore fall to that auditor to decide whether there was inappropriate contact from persons outside your department — meaning those departmental staff who are responsible for the permit?

Mr VINEY — Just on the question — —

The CHAIR — Point of order?
Mr VINEY — Yes, it is a point of order. The question’s preamble made an allegation in relation to rigging a process. I understand there is a witch-hunt where we are trying to gather the evidence to prove the outcome —

The CHAIR — What is your point of order, Mr Viney?

Mr VINEY — The point of order is: how can you allow a question that has actually got a statement relating to an outcome in the question? These sorts of questions would never be allowed in a court of law.

The CHAIR — We are not in a court of law.

Mr VINEY — Here we are, Jon Faine has called this a trial. Jon Faine this morning referred to this as a trial. What we know is that you have already convicted and sentenced — —

The CHAIR — Mr Viney!

Mr VINEY — And your finding of guilt on Wednesday in the Council, and now here is an absolute example of the Greens trying to seek evidence to prove the outcome that they have already concluded in the form of that question. It is absolutely out of order.

The CHAIR — Mr Viney, firstly, this is not a court of law. Secondly, Mr Barber is not the only person to make statements in his questions. I am sure Mr Blacher is more than capable of answering appropriately.

Mr BARBER — Chair, Mr Blacher does not have to say what the auditor will not do or will do, that is fine.

Mr VINEY — But if he answers your question, it assumes that the preamble to your question is correct.

Mr BARBER — No.

Mr VINEY — You give a 5-minute preamble to a question and if he answers it, it is an assumption that the preamble is correct.

The CHAIR — I do not accept that.

Mr VINEY — You have got to go through and actually correct the preamble before he can answer the question.

Mr BARBER — Let me rephrase the question.

Mr VINEY — Thank you.

Mr BARBER — There is no constraint against this probity auditor considering whether there may have been outside contact into your department’s consideration of the planning permit?

Mr BLACHER — I think the only way I can answer your question is that the probity auditors will examine everything that is relevant to the planning application and its conduct and the process of it from the time that the application came in to where it is at the moment.

Mr TEE — And they then decide who they want to talk to.

The CHAIR — Mr Tee.

Mr BARBER — Yes, they do. This committee wants to talk to ministerial advisers about activities that may or may not have happened inside the minister’s office. The government’s view is we are not allowed to do that. Is your auditor allowed to do that?

Mr VINEY — Is this a question?

Mr BARBER — Is your auditor allowed to interview ministerial advisers about any involvement they may have had in the process? Are they able or allowed to do that?
Mr BLACHER — Should they decide that they wanted to do it, they could, but I actually think it is a strange question to ask, because the issue at hand that you referred to, and we are talking about the email, is absolutely irrelevant to the process. I have explained to you how it is irrelevant from a number of different perspectives and you keep coming back to it. You are quite entitled to do that, but it is irrelevant to the process. There is no way in which a ministerial adviser, or indeed a media adviser, can actually interfere or have a view about a statutory process.

Mr BARBER — Well, this one did have a view about it — she wrote it down and sent it to people.

Mr VINEY — Yes, but it is irrelevant.

Mr BLACHER — I meant, as you understand, to have a view that is effectively a material view — —

Mr VINEY — Of some standing.

Mr BLACHER — That is effectively a material view to that process. It simply does not happen.

Mr VINEY — All the people in the committee have apparently got views about the minister’s guilt: they have already voted for it.

The CHAIR — Mr Viney.

Mr BARBER — So even if a ministerial adviser had called the departmental officer who has got this file in their desk and asked questions about it or put views about it, that would be irrelevant to the consideration and you do not even want to know about it.

Mr BLACHER — There are very specific processes under the act, and these are the processes that departments followed. At the end of the day ultimately it is the minister who makes the decision, as you well know, and the minister makes the decision — —

Mr GUY — That is the point.

Mr BLACHER — That is right. And the minister has a number of discretions on the basis of which he can exercise his decision-making responsibilities.

Mr BARBER — But your department is out there pinging local government councillors all the time for having what you guys seem to consider to be ‘prohibited contact’ with officers of their own council. Sometimes it is just because they ask a question about a planning permit or seek to nudge that officer’s view in a particular direction. Councillors can be thrown out of office for that — —

Mr GUY — Or taken to court.

Mr BARBER — I am simply asking you: are you going to be concerned to find out whether any staff from the minister’s office spoke to or even attempted to direct any of your staff under your head?

Mr BLACHER — Ministerial staff do not direct departmental officers; ministerial staff do speak to departments all the time. The notion that that is inappropriate is an absurd notion in relation to public administration, as I am sure you do know, Mr Barber.

Mr BARBER — I agree with you, in fact, and that is why I rebel against the idea that a local councillor seeking information from their — —

Mr VINEY — That is not relevant to this inquiry.

Mr BARBER — It is the same act. It is the administration of the same act.

Mr VINEY — That is not relevant to this inquiry.

The CHAIR — It is to a certain extent.
Mr BARBER — If a local councillor rings up their council planning officer and says, ‘I want to know how you are making that decision’ or, ‘I reckon this is the way it should go’ or, ‘This is the way it is going to go when it comes to council, so you had better take notice of what I am telling you’, they can get pinged for that, so I was simply asking you a question whether that sort of contact would be inappropriate. You are not saying it is inappropriate, you are saying it is ineffective. You are saying it is a legal irrelevancy. I want to know if you think it is inappropriate and whether the probity auditor will be seeking to find out whether any of that sort of contact occurred.

Mr BLACHER — I have indicated to you that the probity auditor will cover the whole process of the consideration of the application from the day the application came in to where it is at the moment.

Mr BARBER — Will we get to see that report?

Mr BLACHER — The minister has indicated that the probity auditor’s report will be public.

Mr BARBER — Thank you.

The CHAIR — Are there any further questions?

Mr GUY — I will just ask one about the last point, Mr Blacher. You said that the minister had indicated that the probity auditor’s report would be public. Have you spoken to the minister about that?

Mr BLACHER — He made a public statement about that.

Mr GUY — So you are taking it based on the public statement?

Mr BLACHER — I am indeed.

Mr GUY — Thank you.

The CHAIR — Thank you, and Mr Hall had a question.

Mr HALL — You said in response to Mr Barber’s questions that it was not usual to release an advisory panel report and seek further public comment. Did that happen at all in the Barwon Heads bridge project, in the Bastion Point project, for example?

Mr BLACHER — Mr Hall, I do not recall. I can get that information for you if you like.

Mr HALL — I would appreciate it if you could check to see whether the panel report was actually released for further public comment or not in those two particular projects.

Mr BLACHER — Okay, I will be happy to do that.

Mr HALL — Thank you.

The CHAIR — If there are no further questions, Mr Blacher, thank you for your evidence here this morning setting out the framework of this particular planning process. We will conclude the hearing at this point, but the committee reserves its right to recall you if there are further matters that arise, but we appreciate you making yourself available today — we know through the secretary that you did have other arrangements today, so it is much appreciated. We will have a draft version of the transcript to you in the next couple of days for any corrections. Thank you very much.

Committee adjourned.