STANDING COMMITTEE ON FINANCE AND PUBLIC ADMINISTRATION

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

Melbourne — 1 June 2010

Members

<table>
<thead>
<tr>
<th>Mr G. Barber</th>
<th>Mr G. Rich-Phillips (Chair)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr M. Guy</td>
<td>Mr B. Tee</td>
</tr>
<tr>
<td>Mr P. Hall</td>
<td>Mr M. Viney (Deputy Chair)</td>
</tr>
<tr>
<td>Mr P. Kavanagh</td>
<td></td>
</tr>
</tbody>
</table>

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Witness

Ms P. Digby, deputy secretary, planning and local government, Department of Planning and Community Development (sworn).

Necessary corrections to be notified to secretary of committee
The CHAIR — I declare open the Legislative Council Standing Committee on Finance and Public Administration public hearing. Today’s hearing is in relation to the inquiry into Victorian government decision-making, consultation and approval processes. Specifically the hearing will focus on the Windsor Hotel redevelopment planning process.

I welcome Ms Prue Digby, deputy secretary, planning and local government, for the Department of Planning and Community Development. 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 being recorded by Hansard, and witnesses will be provided with a proof version of the transcript in the next couple of days.

The CHAIR — Thank you, Ms Digby. I now ask you to make an opening statement, if you wish, or the committee will proceed to questions.

Ms DIGBY — I, Prue Digby, of level 8, 8 Nicholson Street, Melbourne, state as follows: I am the deputy secretary, planning and local government, within the Department of Planning and Community Development, known as DPCD. In this capacity and reporting to the secretary, Mr Blacher, I oversee the operations of the departmental group known as planning and local government. The group is responsible for land-use planning, heritage planning and environmental assessment in Victoria as well as delivering major planning and urban development projects. My group also works in partnership with Victoria’s 79 local councils to increase their capacity to provide local services and build stronger communities.

The group is comprised of the following business units: Heritage Victoria, Local Government Victoria, planning policy and reform, planning services and development facilitation. Each of these units is managed by an executive director, reporting to me, who oversees the day-to-day operations of the respective business unit. The chief panel member, who manages the day-to-day operations of Planning Panels Victoria, reports to me, as does the director of the group business support services unit.

The planning and local government group responds primarily to two ministers: the Minister for Planning and the Minister for Local Government.

I have been employed in the public sector across state and local government for over 25 years and have been a deputy secretary in the planning area since shortly after the establishment of the Department of Planning and Community Development in August 2007. I am an employee of the Crown; I attend before the standing committee in my capacity as a member of the Victorian public service and as a representative 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 Protection of Witnesses; and the Code of Conduct for Victorian Public Sector Employees (No. 1) of 2007.

I have come here today upon request to discuss the Windsor development. To start I will now explain the administrative processes that are relevant to that development.

Two discrete administrative processes applied to the application to develop the Windsor Hotel: the planning process as mandated by the Planning and Environment Act 1987, and the heritage process, regulated by the Heritage Act 1995. Within the planning and local government group the heritage and the planning services development facilitation unit operate independently of each other. The executive director of each unit reports to me.

Let me turn to the Planning and Environment Act 1987. The Planning and Environment Act establishes a framework for planning the sustainable use, development and protection of land in Victoria and seeks to strike a balance between community involvement in the planning process and decision making. Planning, by its nature, is a highly contested area of public administration. In response to this reality the structure of the act provides for a system of checks and balances which provide for transparent and accountable planning decisions. Some of these checks and balances are relevant to the Windsor Hotel redevelopment process, and I shall deal with them in that context.
As a general observation it is fair to say that over the last two decades the planning process has become more transparent. The general thrust of the amendments to the act over that period and, indeed, the practice of successive ministers, has been to make more information about the process and individual projects available to the public and to encourage public participation in the processes themselves.

The minister plays an important role in the planning regime. The minister’s actions are subject to administrative review by the Victorian Civil and Administrative Tribunal, VCAT, and in some instances to judicial review by the Victorian Supreme Court. A significant part of the department’s work, and therefore my role, is ensuring that the statutory processes are followed, natural justice is accorded and that when the minister comes to exercise powers of decision he is properly and fully appraised of the relevant considerations and is assisted to make his decisions according to law.

The department provides its advice to the minister. While it is a normal and proper aspect of public administration that there are discussions between ministers’ officers and departments on all range of matters relating to the business before the minister, the advice is ultimately for the minister and delivered to him. In preparing and delivering its advice to the minister, the department observes the provisions of the Public Administration Act 2004 and the public service code of conduct which, in effect, codify the proper principles of good public administration and its best practice. My officers are bound to be independent and impartial both in their administration of processes and in their provision of advice.

To further ensure probity of process and delivery of impartial advice all senior officers who deal with planning matters are required to provide a declaration of interests to ensure no conflicts upon their initial appointment to their role, then annually and if their circumstances change. Non-executive officers must, by virtue of the Public Administration Act and the code of conduct, be able, upon the request of the secretary, to attest that they do not have a conflict of interest in any particular matter with which they are dealing.

The committee will, of course, be aware that the department gives advice upon process, administration, law and policy but it does not decide those things; that is the role of the minister and role of the government of the day. The department manages and advises upon the statutory responsibilities of its ministers.

I would like now to take the committee to the particulars of the Windsor redevelopment application. The committee will, no doubt, observe that the planning and heritage processes which applied to this application have in all respects been the usual processes as for other major developments in this state. Section 47 of the Planning and Environment Act and the relevant planning scheme for Melbourne require a planning permit to be obtained for the development of the Windsor site. That is because the land is zoned capital zone schedule 1 and subject to the following overlays: design and development overlay, schedule 1 (area 2); design and development overlay, schedule 1 (area 3); design and development overlay, schedule 2; design and development overlay, schedule 2; design and development overlay, schedule 3, which is traffic conflict frontage; heritage overlay; heritage overlay schedule; and the heritage overlay schedule. I did not read out all the numbers associated with those, but you can see them before you.

The zone and overlay requirements require a permit for buildings and works. A permit is also required from Heritage Victoria as the Windsor Hotel is listed on the Victorian Heritage Register. This application and decision-making process was conducted in parallel with and independently from the planning permit application process.

The Windsor Hotel redevelopment site is, as you know, at 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. The minister has been the responsible authority in relation to these major development applications since 1986.

In relation to the pre-application process it is not unusual in the case of complex developments and indeed the department’s published guide Using Victoria’s Planning System recommends meeting with the responsible authority prior to making an application. The rationale is as follows. Just because a person is able to apply for a permit, does not imply that a permit should or will be granted. The responsible authority has to decide whether the proposal will produce acceptable outcomes in terms of the state planning policy framework (SPPF), the local planning policy framework (LPPF), the purpose and decision guidelines of the planning scheme.
requirements and any other decision guidelines in clause 65 of the scheme. Meeting with the responsible authority before the application is finalised and submitted can avoid both cost and delay.

In such meetings advice would be provided upon whether a permit is required and why; the nature and amount of supporting information to submit with an application; any state and local planning policies, including the municipal strategic statement, that should be addressed as part of the application; any relevant guidelines, requirements or particular provisions that may apply; and any referral authorities relevant to the application that must be notified.

The minister is of course a responsible authority, and one might expect proponents to have one or more pre-application meetings with the minister in that capacity. One such meeting with the proponent took place on 17 June 2009. The minister was accompanied by officers of the department. The proponent had a further pre-application meeting with departmental officers on 23 July 2009.

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. The application proposed part demolition of the existing buildings and construction of new buildings and works, including varying the applicable preferred height control. In particular what was proposed was part demolition of the rear and side sections of the existing hotel 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.

On 24 August 2009 the department sent a letter to the applicant, requesting more information in order to deal with the application under section 54. The information was provided on 18 September 2009. On 25 September 2009 the department sent a further letter to the applicant, setting out details of notification requirements in relation to the application. Among other things, this required the applicant to notify adjoining owners and occupiers and others specified in the act, including any to whom the grant of a permit might cause material detriment. The point of this notification is that a person who may be affected by the grant of a permit may object to the grant of a permit.

The department provided a copy of the application to the director of public transport as a referral authority prescribed by the planning scheme under section 55 of the act on 23 September 2009. The application was also referred to the City of Melbourne under section 52 of the act on 23 September 2009. The Office of the Victorian Government Architect was asked for comment on 6 October and also on that date the National Trust was informally advised of the application.

On 27 October 2009 the minister directed the establishment of 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 be issued and, if so, on what terms. This was done under section 151 of the act. It is a mechanism to address both the particular complexity of the planning issues in the Windsor case and the likely volume of submissions that might need to be considered.

It is not a mandatory step in the process but is often used when issues might be complex or there are likely to be a significant number of submissions to be dealt with and the advice to the minister would be assisted by the input of expert committee members.

The chief panel member of Planning Panels Victoria nominated a chair and two members to constitute the advisory committee. The nominees were selected because of their skills and expertise in relation to the issues raised by the proposal. Before their appointment it was ascertained that no nominee had any conflict of interest in considering the proposal. The members of the advisory committee were subject to the provisions of the Public Administration Act 2004 and the code of conduct for Victorian public sector employees 2007, which of course also applies to all employees of the DPCD, including Heritage Victoria.
The act and the code prescribe a number of important mandatory standards, particularly those going to integrity and the duty to provide advice that is free of prejudice or favouritism and that is based on sound judgement.

It was the case that from 1 December 2009 the applicant was at liberty to appeal the minister’s failure to decide the planning application within the statutory time frames to VCAT.

On 3 December 2009 the minister appointed the members of the advisory committee. The minister requested the advisory committee to advise him on all relevant matters concerning the planning permit including the relevant heritage provisions, planning policies, built-form controls, design and economic considerations, and any relevant submissions received. On 10 December 2009 the advisory committee held a public hearing and heard from the Victorian branch of the National Trust of Australia, Melbourne City Council and the applicant. It undertook an on-the-papers review of the written submissions.

On 8 February 2010 the advisory committee delivered its report to the minister’s office. As is usual with such correspondence, a copy of the advisory committee report was given to the department. The report provided an assessment of the relevant issues, assessed the submissions and recommended that the planning application be approved.

With respect to the heritage process, a parallel heritage process was also under way. As the Windsor is a registered place on the Victorian Heritage Register, a heritage permit was required to carry out the proposed works and activities on the site. Heritage issues impact upon planning process but involve different considerations and so are dealt with separately by the department and are regulated by separate legislation — the Heritage Act 1995. The act establishes the Heritage Council as a body corporate, independent of the department. The council has a number of duties including the hearing of appeals against a decision of the executive director of Heritage Victoria which affects a heritage place.

The office of executive director is mandated by the Heritage Act, which spells out his functions including the duty to determine applications for permits and consents in heritage matters. As such, the processes and deliberations of Heritage Victoria are discrete from those of planning within DPCD.

The project proponent submitted an application for a heritage permit with Heritage Victoria pursuant to the Heritage Act on 28 July 2009.

The permit application was considered by the executive director in accordance with the process set out in 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.

In this particular case the matter proceeded as follows. Following its lodgement, a copy of the application was forwarded to Melbourne City Council. The executive director requested that the applicant publish notice of the application in newspapers circulating in the Melbourne region, notification of which was received on 13 October 2009. A copy of the application was made available at the office of the executive director and on the Heritage Victoria website. Written submissions were received from interested parties, and requests were made by the executive director for further information from the applicant.

In considering the application the executive director was bound to consider a number of factors, including the extent to which the application, if refused, would affect the reasonable or economic use of the registered place or registered object or cause undue financial hardship to the owner in relation to that place or object; any submissions; any matters relating to the protection and conservation of the place or object that the executive director considers relevant; and the extent to which the application, if approved, would affect the cultural heritage significance of the registered place or registered object.

On 13 March 2010 the executive director issued the heritage permit and the applicant was notified of the decision.

On 10 May 2010 the applicant submitted an appeal against a condition of the executive director’s decision in relation to the heritage permit. The appeal is yet to be determined by the Heritage Council.
The committee will be aware that this matter — the Windsor Hotel — became a matter of public interest in late February 2010.

The committee will also be aware that the department engaged PricewaterhouseCoopers to audit the activities undertaken by state planning services, the advisory committee and Heritage Victoria in processing both the planning and heritage permit applications. I understand that the committee has heard from PricewaterhouseCoopers, who found no evidence of non-compliance with usual procedures and no evidence of any attempted interference with those procedures.

The minister was briefed regarding the proposal on 17 March 2010. As the committee is aware, RSM Bird Cameron had been engaged as probity advisers from 11 March 2010 to provide a probity report on the process leading to the department’s advice to the minister and the brief of advice itself. They advised that the brief was appropriate.

In considering the planning permit application the minister was called upon to decide whether to grant a permit, grant a permit subject to conditions, or refuse to grant a permit on any grounds he thought fit — section 61.

In arriving at his decision, the minister was obliged by section 60(1) of the act to consider the relevant planning scheme, the objectives of planning in Victoria, all objections and other submissions which had not been withdrawn, any decision and comments of a referral authority, any significant effects which he considered the development may have on the environment or which he thought the environment may have on the development.

Section 60(1A) of the act sets out other matters the minister may consider before deciding on an application if the circumstances appear to so require. The considerations that may have been relevant for the Windsor application included any significant social and economic effects of the use or development for which the application is made; any other strategic plan, policy statement, code or guideline which has been adopted by a minister, government department, public authority or municipal council; and any other relevant matters.

On 18 March 2010 the minister gave notice of decision to grant the planning permit.

The committee will be aware that the applicant has sought review of the minister’s decision on the planning permit by VCAT — sorry; that is incorrect. The matter is yet to come before the tribunal.

As I mentioned earlier, the heritage permit has also been appealed to the Heritage Council. This appeal is yet to be heard. I may seek leave to have an alteration to my statement on point 61. I just want to check that. My understanding is it is the National Trust. I might have to correct that in my statement.

The CHAIR — That the National Trust is seeking a review of the decision?

Ms DIGBY — Correct. Sorry, that should be changed. That is the conclusion of my statement.

The CHAIR — Thank you, Ms Digby. Are you happy to have that corrected now or would you like to confirm that in writing a response?

Ms DIGBY — I would like to just triple confirm the wordings, but I would like to correct it.

The CHAIR — Thank you for your submission. I will ask Mr Barber to take the call.

Mr BARBER — Ms Digby, in paragraph 21 of your statement, over the page, it actually says:

The zone and overlay requirements require a permit for building and works.

The zone requirements being capital zone, though, do not allow for notice or review for neighbours and so forth to object, do they? They exempt the decision-maker from notice and review?

Ms DIGBY — My understanding is that is correct, but I will have to check that. Obviously the process did allow for people to put in submissions if they objected. So I would — —

Mr BARBER — Yes. So notwithstanding no requirement for notice, you did in fact direct them to give notice to some neighbours and so forth?
Ms DIGBY — Yes.

Mr BARBER — I understand that the National Trust sought leave to have a review. You say here that it has not yet been determined, but my understanding is that the National Trust were not given leave to seek a review from VCAT?

Ms DIGBY — I will have to check that. My understanding is that they have made an application. I do not know whether that has been determined.

Mr BARBER — Given that they do not have that right under the capital zone, they would be seeking some kind of special leave, wouldn’t they — —

Ms DIGBY — That would be up to VCAT to determine.

Mr BARBER — In order to take it to VCAT?

Ms DIGBY — Yes.

Mr BARBER — Thank you.

Mr TEE — Sorry, that is a matter for VCAT?

Ms DIGBY — That is my understanding. They have lodged an appeal against the minister’s decision to VCAT, so any decision about standing would be determined by VCAT.

Mr BARBER — Sometime before you received the advisory committee’s report — the section 151 advisory committee’s report — you had a meeting in the department to discuss the possibility that maybe you were heading for a refusal with the Windsor application and/or that the section 151 committee report would be put out for further public consultation. Is that correct?

Ms DIGBY — Is that a question?

Mr BARBER — Yes.

Ms DIGBY — Whether there was a meeting?

Mr BARBER — Did you have a meeting within the department to discuss those options?

Ms DIGBY — I am aware of no such meeting.

Mr BARBER — Did you have a chat with a ministerial adviser?

Ms DIGBY — I am aware of no such discussions.

Mr BARBER — Nobody like David Hodge was talking to you, suggesting that maybe you were going to get grounds for a refusal put together?

Ms DIGBY — David Hodge did not have that discussion with me.

Mr BARBER — No ministerial adviser came to you and said, ‘We want a mechanism here, such as receiving the section 151 committee report and then putting that out for further public consultation’? That has never been an idea that has been floated with you by anyone?

Ms DIGBY — No. A ministerial adviser has not approached me on that basis.

Mr BARBER — Or the minister?

Ms DIGBY — You know that I cannot discuss the conversations I have with ministers at all in relation to any matter that is subject to a ministerial decision.

Mr BARBER — Does that apply to ministers and ministerial advisers?
Ms DIGBY — My understanding is that it is clear that I am not allowed to disclose any information in relation to a ministerial or government decision or possible decision. I have answered your first question in relation to whether I had been approached by a ministerial adviser on the matter. I answered that question.

Mr BARBER — And the answer was no?

Mr TEE — Perhaps you could ask the minister?

Mr BARBER — Just to be clear about this, I will read into the record the section of your relevant code of conduct, which you referred to briefly. It says:

> Official witnesses should be cooperative and frank when giving factual information. On matters of government business, public sector employees may appear before parliamentary committees as a representative of a minister. They are not therefore expected to answer questions:

> seeking their personal views on government policy;

> seeking details of matters considered in relation to a ministerial or government decision or possible decision, unless those details have already been made public, or the giving of evidence on them has been approved; and

> that would require a personal judgement on the policies or policy options of the Victorian or other governments.

Mr VINEY — Those same guidelines are in the Parliament’s own guidelines to witnesses.

Mr BARBER — So on that basis you would not discuss with us — certainly not without first seeking approval from the minister — —

Ms DIGBY — Or the secretary, yes.

Mr BARBER — Whether the minister put to you the idea of the section 151 committee going out for further consultation?

Mr VINEY — She is not prepared to answer any question about what discussions she had with the minister — —

Mr GUY — Listen. Let Mr Barber ask and Ms Digby answer. It is not your go.

Mr VINEY — But Ms Digby has said that she cannot discuss anything she answered. She cannot discuss anything in her discussions with the minister about a decision of the government.

Mr BARBER — So my question is — —

Mr GUY — What are you, an echo?

Mr VINEY — You are being quite cute with your questions.

Mr GUY — No, he is not.

Mr VINEY — To try and get a denial about a specific conversation, where the witness has said — —

Mr GUY — It is a fair question.

Mr VINEY — She cannot answer any questions about the discussions with the minister.

The CHAIR — The question was not about the discussion with the minister, it was about the code of conduct. I believe it is in order. Ms Digby?

Mr BARBER — Is that the basis you are using when you say that you cannot talk to us about what you talked to the minister about?

Ms DIGBY — Yes. Under the code of conduct, I am not allowed to disclose any information in relation to matters that are the subject of a ministerial government decision or possible decision. You read the other section correctly as well, Mr Barber.
Mr BARBER — Yes. As you know, this all started because Peta Duke wrote a memo, where she suggested, and I quote:

Strategy at this stage is to release it —

that is, the section 151 committee —

for public comment, as this affects the entire community, and then use those responses as reason to halt it, as we have listened to community views…

You have just confirmed for us that effectively you have absolutely no idea where that idea may have come from. It did not come from any discussion that you had with anybody?

Ms DIGBY — Correct.

Mr BARBER — And in fact, to do so with a section 151 committee report would be unusual, would it not? You cannot point to an instance where a section 151 committee report, having been received, was then itself put out for further public consultation?

Ms DIGBY — No, I cannot.

Mr BARBER — You cannot point to any file note or minute or anywhere where possible grounds for a refusal have been drafted?

Ms DIGBY — No, I cannot.

Mr BARBER — Notwithstanding the lack of ability to appeal this decision by a neighbour or an objector, you did in fact receive 30 submissions, many of which were opposing the development or some aspect of it?

Ms DIGBY — Yes.

Mr BARBER — And those 30 submissions, did they need to form part of the minister’s consideration under section 60, notwithstanding the fact that those people then did not have an appeal right?

Ms DIGBY — I would need to provide information in terms of the submissions in writing, because it is my understanding that there were more submissions than that number, but I can give you that detail, and yes, the advisory committee was requested to consider all submissions and in preparing advice to the minister, both the advisory committee’s assessment of those submissions and the department’s assessment of those submissions would need to be provided to the minister.

Mr BARBER — Section 60 says he must consider them and therefore we would expect a rigorous piece of advice also to have considered them, without giving anything away about that advice?

Ms DIGBY — Yes.

Mr VINEY — Mr Blacher in his evidence to the committee made, I think, the comment that for someone to suggest that the panel’s report would be put out for public comment and further public comments was, I think he said, ‘naive’ because it simply could not happen. Would you concur with his view expressed to this committee — in terms that it does not comply with the required processes under the act?

Ms DIGBY — I will try to answer that to the best of my ability. The act does not require, and I said this in my statement, that you actually have an advisory committee process in the first place so the technical answer to your question, even though I am not a lawyer, is that the Planning and Environment Act does not, not allow, another process to be entered into.

Having said that, there would be a range of issues that would need to be considered if it was entertained, and a number of those would be significant legal ones given that a process had already been run and you had, as Mr Barber said, a number of submitters, and the status of those, so whilst, as I said, I am not a planning lawyer, you would have to have grounds to run another process that was different to the process that you had run before or did not cover that same ground that you had gone over before, because, as I also said in my statement, there
Mr VINEY — Yes, it does, thank you. You have also had, by your evidence today, two sets of probity auditors go through all the processes associated with this. Are you confident, presumably you have seen the reports, that was an exhaustive process and you are comfortable with the findings that they made?

Ms DIGBY — Yes. I clarify that slightly. The first piece of work that was done was an internal audit by PricewaterhouseCoopers and that looked at the way in which the state planning services went about their statutory responsibilities or the responsibilities under the act. It looked at whether the advisory committee had adhered to their terms of reference and it looked at the Heritage Victoria processes as well, and found no areas of non-compliance.

The second piece of advice was by a probity adviser, it was not actually an audit, it was an adviser who actually sat with the department as they went through the process of preparing the advice to the minister on the decision in relation to the Windsor Hotel and to make sure that all the grounds, including those Mr Barber mentioned before, were covered off in terms of the submitters and various other requirements that needed to be provided in a fully comprehensive piece of advice to the minister.

Mr GUY — I want to touch on the point Mr Viney just made about the exhaustive process of these two audits that we have had evidence given to this committee and your points 55 and 56, on page 14, which stated that:

… no evidence of any attempted interference with those procedures …

was entered into.

You are aware that PwC’s audit, if you like, was limited to what they could actually look at, as you have outlined, and did not at all look at the issues that this committee is examining today in relation to the possible corruption outside of obvious planning processes? You are aware of that?

Ms DIGBY — I am aware of what they have stated to the committee, that they did not look at those issues.

Mr GUY — For what they were directed to look at. There is a very big difference. If you are directed to look at three letters of the alphabet, there are two dozen more, then clearly you are only looking at part of the process.

Ms DIGBY — They were looking at the process as it pertained to the department’s responsibilities.

Mr GUY — Secondly, point 56 says:

… RSM Bird Cameron had been engaged as probity advisers —

As he correctly states again, this committee is looking from July 2009 to February 2010. RSM Bird Cameron was only engaged from 11 March onward.

Ms DIGBY — Yes, it was specifically engaged to ensure that the department’s advice that went to the minister in relation to the Windsor Hotel decision met probity requirements. That was the nature of engagement.

Mr GUY — Again, yes. That is right. Again, it is very specific. An exhaustive process, I think we would have to say, it was not. Can I just ask in relation to the planning permit application tracking system?

Mr TEE — That is an opinion you might have. But it is not the evidence.

Mr GUY — I am sure in your view of the world that would be right.

Mr VINEY — We would expect you to have that opinion.

Mr GUY — Mr Viney, this committee is about corruption.

Mr TEE — Have you got any other questions?

Mr VINEY — No, it is not. I thought it was about decision-making processes.
Mr GUY — Corruption is an issue. The rest of the state does.

Mr VINEY — Do you want to throw that around? That is absolute nonsense.

Mr GUY — I just want to ask about the planning permit application tracking system. I just wonder if that system registers like the LEAP database, who would actually look at it?

Mr TEE — Sorry, what was the question?

Mr GUY — Well, you may be on another planet. It is a very simple question. The planning permits application tracking system — —

Mr TEE — I do not think anybody understood the question.

Mr GUY — The question was: does it register who looks at it like the LEAP database does?

Mr BARBER — You mean apart from the fact it is on the website?

Mr GUY — No, the internal system.

Mr TEE — So you are asking about the internal system?

The CHAIR — Without help, Mr Tee.

Ms DIGBY — If I understand your question correctly — —

Mr TEE — You are ahead of the rest of us.

Ms DIGBY — I think you asking me whether there may or may not be restrictions not on the actual application but its processing through the department. Is that correct?

Mr GUY — It is the application’s internal procedures electronically within the department. So an application, as you say, once it has been lodged on the system, there is a public view. Then there is the private view. Do you understand that one, Mr Tee? It is very simple.

Mr TEE — Are you asking me questions now?

Mr GUY — I wonder if on the internal database there is a mechanism to see who looks at each application.

Ms DIGBY — I am trying to answer your question to the best of my understanding of what it is. There is a workflow tracking system that you can actually see which officers have dealt with applications or inputted material. Am I answering your question now?

Mr GUY — Ms Digby, you understand my question. It appears Mr Tee and some other members did not. You obviously did, and I thank you for that. Is that material as to who has looked at each application public or is that something that is kept obviously within the department?

Ms DIGBY — It is internal.

Mr GUY — Is that information available as to who might have looked at the Windsor application?

Ms DIGBY — You mean if it is requested?

Mr GUY — It is available for the committee to examine who has looked?

Ms DIGBY — I would have to take that on advice.

The CHAIR — Can I just seek clarification on Mr Guy’s question and your answer? You answered in terms of the workflow — that is, who has worked on a particular file. If I understood Mr Guy’s question, the question related to anyone viewing that file. For example, a temp working in the department chose to look at the Windsor case — would that be recorded, that that person had accessed that file?
Ms DIGBY — Right. There are access restrictions to information that is on the database in the department’s system. I would have to check. I do not know the restrictions that apply in every instance. But there would be some restrictions.

The CHAIR — And you would know who looked at the file?

Ms DIGBY — Sorry?

The CHAIR — You would be able to track not only who had worked on a particular file but who had actually viewed that data?

Ms DIGBY — Once again, I would have to take that question on notice. I am not as au fait with the technicalities of the system.

Mr GUY — Who was managing the Windsor application from within the department?

Ms DIGBY — It was managed within the state planning services area.

Mr GUY — Who was managing it within the state planning services area? Is there a person who was dedicated to managing this application?

Ms DIGBY — There is an officer who is allocated. There is usually one or two. Usually they have a sort of peer system. There is the manager of the team that that officer sits in. Then there is the head of state planning services, the executive director, and then there is the head of the planning services and developer facilitation. It is not a clear cut answer, I understand, but there is a sort of hierarchy.

Mr GUY — In relation to the Windsor application, who would have been in charge of its processes through the department?

Ms DIGBY — The manager of the team.

Mr GUY — Who was the manager of the team?

Ms DIGBY — I can provide you with his name: it is Mr Adrian Salmon.

Mr GUY — That is the evidence we have had from Mr London. Mr London as well had mentioned Mr Salmon was the manager of the team.

Ms DIGBY — He is the team leader.

Mr GUY — Are you aware of any direct contact with the minister’s office? I will preface this by saying presumably you oversee Mr Hodge and Mr Salmon as the managers of that area of the department, as the deputy director — —

Ms DIGBY — Amongst others.

Mr GUY — Amongst many others, I am sure. Are you aware of any contact that was held between that team and the ministerial office of the planning minister or the Premier’s office directly?

Ms DIGBY — I would have to say that over the life of an application, like the Windsor, it would be quite normal for the team to interact with the minister’s office. Information goes backwards and forwards about the overall process, the progress and when things can be expected and not expected. Yes, I will answer it from my own department. It would not be normal for that interaction to occur with the Premier’s, no.

Mr GUY — Would that interaction with the ministerial office be verbal, would it be via meetings or would it usually be via email? What is the usual protocol or process in how that is done?

Ms DIGBY — There are a range of communications. Some would be verbal and some may be in meetings. For instance, I have already talked about a meeting the minister has had with the applicant where officers were present. Some would be formal briefings.
Mr GUY — Would those meetings — for instance, the one with the applicant — be limited?

Ms DIGBY — No; not normally.

Mr GUY — Would there be a record kept of who actually accompanied the minister to those meetings or who attended those meetings?

Ms DIGBY — We would know who attended. Whether it is actually written down, I cannot be certain but we know the officers who were present.

Mr GUY — Who would prepare the material for either a rejection or an approval of a project to the minister? Would that be the team that is designed to manage the application?

Ms DIGBY — It would go through a process, yes; and, if you like, the lion’s share of the work, if that is correct term to use, would be done within the team and then it would escalate up.

Mr GUY — In terms of that process, assuming a decision is made from a minister to reject or approve an application, is the process different from an approval or a rejection? Once you have a decision, in the follow-up from that decision are there different mechanisms put in place beyond that? That would be written documentation put in place beyond that application; or once the decision is made is the case then moved away from that part of the team in the department?

Ms DIGBY — I am not sure that I understand.

Mr GUY — What I am trying to ask is: in the process for a decision being made, in the case of the Windsor decision being made, would that process for a decision be put in place only after the minister has made a decision — this is, to proceed with the project or to reject it? When would that process begin? When does the process post the ministerial decision begin?

Ms DIGBY — Post the ministerial — —

Mr GUY — Post the ministerial decision — what occurs?

Ms DIGBY — It begins post the ministerial decision.

Mr GUY — Yes, but what occurs, is what I am asking. What actually occurs post the ministerial decision?

Ms DIGBY — Once again I would have to take that on notice. There would be a range of different requirements. People have to be notified of the decision, including the applicant.

Mr GUY — Is there electronic material produced, obviously post that decision? What I am trying to find out is whether or not there was — —

Ms DIGBY — A notification.

Mr GUY — What I am trying to find out is whether or not there was material that was produced to pre-empt the decision, whether or not there has been material produced in that section of the department to pre-empt a decision; supposedly pre-empting a decision or a decision being done with knowledge in hand, and whether anyone has sought to ascertain whether that exists?

Ms DIGBY — No, I do not believe there is any material produced to pre-empt a decision. The material that is produced to elicit the decision is the brief.

Mr GUY — Yes, that is the brief to the minister, but clearly there is a process — —

Mr TEE — Correct, and then there is material to confirm the decision.

Mr GUY — Thank you, I did not ask you anything.

Mr TEE — or pre-empt the decision.
The CHAIR — Mr Tee, you will get your turn. Mr Guy, we will need to move on shortly.

Mr GUY — I am trying to find out the processes.

Mr VINEY — You are trying to get some evidence.

Mr GUY — Again, Mr Viney, we will really have to excuse you from this committee.

Mr VINEY — Just grab some evidence; anything will do.

The CHAIR — Mr Guy, time is short.

Mr VINEY — ‘If I have not got evidence, I will use innuendo’.

Mr GUY — I am not using innuendo. I asked a very simple question about processes.

Mr VINEY — No, you made allegations a minute ago.

Mr GUY — No, I did not.

The CHAIR — Mr Guy!

Mr GUY — I am trying to do this without the intervention of Mr Viney, but he obviously does not believe corruption is an issue of significance in Victoria.

Again in relation to media strategies, when were you aware of the government’s media strategy and to factor in the Windsor Hotel in this media strategy? When were you aware of that? When did that come to your notice?

Ms DIGBY — Are you asking me when I became aware of Peta Duke’s email?

Mr GUY — The media strategy around it. Obviously there is a media strategy produced and a media strategy involving planning applications. When were you aware that media strategies involved planning applications?

Ms DIGBY — I became aware of that email, and therefore the material contained within it, in the weekend papers after it was released.

Mr GUY — Not the email. I am asking about media strategies.

Ms DIGBY — I was not aware of a media strategy.

Mr GUY — Not this one — media strategies. Are you aware that the government — —

Ms DIGBY — I was not aware of any media strategies.

Mr GUY — So you are not aware that the government produces media strategies that involve planning applications in them?

Ms DIGBY — That is not the question you asked me.

Mr GUY — But that is the one I am asking you now.

Ms DIGBY — Okay; all right, but it is not the question — I answered your question — —

Mr TEE — For heaven’s sake! Through the Chair, this is very confusing.

Mr VINEY — And I am not sure of the relevance.

Mr TEE — It is very difficult to understand even what the question is.

Mr VINEY — I do not think there is any relevance to the terms of reference.
The CHAIR — Ms Digby, are you able to address the subsequent question from Mr Guy about other strategies surrounding the planning process?

Ms DIGBY — Can I just put back the question to make sure I have understood it? You are asking me whether I am aware that the government produces media strategies in relation to any planning application?

I understand that the government produces media releases and media plans in relation to decisions the government makes.

Mr GUY — Is the department ever invited to participate in media strategies in relation to planning applications — that you are aware of?

Ms DIGBY — The department is asked to provide information in relation to planning decisions, and they are then therefore used in the production of things like media releases, but the department does not draft those media releases.

Mr GUY — I do have more but I will move on, Chair, because I want to come back to — —

Mr HALL — Can I just clarify a couple of matters regarding the submission you made this morning? The first is in paragraph 56 where you said the minister was briefed regarding the proposal. What do you actually mean by ‘the proposal’?

Ms DIGBY — The Windsor application.

Mr HALL — Was that the advisory committee report you were referring to?

Ms DIGBY — The actual application.

Mr HALL — That ‘was advised on the application. By that time the minister had received the advisory committee’s report’.

Ms DIGBY — Correct.

Mr HALL — Was the briefing on that as well?

Ms DIGBY — The overall issue that was the subject of that briefing was the question of the minister’s decision in relation to the application and all things that had to be considered in terms of making a decision.

Mr HALL — Who briefed the minister on that day?

Ms DIGBY — Do you mean who signed the brief?

Mr HALL — You said here the minister was briefed regarding the proposal on 17 March 2010, so my question is: who briefed the minister?

Ms DIGBY — That is a formal, written brief.

Mr HALL — Who prepared that formal, written brief?

Ms DIGBY — I think I answered that question previously. It is generated within the team within the department and it is signed off through the various levels within the department.

Mr HALL — It was a written brief; it was not an oral brief?

Ms DIGBY — No, it was a formal, written brief.

Mr HALL — It was a document handed to the minister rather than people sitting around a table briefing the minister?

Ms DIGBY — Absolutely, yes.
Mr HALL — I go back to paragraphs 25 and 26; this is regarding pre-application meetings. The first one, you said, was held on 17 June and the minister was accompanied by officers of the department. Is it possible for you to advise the committee who actually attended that pre-application meeting?

Ms DIGBY — In terms of the officers or in terms of the people who accompanied the applicant?

Mr HALL — I would be particularly interested in who were the officers of the department who attended with the minister, and who from the minister’s staff attended that meeting.

Ms DIGBY — I am not aware of who attended from the minister’s staff, I was not present at the meeting. In terms of the officers who attended that meeting, it was David Hodge and an officer from Heritage Victoria.

Mr HALL — Would you have a minute of that meeting which would say who in total attended that meeting? Could you take the question on notice?

Ms DIGBY — I could take that on notice, yes.

The CHAIR — Thank you.

Mr HALL — And the same with the 23 July meeting?

Ms DIGBY — Yes, which was a departmental officers-only meeting.

Mr HALL — Was there anyone from the minister’s office who attended that 23 July meeting?

Ms DIGBY — I could not answer that question.

Mr HALL — In respect to the advisory committee, once it was formed on 1 December — I am just looking for the date — the advisory committee was formed on 1 December, is that correct? That was the date on which it was formed?

Ms DIGBY — I am having the same trouble as you are in finding the date.

Mr HALL — It is somewhere in your submission?

Ms DIGBY — It is.

The CHAIR — Paragraph 39 — 3 December.

Mr HALL — On 3 December that advisory committee was formed. Is it usual for the department to liaise with members of the advisory committee through their processes?

Ms DIGBY — In terms of transferring information, yes it is, referring material to them.

Mr HALL — Is the minister’s office involved in any of that, because the minister is the referral authority in this case?

Ms DIGBY — No, the minister establishes the advisory committee to provide advice to him, so it would not be my understanding that the minister’s office is involved in any way in relation to the advisory committee. They are set up to do their work independently.

Mr HALL — All right. I would be happy if you could take on notice those questions as to who might have attended the pre-application meetings.

Ms DIGBY — Of course.

Mr HALL — That is listed in paragraphs 25 and 26.

The CHAIR — Thank you, Mr Hall. We have Mr Tee and Mr Kavanagh.

Mr TEE — Thank you very much for your evidence today. I want to clarify a couple of the issues and the first arises out of the notification. I think you gave evidence that notification of the application was provided to
the neighbours, but I also understood that there is a broader notification in the sense that there was a display of a public notice as well as to the owners and occupiers of the adjacent properties, and there was also a public notice provided in the *Melbourne Times* and the *Age*. Is that your understanding?

**Ms DIGBY** — That is correct. There was a published notice in the *Age*; I believe it was on 30 September. I cannot tell you when the one was in the *Melbourne Times*. But there were also notices on the site.

**Mr TEE** — The other issue goes to the auditors. I think Mr Blacher gave evidence that he did not put any constraints on the auditors; they were at liberty, he says, to get any documents they liked and to speak to whoever they liked. Did you put any constraints on the auditors?

**Ms DIGBY** — No, I did not.

**Mr TEE** — Are you aware of any constraints that were put on the auditors?

**Ms DIGBY** — No, I am not.

**Mr KAVANAGH** — You have referred a lot to senior officers in the department and their responsibilities and so on in your statement, including, for example, in paragraph 17:

… all senior officers who deal with planning matters are required to provide a declaration of interests to ensure no conflicts …

You are referring there just to DPCD senior officers, is that right?

**Ms DIGBY** — No, I am not. All senior officers are required to fill out conflict of interest or declaration forms annually.

**Mr KAVANAGH** — Would a senior media adviser who actually works in the Department of Premier of Cabinet be required to provide a declaration of interest, for example?

**Ms DIGBY** — I cannot answer that question.

**Mr KAVANAGH** — You do not know the answer?

**Ms DIGBY** — I do not know the answer to that question.

**Mr KAVANAGH** — I see. That reference to conflict of interest really refers to financial interest, does it not?

**Ms DIGBY** — I do not believe I can answer that question.

**Mr KAVANAGH** — In paragraphs 58 and 59 you refer to the proper grounds for a decision by a minister and they are listed there, but those grounds do not include political considerations for the government either, do they?

**Ms DIGBY** — No, they do not.

**Mr KAVANAGH** — What would be the consequences of a minister deciding on grounds like trying to delay a development until after an election for purposes of electoral benefit?
Ms DIGBY — I will try to answer that in the broadest possible way and not specifically in relation to this matter. As I have said before, there are recourses for applicants to take the minister to VCAT for failure to make a decision and to get VCAT to make the decision.

The minister’s decisions, as I pointed out in my statement, are to approve an application — approve with conditions or refuse. There are no other decisions that can be made. To the best of my ability I think that is the best I can answer the question you put to me.

Mr KAVANAGH — Okay, but it may be that such a decision, even on those grounds, could delay the consequences until the political disadvantage had disappeared perhaps? Anyway, that is a political question, I guess.

But I would like to ask you to clarify in relation to Mr Guy’s question. He asked you when you became aware of the government’s media strategy in relation to the Windsor Hotel, and you said you became aware of Ms Duke’s email after it was publicly released. As an attempt to clarify it, the government members here said they did not understand the question or it was confusing.

I would like to ask you: when did you become aware of the government’s media strategy in relation to the Windsor Hotel? I am not asking about what appeared in the newspapers.

Ms DIGBY — That is the time at which I became aware — —

Mr KAVANAGH — You first became aware?

Ms DIGBY — Yes.

Mr KAVANAGH — Thank you.

The CHAIR — Ms Digby, we have reached the end of the time allocated for this hearing, but we seem to have some further questions. Are you able to — —

Ms DIGBY — Yes, of course.

The CHAIR — Thank you, Ms Digby. We will take 5 more minutes of questions. We did start before the scheduled time.

Mr BARBER — Beyond the 30-odd formal submissions that are detailed in the advisory committee’s report, are you aware of any other representations made in relation to this application?

Ms DIGBY — I did say I would like to take on notice the number of submissions, because there were some other postcard-type submissions et cetera. I will come back to — —

Mr BARBER — Sure, but apart from those that became registered as objections, if you like, are you aware of other representations that have been made in relation to this application?

Ms DIGBY — There were the referral authority representations, and there was the National Trust and the City of Melbourne.

Mr BARBER — But this morning we heard that the chief architect met with Mr Hodge and made a very strong representation that it was a good development?

Ms DIGBY — I believe I referred to that in my witness statement; that they were asked for a view, and their view was provided in writing and it was provided also to the minister as part of his overall consideration.

Mr BARBER — Yes, but what I am asking you is: from your knowledge — and maybe you need to check with Mr Hodge as well — were there other representations made by other people to you and to your staff below you about this application that did not make it onto our formal list of objections?

Ms DIGBY — To me, I can certainly answer no. I will check and take the other part of your question on notice.
Mr BARBER — Thank you. Just coming back to the issue of the advisory committee report, prior to its formal receipt were you aware of any speculation about its contents?

Ms DIGBY — No, I was not.

Mr BARBER — Nobody speculated to you about what it might contain?

Ms DIGBY — No. I was informed when it was delivered and of its general contents.

Mr BARBER — Sure. Thanks, Chair.

Mr VINEY — Mr Guy made some assertions about corruption, and I just want to ask — —

Mr GUY — You are precious! I will get a box of tissues for you.

Mr VINEY — You made the assertions on the public record — —

The CHAIR — Mr Viney, your question.

Mr VINEY — I just want to ask some questions quite directly to see whether we can clear up any of these things, because I certainly would not want to be part of a corrupt government, and I imagine you would not want to be part of a corrupt department.

My understanding of corruption is that it takes two parties, so I am going to ask you: have you got any concerns that Mr Salmon or Mr Hodge from your department have behaved corruptly in relation to this project?

Ms DIGBY — No, I do not.

Mr VINEY — What about Mr Corker or Mr White from Denton Corker Marshall, who we understand had meetings? Have you any evidence or concerns about them having behaved corruptly in relation to this project?

Ms DIGBY — No, I do not have any evidence.

Mr VINEY — Mr Halim or Mr Coupar from Halim Group Pty Ltd. Any evidence of them?

Ms DIGBY — I do not have any evidence.

Mr VINEY — Right. What about Mr Connor from Contour Consultants, who were also apparently involved as planning specialists?

Ms DIGBY — I do not have any evidence.

Mr VINEY — Thank you. No evidence of corruption in this process has come to you — in your knowledge or of concern to you?

Ms DIGBY — No, I do not.

Mr VINEY — Thank you.

Mr GUY — Ms Digby, just in closing I wonder given you run planning services in the department, if you would be able to take on notice please: who in the Windsor planning team and how often they spoke to the minister’s office about the Windsor application, and on what dates that communication took place?

Ms DIGBY — I will seek advice on what I can provide to you.

Mr GUY — Thank you.

The CHAIR — Thank you, Ms Digby. The committee appreciates your evidence — your written statement and your verbal evidence here today. There were a number of matters that were taken on notice that the committee will follow up with you. Indeed, we may have further questions. We will have the draft transcript to you in the next couple of days for any corrections. Thank you for your time this morning.
Ms DIGBY — Thank you very much.

Committee adjourned.