CORRECTED VERSION

STANDING COMMITTEE ON FINANCE AND PUBLIC ADMINISTRATION

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

Melbourne — 30 September 2010

Members

Mr G. Barber  Mr G. Rich-Phillips
Mr M. Guy  Mr B. Tee
Mr P. Hall  Mr M. Viney
Mr P. Kavanagh

Chair: Mr G. Rich-Phillips
Deputy Chair: Mr M. Viney

Staff

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

Witness

Mr J. Madden, Minister for Planning (sworn).
The CHAIR — I declare open the public hearing of the Legislative Council Standing Committee on Finance and Public Administration. 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 the Honourable Justin Madden, MLC, Minister for Planning.

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 the 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.

Minister, I now invite you to make an opening statement if you wish, and the Committee will then proceed to questions.

Mr MADDEN — Thank you very much, Chair. I have a statement I would like to present. I will read through that statement.

I, Justin Mark Madden, member of the Legislative Council, of level 17, 8 Nicholson Street, East Melbourne, state as follows.

I am the Victorian Minister for Planning and Minister for the Respect Agenda. I have been a member of the Victorian Parliament since 1999, elected as the member for Doutta Galla Province in the Legislative Council. I currently represent the Western Metropolitan Region in the Legislative Council. I have been Minister for Planning since 2006. Prior to this, I held the following ministries: Minister for the Commonwealth Games, 2002 to 2006; Minister for Sport and Recreation, 1999 to 2006; Minister for Youth Affairs, 1999 to 2002; and Minister Assisting the Minister for Planning, 1999 to 2002.

I have been provided with a copy of the Legislative Council’s Standing Committee on Finance and Public Administration (the Committee) terms of reference and a document issued by the Victorian Parliament entitled ‘Appearing before a parliamentary Committee — Guidelines for the rights and responsibilities of witnesses’.

The following statement relates to two aspects of the Committee’s terms of reference — namely, any knowledge I have and/or involvement on my part in relation to the Windsor Hotel redevelopment proposal and the Windsor Hotel redevelopment as referred to in the Minister for Planning media plan.

On 3 March 2010 the Committee invited me to give evidence at a public hearing scheduled for 12 March 2010; I refer to the letter dated 3 March 2010 from the Committee’s secretary. I subsequently sought to appear before this Committee on 12 March 2010. However, the Committee declined to hear from me on that day. It has taken the Committee six months to now seek my attendance before this Committee. I have always been willing to cooperate with this inquiry, hence my appearance six months ago on 12 March and again today.

On 14 September 2010 Committee member Matthew Guy, MLC, issued another media release, this one titled ‘Madden called before Windsor inquiry on media plan questions’, and I quote the first paragraph of the media release:

30 September 2010
Standing Committee on Finance and Public Administration

Matthew Guy media release, 18 June 2010.
The Victorian Liberal-Nationals Coalition will seek to call Planning Minister Justin Madden before the Windsor inquiry to answer questions on his knowledge of the Brumby government’s media plans following recent evidence given to VCAT by John Brumby’s principal media adviser.

Matthew Guy media release, 14 September 2010.

I understand that Mr David Davis, MLC, has made a request under the Freedom of Information Act 1982 for access to government media plans and that this application was refused. I understand that Mr Davis applied for review of this decision in the Victorian Civil and Administrative Tribunal (VCAT). The matter was heard before Her Honour Judge Hampel on 8 September 2010. I understand that Her Honour has reserved her decision on the application. I do not propose to answer any questions specifically relating to the VCAT proceedings.

In a letter dated 27 September 2010 I was informed by the secretary to the Committee that I was scheduled to give evidence before the Committee on Thursday, 30 September 2010, between 3.00 p.m. and 5.00 p.m. I was informed that the purpose of the hearing is in relation to the Committee’s inquiry into ‘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’.

So far as I am aware, the Ombudsman’s inquiry is still current and no report has been delivered to the President of the Legislative Council, as required by section 16(3)(a) of the Ombudsman Act 1973. I appear before the Committee as requested by it, but I am conscious that the Ombudsman has not yet reported on the matters referred to him by this Committee.

I have read the witness statements of Yehudi Blacher, Secretary, Department of Planning and Community Development the Department), and Ms Prue Digby, the Department’s Deputy Secretary, Planning and Local Government. I have reviewed their evidence to this Committee on 12 March 2010 and 1 June 2010 respectively. I have also read the witness statement of Professor Geoffrey London, Government Architect for the state of Victoria, and reviewed his evidence to this Committee on 1 June 2010.

I consider that the statements made and the evidence given by Mr Blacher and Ms Digby are an accurate representation of the organisation and functions of the Department, particularly the processes underpinning the planning system. Furthermore, Mr Blacher and Ms Digby have already described the processes which applied to the proposed redevelopment, which I summarise as follows.

On 28 July 2009 Windsor Hotel Holdings Pty Ltd lodged an application for a permit for the use and development of the site. This application was registered on the Department’s planning permit applications tracking system in accordance with standard procedure. 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. On 24 August 2009, following consideration of the documentation submitted, the Department sent a letter to the applicant requesting more information in order to deal with the application pursuant to section 54 of the Planning and Environment Act 1987. This information was subsequently provided on 18 September 2009. On 23 September 2009 the Department under section 55 of the Act referred the application to the Director of Public Transport as a referral authority. On 23 September 2009 the Department, under section 52(1)(b) of the Act, gave notice of the application to the City of Melbourne; and on 25 September 2009 the Department sent a letter to the applicant setting out details of the notification requirements in relation to the application as contained in section 52 of the Act.

The proposed Windsor Hotel redevelopment has a gross floor area exceeding 25 000 square metres. Accordingly, as Minister for Planning I am the responsible authority pursuant to clause 61.01 of the Melbourne Planning Scheme. Since 1986 the Minister for Planning has been the responsible authority in relation to these major development applications. The Department’s published guide, Using Victoria’s Planning System, recommends meeting with the responsible authority prior to making an application, particularly in the case of complex developments.

On 17 June 2009 I was given a presentation from representatives of Denton Corker Marshall architects, the Halim Group Pty Ltd and Contour Consultants Australia Pty Ltd. The presentation consisted of preliminary plans for the partial demolition of the Windsor Hotel and the construction of two multilevel buildings on the site. In preparation for this meeting the Department provided a written brief to me dated 16 June 2009. On
27 October 2009, on advice from the Department dated 13 October 2009, I approved the Hotel Windsor application proceeding in the normal manner, including completion of the public notification and referral process as required in the Melbourne Planning Scheme. I agreed with the Department’s advice to establish an Advisory Committee pursuant to section 151 of the Act; signed the terms of reference for planning permit application no. 2009/1687 for the land at 137 Spring Street and 1–17 Bourke Street, known as the Windsor Hotel site; and signed a letter to the Melbourne City Council advising it of my intent to set up an advisory Committee pursuant to section 151 of the Act to consider the application and allow it to provide comment on the process in addition to the formal notification.

The Departmental brief dated 13 October 2009 also included additional options for my consideration in relation to the application, including call-in under section 97B of the Act where the application raises a major issue of policy and the determination of the application may have a substantial effect on the achievement or development of planning objectives; call-in under the Victorian Civil and Administrative Tribunal Act 1998 if an appeal is lodged with VCAT against any notice of decision; and prepare an incorporated document under section 20(4) of the Act, which would involve the preparation, adoption and approval of an amendment to the Melbourne planning scheme and the preparation of an incorporated document to exempt the site from the current planning controls.

I decided not to adopt any of the options referred to in the previous paragraph of my statement.

On 3 December 2009, under section 151 of the Act, I formally appointed the advisory Committee to provide advice to me on the planning permit application in accordance with the approved terms of reference. This is the process I have used with other developments since I have been Planning Minister, as it provides me with independent advice and also provides a strong community consultation process.

Following its appointment, the Advisory Committee commenced public hearings in December 2009. I am advised that on 10 December 2009 the Advisory Committee held a public hearing and heard from the National Trust of Australia (Victoria), the City of Melbourne and the applicant. The Advisory Committee report was submitted to my office on 8 February 2010. This is normal practice as under the Act the Advisory Committee reports to me and not to the Department. It is important to note that although the administrative practice is that a report is sent to the minister’s office, it is immediately sent to the Department for its consideration and for it to provide advice to me.

I note in a letter dated 26 March 2010 Mr Yehudi Blacher advised the Standing Committee that the Windsor Advisory Committee report was received by the Department’s statutory approvals unit on 8 February 2010. Furthermore, the internal process of receiving the Advisory Committee document involves date-stamping of the material on the date received. I did not personally see the Advisory Committee report prior to it being sent to the Department, and this is consistent with usual practice in the Department. I personally see Advisory Committee reports of this kind when they come to me with a brief from the Department at the time I am being asked to consider making a decision on a proposal. That is the usual practice, and it is also what occurred in relation to the Windsor Hotel.

The Committee is aware that this matter became a matter of greater public interest in late February 2010. The Committee is also 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 the Committee has heard from PricewaterhouseCoopers, who found no evidence of any attempted interference with the usual processes.

Furthermore, as the Committee is aware, RSM Bird Cameron was engaged as probity adviser by the Department from 11 March 2010 to provide a probity report on the process leading to the Department’s advice to myself as Planning Minister and the brief of advice itself. RSM Bird Cameron advised that the brief was appropriate.

Pursuant to section 61 of the Act, in considering the planning permit application I 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 I thought fit. In arriving at my decision I was also 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 been received and not withdrawn, any decision and comments of a referral authority, and any significant effects
which I considered the development may have on the environment or which the environment may have on the
development.

Section 60(1A) of the Act sets out other matters that I may consider before deciding on an application if the
circumstances appear to so require. The considerations that were relevant for the Windsor application included
any significant social or 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 17 March 2010 the Department briefed me regarding the proposal. On 18 March 2010 I considered the
contents of the Departmental brief received and the matters I was required and permitted to consider under the
Act. I decided to note the Advisory Committee’s report and allow the report to be made publicly available; note
the RSM Bird Cameron probity report on the Department’s advice regarding the planning permit; grant a
planning permit for the redevelopment of the Windsor Hotel; advise the Lord Mayor of Melbourne and the
National Trust of my decision; and instruct the relevant authority to notify any objectors or submitters and the
referral authority of my decision.

I made the decision on 18 March 2010 to grant a planning permit for the Windsor Hotel personally. At the time
I considered it to be the right decision on the merits of the material I had before me, and I still consider that to be
the case.

On 3 June 2010 I noted that an appeal had been lodged by the National Trust under section 75(3) of the
Heritage Act 1995 in relation to the height of the proposed development. I decided not to exercise my call-in
powers under section 78 of the Heritage Act 1995 in relation to this appeal. I am aware that the National Trust
subsequently commenced proceedings in VCAT seeking a review of the decision to grant the application and
that neither these proceedings nor a subsequent appeal to the Supreme Court of Victoria were successful.

In relation to issues arising from the media plan, Ms Peta Duke is employed by the office of the Premier and is
physically located at level 1, 1 Treasury Place. Between October 2009 and 25 February 2010 Ms Duke was
assigned as the media adviser for the planning portfolio. I now know that as part of her duties Ms Duke
produced a document called ‘Minister for Planning Justin Madden media plan’. I first became aware of the
existence of this media plan on 25 February — the day after it had mistakenly been emailed to the ABC. Prior
to this I was not aware such documents existed. It is not an organisational tool that I use.

The Attorney-General, on 5 March 2010, provided the Standing Committee with a copy of the media plan as
requested. Furthermore, Mr Blacher, secretary of the Department, in his evidence to this Committee on
12 March said in relation to the media plan:

… 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.

That was Yehudi Blacher on 12 March 2010.

And as I advised the Legislative Council on 9 March 2010, and as was reported in the second interim report of
the Committee:

As I have said previously and publicly, this was a document that I would not necessarily see, and nor had I seen it. It appears to
have been a collation of information relating to up and coming planning matters and events from my diary as well as legislation and
other additional comments. This document was prepared by my media adviser for her own planning purposes. It reflects her views
on issues, not the government’s. And they were her words; they were not my words.

That is from the Victorian Parliamentary Debates, Legislative Council, on 9 March 2010, page 598.

I now welcome the Committee’s questions.

The CHAIR — Thank you, Minister. The Committee now has 1 hour and 40 minutes for questions, and I
invite Mr Guy to commence.

Mr GUY — If they were Peta Duke’s words, why are you preventing Peta Duke from appearing before this
inquiry?
Mr Madden — Let us be very clear, Mr Guy, what today is all about. Today is not about an investigation; this is not an inquiry. We know exactly what this is.

Mr Guy — I did not ask about today. I asked: if they are her words and you have said they are her words, why aren’t you letting Peta Duke appear before this inquiry?

Mr Viney — Why don’t you let him answer the question?

Mr Madden — Would you like me to answer, Mr Guy?

Mr Guy — I do not want you to sidetrack; I want you to answer the question.

Mr Madden — We know what today is about: today is about a witch-hunt. Today is about a political witch-hunt to tarnish my name and my reputation, which has taken 30 years to establish, based around fair play and my involvement in public affairs and across my personal career. We know what today is about; it is about a political witch-hunt — it is no more than that. In relation to the matters that you raise, Mr Guy, in relation to Ms Duke and Mr Jarvis and in relation to this Committee — —


The Chair — Mr Guy.

Mr Madden — In relation to this Committee and you wanting to meet with them, I will make a few comments. Basically Ms Duke and Mr Jarvis, who have both been subpoenaed to appear, are both ministerial advisers. The Attorney-General has already spoken at length on this issue. I myself explained the government’s position to the Committee when I attended on 12 March 2010, but the Committee did not wish to hear from me. I do not consider that the actions of the Attorney-General or of my advisers in any way constitute a breach of parliamentary privilege.

There are three main grounds, basically, as to why the advisers were directed not to give evidence to this Committee. The first is that ministerial advisers are not liable to be called to give evidence before parliamentary Committees because ministerial staff are accountable to the minister, and the minister is accountable to the Parliament and ultimately to the electors. This is known as the McMullan principle. It is my understanding that this principle has been adopted at various times by various state and federal governments on both sides of politics. The second is that the ministerial advisers are employed by the office of the Premier, and because the Premier is not subject to the jurisdiction of this house, neither are his employees. Thirdly, and most importantly, the summonses were considered to be defective.

Mr Guy — They were not.

Mr Tee — Can you just ask the question?

Mr Guy — If you have based your career on fair play and fairness, Mr Madden, why didn’t you let the person who you blamed for this document actually come here and explain why it was written?

Mr Viney — He just answered the question.

Mr Madden — I think the point, Mr Guy, is that the summonses were defective.

Mr Guy — So that is the reason: because of the summonses?

Mr Tee — No, he has given three reasons.

Mr Viney — You got three reasons. You have asked the question, and you can keep asking it for the 1 hour and 40 minutes that the Chair thinks we have — but you have already asked it.

Mr Guy — If it were for Peta Duke’s use, Minister, why did she email it to people?

Mr Madden — Mr Guy, as I have said before, Ms Duke was subpoenaed here. I have given my reasons why she did not attend, as Mr Jarvis did not attend. I think most importantly — and you need to acknowledge this — the summonses that were issued by this Committee were defective.
Mr GUY — In fact there is evidence to the contrary that says that is not the case.

Mr MADDEN — If they were defective, then that is a matter for you, Mr Guy, and you need to deal with that and the Committee needs to deal with that.

Mr GUY — I am sorry; that is interesting spin, Minister, but it is not fact.

Mr MADDEN — They were found to be defective.

Mr TEE — The Committee has never responded to that.

Mr GUY — You have just said in your statement again that this was a document produced for Peta Duke’s own use. Why did she email it to the office of the Premier if it were for her own use?

Mr MADDEN — Let us make this point very clear again — —

Mr GUY — It is a very clear question: why did she email it to the office of the Premier?

Mr VINEY — Why don’t you let him answer it?

Mr MADDEN — I will make this point very clear, Mr Guy. No matter what you might want to make out today, I will make this point very clear: this is nothing but a political witch-hunt. This is nothing more — —

Mr GUY — You have stated that.

Mr MADDEN — And I will state it again.

Mr GUY — So why did she email it to the office of the Premier?

Mr MADDEN — I am happy to state it time and again: this is nothing more than a political witch-hunt to discredit my public and private reputation, which has taken me more than 30 years in public life to establish.

Mr GUY — You blamed a 25-year-old woman for the fault, and you will not even let her come and answer it.

Mr MADDEN — I have established this on the basis of fair play.

Mr GUY — You blamed her — not me and not the Committee. You blamed her.

Mr MADDEN — My track record stands on far more an extensive reputation of fair play than yours does, Mr Guy.

Mr GUY — So why didn’t you let her appear, Minister?

Mr MADDEN — And I note that if you had been as conscientious and rigorous in terms of the operation of this Committee in relation to your subpoenas, your subpoenas would be correct. But, as I mentioned before, they have been defective.

Mr GUY — If you knew the operation of the Parliament, you would know they were not issued by members of Parliament.

Mr MADDEN — They were defective, Mr Guy.

Mr GUY — I ask you again, Minister: if this was for her personal use, why was it emailed to the office of the Premier?

Mr MADDEN — I am quite happy to say that this is not an instrument I have ever seen. It is not a document I would ever have seen, nor have I seen it in operation at any other time until it was brought to my attention after it was made public, Mr Guy. I cannot answer those questions in relation to those matters.

Mr GUY — Did you ask her?
Mr MADDEN — What I can make very clear, Mr Guy, is that this is nothing more than just a political witch-hunt.

Mr GUY — So have you asked her that question in the last seven months?

Mr MADDEN — I have answered my questions, Mr Guy. If you have another question, please make that question clear, Mr Guy.

Mr GUY — My other question is: did you ever ask Peta Duke why she emailed this to the office of the Premier if this were the work of one, as you say it was?

Mr MADDEN — I have not had any discussions with Ms Duke since this became public. She was reassigned to other areas of the Premier’s office, and I have not had any at-length discussion in any form in relation to these matters.

Mr GUY — At-length or any?

Mr MADDEN — I have not had any discussions in relation to these matters with Ms Duke. I have wished her well.

Mr GUY — I am sure you have.

Mr MADDEN — You have to appreciate that Ms Duke was traumatised by this.

Mr GUY — You blamed her; I am sure she was.

Mr MADDEN — She has suffered an enormous amount of ridicule not only because of the coverage in the media but also because of the political witch-hunt that we are seeing being undertaken today. I have wished her well. I do wish her well. She was a young media adviser starting off on her career. The mistake that she made was one that has affected her career and has affected her personally. I have wished her well. I continue to wish her well. I hope her career continues. I believe the criticism by this Committee of her — the protracted campaign that this Committee has waged against a ministerial adviser at great length and run through the media — has traumatised her and continues to traumatisise her.

Mr GUY — How?

Mr MADDEN — The power that this Committee has. It could have called me at any time over the last six or eight months. Mind you, it has taken you almost six months to call me here to answer these matters.

Mr GUY — It has taken you seven months to actually have a conversation as to why she emailed it to the office of the Premier. It was the second question, and you still cannot answer it.

Mr TEE — Then why didn’t you call her six months ago?

Mr MADDEN — Is this an argument, Mr Guy, or is this a line of questioning?

Mr GUY — I have asked you, but you still have not answered the question.

Mr MADDEN — I am still answering, Chair. Through the Chair, please.

Mr GUY — It was a long answer, Chair. If you can tell the minister we have — —

Mr MADDEN — I make the point, Chair, that the campaign that has been run by Mr Guy outside the Committee and what has taken place within this Committee in relation to the media adviser and ministerial advisers has traumatised them and continues to traumatisise them.

Mr GUY — You blamed her. You said it was her; we did not say it was her.

Mr MADDEN — You should recognise that and note that.
Mr GUY — You should apologise for blaming her. Can I put it to you, Minister, that this was simply your office’s submission to the government’s master media plan? Is that true?

Mr MADDEN — Mr Guy, we know what this is today: this is a witch-hunt.

Mr GUY — So is that true? Is that a yes or a no? We have heard that line. Is that a yes or a no

Mr MADDEN — I refer you back to my statement, Mr Guy. I refer you not only to my comments in today’s statement but also to the comments I have made in the Legislative Council before. I make those comments very, very clear. If you have not read my statement, I recommend you read it rather than twittering on your BlackBerry, as you are currently doing. I draw your attention to this, Chair.

The CHAIR — Minister, I will run the Committee and you answer the questions.

Mr GUY — It is actually my wife, if you would like to know, Minister.

Mr MADDEN — If you want to listen to my answer, do so, but do not twitter on your BlackBerry, please, Mr Guy. Can I make the point, Chair, as per my comments of 9 March 2010, which I have repeated today in this forum, that those words were her words; they were not mine. It was not a document I would see, nor was it a document I would use. You can make any remarks you like, Mr Guy, but of course — —

Mr GUY — I asked a question, and you have not answered it.

Mr MADDEN — Well, I am answering it.

Mr GUY — Typically, you have not answered it.

Mr MADDEN — Mr Guy, this seems to be the catch: you may not like my answers and you may wish not to hear my answers — —

Mr GUY — Because you are not answering it.

Mr MADDEN — But these are my answers, Mr Guy.

Mr GUY — I ask you again: if this was your office’s submission to the Premier’s office master media plan, did this material feature in the government’s master media plan when you ticked it off with other ministers the following Monday?

Mr VINEY — That question has already been asked, Chair.

Mr GUY — No, it has not.

Mr VINEY — And it has been answered.

Mr GUY — No, it has not.

Mr MADDEN — Chair, I have already made comments in relation to matters currently before VCAT.

Mr GUY — It is not before VCAT.

Mr MADDEN — Those matters in relation to master media plans are before VCAT.

Mr GUY — Nice try.

Mr MADDEN — I am happy to answer around them, but I cannot specifically go to those matters that are currently before VCAT.

Mr GUY — It is not about VCAT; it is a very clear question. When you tick off a master media plan on Mondays, Minister, do live planning matters feature as a part of those master media plans?

Mr VINEY — He did not see it. What are you talking about? He said he did not see it. He did not see the document. He said he did not see it.
Mr GUY — Mr Viney, if you want to be interviewed, come to this side of the table.

Mr VINEY — He has answered the question.

Mr GUY — I have asked this guy.

Mr VINEY — You interview me all the time when we are in these meetings. He has answered the question.

Mr GUY — I can tell you are a Collingwood supporter.

Mr VINEY — Proudly.

Mr MADDEN — I am sorry, I am just trying to work out what the question is. Whenever I try to answer, Mr Guy seems to want to talk over the top of me.

The CHAIR — The question related to media plans feeding into a master media plan.

Mr MADDEN — I will make these points very clear. The media plan that was submitted by Ms Duke was not a document I was aware of, nor was it a document I would normally see.

Mr VINEY — Therefore he cannot answer the question.

Mr MADDEN — In relation to the matter about a master media plan, in any sense that Mr Guy refers to, that goes to cabinet, the Premier is already on the record explaining what that document is. His public remarks have been that it is basically a schedule of media announcements across that week and the announcements that ministers will make during that week. It is more a schedule than any great plan, so I believe I have answered that. I believe the Premier has put those comments on the public record. I am not aware of any other matters in relation to any other plans which are presented or dealt with, nor can I speak about those. They are before VCAT. As I said before, regarding those matters that relate specifically to an office media plan I was not aware that there was any detailed plan or this type of document presented in any format. It is not a tool I use, nor is it a tool that I was aware existed.

Again, Chair, I will repeat this: when I discovered this document existed, I was horrified by the tone of language in it. I was horrified not only by the tone of language and the disrespectful nature of that language but also by the fact that such a document existed.

Mr GUY — Minister, you say you were horrified by the tone of language and shocked at what existed in the document. I would like to go through one or two points with you, and you tell me if you find these horrifying: ‘Renewable energy report to be released’ — —

Mr MADDEN — Chair, can I just make the point — —

Mr GUY — ‘Kananook Creek Boulevard’ launch — —

Mr MADDEN — My understanding of these proceedings is that the member has an opportunity to ask or pose a question — —

Mr GUY — I am.

Mr MADDEN — And then we move on to other members of the Committee to ask — —

Mr GUY — No, that is not how this one works, Minister.

The CHAIR — No, that is not how this Committee works, Minister. Each Committee member has a block of time to ask questions.

Mr GUY — That is right.

Mr MADDEN — All right. Can you explain to me the block of time that Mr Guy has?

The CHAIR — In the order of 20 minutes, Minister.
Mr MADDEN — Yes, 20 minutes. All right. Good.

Mr GUY — Sorry about that, Minister. Under ‘Planned media events’ we have the GAA doing updates to work at Truganina, and that appears to be fact; the Dandenong government services building, and that appears to be fact.

Mr VINEY — What is the question?

Mr GUY — March 11 being World Plumbing Day, which appears to be fact.

Mr TEE — I am not sure how this is relevant to the Windsor inquiry.

Mr GUY — We have the Coburg social housing development, which appears to be fact. We have the minister’s heritage award, which appears to be fact. We go through a range of others, including a car parking review — which you will be aware of — which appears to be fact. We have an advertising signs review, which appears to be fact. We have a South Gippsland rural study review, which appears to be fact. And lo and behold, the Windsor advisory Committee — —

Mr VINEY — What is the question?

Mr GUY — which was due in the first week of February, and it goes on to make the contentious points. Minister, are you asking Victorians to believe that everything in this document appears to be fact except for one line about the Windsor Hotel?

Mr MADDEN — As I said before, Mr Guy, I was not aware that this document existed. I had not seen the document. My understanding is, and it has come to light since, that the material in this document is basically taken from my diary. It has been taken from my diary in various forms and from various other sources. It was not a document I knew existed, nor have I used the document in any form. It was a document used by Ms Duke, I understand, for her own organisational purposes. It was not a document used in any organisational way by myself.

Mr GUY — And despite being so horrified by this document, you still have not spoken to Peta Duke about why she produced it?

Mr MADDEN — As I mentioned before, Mr Guy, she was appropriately reallocated within the Premier’s unit. I was not going to traumatise her any more than she had already been — —

Mr GUY — Apart from blaming her for it.

Mr MADDEN — by the media, which had taken this matter and highlighted it. She was quite traumatised by it. She was also traumatised by the fact that she was being reappointed. I did not need to add to that in any way by chastising her about the actions she had undertaken. And, as I have said before, the advisers involved in this have been traumatised by this and they continue to be, I suspect, because of the proceedings of this Committee and the way in which members of this Committee, outside this Committee, have sought to basically make this a witch-hunt around these matters.

Mr GUY — Minister, who have you spoken to about it? If you did not speak to Peta Duke, how did you find out that the material was sourced from your diary?

Mr MADDEN — As I said before, it has been brought to my attention that the only possible way Ms Duke could have put this material together was on the basis of organisational matters around the operation of my diary and any other sources that might have existed within the Department, outside the Department or around the office. It is not a document I would ever have seen, nor was I aware that the document existed.

Mr GUY — Are you asking this Committee to believe that your diary contains information about freedom of information requests that I send to you?

Mr TEE — No, that is not what he said.
Mr MADDEN — No, I think I said there is obviously a range of sources from which the document is created — —

Mr GUY — What are they?

Mr MADDEN — But it is not an organisational tool, nor am I involved in any organisational issues around it.

Mr GUY — Have you asked?

Mr MADDEN — Mr Guy, you have probably experienced working in a minister’s office at some stage.

Mr GUY — I have had 10 years of it.

Mr MADDEN — You would understand that a minister does not micromanage the operation of their office. That is undertaken by others in the office. A minister, and no doubt a shadow minister, operates differently from the micromanagement of their office on a day-to-day basis.

Mr GUY — Minister, what I would know is that a good minister would ask his staff how this material was sourced and where it was meant to go to.

Mr VINEY — Have you got a question, or do you just want a running commentary for the whole time? You have got a soapbox in the council, not in here.

Mr GUY — Did you ask your staff how this material was sourced? Did you sit them down after this came to light? Who did you sit down with? Who did you talk to? Did you find out how this material was sourced?

Mr MADDEN — I make this point, Mr Guy, that a media adviser of course has to bring together certain elements of the operation of an office. I do not ask any media adviser how they manage their day-to-day business, because that is undertaken by others in the office who manage those staff.

I have made the point to the staff since the revelation of that document that such a document is inappropriate and the tone of that document is inappropriate. I have made the point in particular, and I have reinforced this publicly since, that staff within my office, staff outside my office — whether it is staff within the Department or whether it is staff in any other section of the government — should not pre-empt decisions of the planning minister, because at the end of the day the decisions I make I sign off to, and those decisions are not made until I sign them. Anybody who might think that they can pre-empt, second-guess or anticipate my decisions is completely in the wrong space. I have indicated that to my staff, and they have been warned not to pre-empt any decision at any stage of the planning process.

Mr GUY — Which staff members did you actually speak to, and how long after this matter had come to light?

Mr MADDEN — As I said, Mr Guy, this has been relayed to my staff.

Mr GUY — By you?

Mr MADDEN — It has been relayed to my staff by me. They are my words and my thoughts, and they have been relayed to my staff. They have been relayed in different ways, but they have been relayed to all staff members.

Mr GUY — No other media plans have ever been produced from your office from February onward after you spoke to your staff and said that this kind of material was inappropriate?

Mr MADDEN — As I said, that document is a document which is not used by me. It is not a document I have seen. It is not a document I would use. It is obviously an organisational document. Again, let us not forget the fact that a media adviser is appointed to a portfolio and employed in the Premier’s unit. If the media unit choose to manage their schedules in a particular way, they might bring together that information accordingly, but I am not party to that. That is an organisational matter for the media unit itself.
Again, as I have said, my staff should not pre-empt my planning decisions. They should not second-guess those. Staff outside in other departments should not second-guess those, nor should they pre-empt those. Staff within the Department should not pre-empt or second-guess any decisions that I have authority to make at any particular time. That message has been relayed, people are aware of that, and if they are not, they should be. I am sure that they are conscious of that in relation to any organisational or management matters they undertake at this point in time.

Mr VINEY — I note the minister’s reference to the restrictions that he has in the evidence that he can give in relation to questions because of the Committee’s referral of this matter to the Ombudsman and the Committee’s suspension of the process during the course of that investigation, which, as we know, has not yet been reported to the Parliament. I would just like to clarify with you, Chair: have you had legal advice about the ability of this Committee to undertake this hearing before the Ombudsman has actually reported?

Mr GUY — Completely separate: government and Ombudsman. Do you not know that the Parliament and the Ombudsman are completely separate?

The CHAIR — Mr Viney, is this a point of order?

Mr GUY — Where have you been?

Mr VINEY — No, it is a question to you, Chair.

Mr GUY — Where have you been?

Mr VINEY — I am just clarifying it, because — —

The CHAIR — You ask questions to the witness.

Mr BARBER — It is a point of order.

Mr VINEY — I want to clarify because it is a very important issue in terms of how we can proceed with questions.

Mr BARBER — So it is a point of order.

Mr VINEY — My understanding is that the Ombudsman’s act has some quite significant requirements that matters relating to an Ombudsman’s investigation cannot be matters of public comment.

The CHAIR — Okay, Mr Viney. I will take your point as a — —

Mr VINEY — So there are difficulties, and I am interested. I think you ought to have got legal advice.

Mr GUY — Why didn’t you ask that 40 minutes ago before he gave a presentation if you felt so strongly?

The CHAIR — Mr Viney, you are a member of the Committee, but I will take your point as a point of order and indicate that I am not aware of any impediment to this Committee taking evidence on this matter today, and as such, I would invite you to ask the minister a question.

Mr VINEY — I suggest that we ought to get some advice.

Mr MADDEN — Chair, can I — —

Mr BARBER — Are you going to help out?

Mr MADDEN — I would like clarification on these matters, because this Committee has referred these matters to the Ombudsman, and even Mr Guy in his public statements has made the point that this Committee will consider those matters when the Ombudsman has reported. For some particular reason this Committee seems to have changed its mind and called me after six months of not wanting to call me. It has called me after six months but before the Ombudsman has reported. I know that there are significant sections in the Ombudsman’s Act, and whilst I might be covered under privilege to talk about many of the things around these matters, I am conscious that there are some very important controls within that Act around potential breaches of
Mr TEE — Or indeed whether the Committee is in breach of the Act.

Mr BARBER — A point of order from the witness now — that is a new one.

Mr GUY — This is a distraction.

The CHAIR — Following on from the point raised by Mr Viney and the minister’s comment, the Committee has resolved to take evidence from the Minister for Planning today, and that is what the Committee is proceeding to do. As indicated in the opening statement, all evidence you give here today is protected by parliamentary privilege and is not subject to judicial review, so I would invite Mr Viney — —

Mr GUY — You may have missed that when you gave the oath.

Mr MADDEN — Can I seek clarification in relation to that point of order? I know that I am covered under privilege, and I know members of the Committee are covered under privilege here, but I would like to know from you whether members of this Committee or I are currently in breach of the Ombudsman’s Act given that there is currently a report being written. I would like to know from you, Chair, in relation to these matters as to whether you have sought advice. Given that Mr Viney has raised these matters, have you sought advice as to whether I am entitled to breach the Ombudsman’s Act or members of this Committee are able to breach the Ombudsman’s Act by entering into the conversations we are undertaking today?

Mr GUY — Chair, may I take a point of order? If the minister and other Labor Party members of this Committee felt so strongly about issues relating to the Ombudsman’s inquiries during parliamentary proceedings or current hearings, I would ask you to consider why this was not raised in the two months of parliamentary debate into the Brimbank inquiry when the Ombudsman’s report was proceeding, and the minister opposite gave a quite strident defence of himself in the chamber at the time. So, Minister, if you feel you are in breach today, you would have been in breach at the time of the Brimbank inquiry. I think you know that, and I urge you to move on from this distraction.

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

Mr MADDEN — No. I would like some direction from the Chair in relation to this.

The CHAIR — Minister, I am giving you the direction. We are proceeding with the hearing, as resolved by the Committee, and I would invite Mr Viney to ask a question if he wishes, or we will move to the next member.

Mr VINEY — We are proceeding in the dark.

The CHAIR — We are proceeding — —

Mr GUY — Were you proceeding in the dark on Brimbank?

The CHAIR — We are proceeding with the hearing, as resolved by the Committee.

Mr GUY — You were happy to hit the grandstand there, weren’t you, Matt?

Mr VINEY — We are proceeding in the dark of a lack of legal knowledge. We are all a bunch of legal amateurs here on this topic.

The CHAIR — Mr Viney, do you have a question for the minister?

Mr GUY — You included.

Mr VINEY — I am a legal amateur — absolutely; no question — but so are you.

The CHAIR — Mr Viney, do you have a question for the minister?
Mr VINEY — You are just skating around the issues that you referred to the Ombudsman. You referred them; you made the move.

The CHAIR — Order, Mr Viney! Do you have a question for the minister?

Mr VINEY — You made the move.

Mr MADDEN — On a further point of order, Chair, could you give me clarity as to when we leave this place today; given that there is a significant media representation here, are you able to give me clarity today as to how I can or cannot answer questions put to me by the media in relation to these matters, given that the Ombudsman is currently undertaking an investigation into these matters? I would like some clarification here.

The CHAIR — Minister, I suggest you speak to your media adviser.

Mr MADDEN — No. If I leave — —

Mr GUY — You were asked about this last week, and you replied to the media last week.

The CHAIR — Minister, I am not about to give you advice about — —

Mr GUY — You answered them last week; why can you not answer them today?

The CHAIR — Order! Mr Guy!

Mr MADDEN — If I leave this chamber today, Chair, am I able to discuss — —

The CHAIR — Minister, you well know everything you say in these proceedings is protected by privilege. What you say outside the proceedings is a matter for you and for your judgement.

Mr MADDEN — And I am making this point, Chair. What I am saying to you and putting to you — and I am seeking some clarity here — is that you are basically indicating that I am not entitled to speak to the media on these matters once I leave this chamber.

The CHAIR — Minister, you can do what you like when you leave these proceedings. These proceedings are protected by parliamentary privilege.

Mr MADDEN — I would like some clarity, because what is important to me, Chair, is that when I leave the chamber it may mean that I cannot answer any questions put to me by the media, but members of this Committee may be able to, so I think it is important that you give clarity to these circumstances as to when we leave this hearing today whether any of us in this room are able to speak of these matters.

Mr GUY — Two weeks ago when you were asked by the media, why did you answer the questions back then?

The CHAIR — Mr Guy! Order! Minister, when you leave — —

Mr MADDEN — Can I take up his point?

The CHAIR — No, Minister, you cannot.

Mr MADDEN — I am happy to take up his point, Chair.

The CHAIR — Minister, when you leave these proceedings today, and when individual members of the Committee leave these proceedings today, what you choose to say to the media or not say to the media is a matter for you. These proceedings of this Committee are protected by parliamentary privilege, as you are aware — —

Mr VINEY — But apparently in breach of the Ombudsman Act.
The CHAIR — They have arisen from a resolution of the Committee. I intend to proceed with the hearing, and I invite Mr Viney to ask the minister a question if he wishes, or we will proceed to the next member of the Committee.

Mr VINEY — But the point is that the proceedings may be protected by privilege but are in breach of the Ombudsman Act.

The CHAIR — Mr Viney, do you wish to ask — —

Mr VINEY — So what takes precedence? Have you got legal advice as to what takes primacy here? Is it the privilege or the Ombudsman Act? I do not know, nor do you, obviously.

The CHAIR — Mr Viney, do you wish to ask the minister a question?

Mr GUY — Why did you not ask it 40 minutes ago if you believed it so strongly?

Mr VINEY — I will ask a generic question, because I am not going to touch the Ombudsman’s issue.

The CHAIR — Do you wish to ask the minister a question?

Mr VINEY — What I would like to know from the minister is if he can tell us when it is appropriate for an advisory Committee to be appointed to consider a project of this nature?

Mr MADDEN — Thanks very much, Mr Viney. As I mentioned in my statement earlier on, a planning authority does not necessarily have to appoint an Advisory Committee in relation to any decision that needs to be made. It is a choice made by the relevant authority. In this case, being the authority, I elected to appoint an Advisory Committee so that I could have an objective assessment about the merits of this proposal, particularly given that the controls were not necessarily mandatory controls.

Once you move beyond those discretionary controls, in a sense, it is important to have an informed, objective view of the matters before you in relation to the proposal. In this instance I sought to have an objective assessment provided to me by an independent expert panel. That is not always the case in relation to matters, nor am I necessarily required as an authority to accept those recommendations. Where a panel is appointed it gives an appropriate opportunity to have things tested objectively but also to have broad consultation and to have that consultation considered also on its merits and considered objectively. This is what was undertaken with this project. That information is compiled and presented by the panel. It is provided to me, and in this case through to the Department of course, and then the Department advises accordingly.

From time to time, if I feel it necessary, I might question some of the advice in that advisory panel report and ask for further information. I do not necessarily need to adhere to the advice of that panel report should I choose not to, but what that provides is a transparent opportunity for people to consider and know what is being considered in relation to the merits of any project. There have been panel reports for some matters where I have received panel reports and not accepted the recommendations of those panel reports. One of those more recently has been the Great Ocean Green, which was a project proposed towards Apollo Bay. Another one of those was the Mallacoota boat ramp. I did not accept those panel reports. But I give reasons for why I do not entertain the recommendations of those panel reports.

But in this instance it was particularly important to have that, because it was a very significant project and a very significant site. Not only did it have controls on the site from within the Melbourne planning scheme, but also it had heritage requirements on it, so it was quite a complex array of issues that needed to be considered on its merits through that independent panel. I received that advice, I received the advice from my Department, it was considered on its merits and of course I approved the project, because I believed they were the right things in relation to these projects.

Mr BARBER — Minister, just some factual questions, and hopefully they will be simple ones too. If I read paragraphs 20 to 26 of your witness statement where you detail the various matters that were put before you in making this decision, and also I think paragraphs 34 to 36 — —

Mr MADDEN — Excuse me?
Mr BARBER — Thirty-four to 36.

Mr MADDEN — Thirty-four to 36.

Mr BARBER — In paragraphs 20 to 26 and then 34 to 36 you provide a description of all the matters that you considered right up to the moment of your decision. Were there any other representations made to you by other persons at any stage about what you should do with the Windsor?

Mr MADDEN — There were a range of views presented to me at various times by members of the public I might have bumped into or met at various stages, and some people on the street said they did or did not like it. And that happens to me all the time. I have mentioned, I think, in the Parliament before that I have been walking through public places and because of my ability to sometimes be noticed in public — because of my height probably — people have made comment about various projects. They just want to bend my ear a bit and say, ‘Can I express a view?’. In this instance it is likely that people expressed those views. I do not necessarily recall in great detail.

Mr BARBER — They could have yelled it across the street at you or something.

Mr MADDEN — Absolutely, and I think — —

Mr BARBER — ‘Don’t do it’ and that sort of thing.

Mr MADDEN — People have still been doing that more recently as well.

Mr BARBER — But did anybody come to see you about it that you can remember?

Mr MADDEN — I had representations from some parliamentary colleagues who were concerned about the impact or the potential impact of a project of this nature on the, for want of a better description, the parliamentary precinct. The parliamentary precinct is probably described in different ways by different people. Even within the controls, what is important are the vistas in relation — —

Mr BARBER — Yes. I am just trying to get a complete list of representations that might have been made to you.

Mr MADDEN — Yes, that is right. In terms of the parliamentary precinct, the vistas are important issues in relation to the parliamentary precinct, depending on the view lines from various locations. I had a number of parliamentary colleagues, caucus colleagues, a handful of them who felt very strongly about the impact this project might have on the parliamentary precinct. They approached me. They were provided with a Departmental briefing in relation to this project, and they expressed views to myself, and I suppose to others, and I indicated to them that if they felt strongly about these matters, they should make a presentation or they should make a submission to the panel so that could be assessed objectively.

Mr BARBER — Sure.

Mr MADDEN — And anybody who felt strongly enough about these matters or had a view — good, bad or indifferent — I encouraged to make those submissions to the independent panel.

Mr BARBER — Committee.

Mr MADDEN — And that would be — —

Mr BARBER — And they are listed in the Committee’s report, where I can read them.

Mr MADDEN — Yes, I understand that.

Mr BARBER — And I am asking you if any of those same people who made an objection or a view to the Committee subsequently came and lobbied you about your decision.

Mr MADDEN — No. I think what — —

Mr BARBER — No. Fair enough.
Mr MADDEN — I do not recall any. But what I would say is that anybody who felt strongly, I recommended that they make a submission. Once the panel process had completed, if they still felt strongly, if they had not made a submission, their opportunity had passed, so it was not — —

Mr BARBER — If there were other people wanting to meet or express a view, would you have farmed any of that work out to your advisers and said, ‘I will get you a meeting with my chief of staff.’? Do you know if your chief of staff met with any other objectors?

Mr MADDEN — No, I do not believe that that is the case. Normally the panel process is undertaken so you can have a broad, wide range of consultation. Occasionally people have strong views beyond that, and if they have not had a chance to make a submission, I might ask them to put it in writing or something like that. But it is not my understanding that we would allow people to — —

Mr BARBER — In this case?

Mr MADDEN — I do not believe so. It would not be normal practice, nor would it be my expectation, that a matter is sort of recontested once a panel has closed its hearing.

Mr BARBER — Really?

Mr MADDEN — Yes. That is my perception. It does not necessarily mean it is not necessarily the case.

Mr BARBER — If people ring up and say, ‘I’m really unhappy about this particular decision’ — and I am talking about the Windsor decision — they would not get a meeting with Justin Jarvis?

Mr MADDEN — I would not expect so. I cannot say it is not necessarily the case, but I would not expect so.

Mr BARBER — Let us be clear. I said I would ask factual questions.

Mr MADDEN — That is right.

Mr BARBER — You cannot be sure; you would have to go and check or something — —

Mr MADDEN — Look, I am speaking — —

Mr BARBER — — whether anybody went and met with Justin Jarvis about this particular matter?

Mr MADDEN — I could not be sure, but I do not believe that would necessarily be the case. Put it this way: there are from time to time in any project, for some particular reason, people — it might be a particular group of community representatives — who feel very strongly and want to continue to make their point heard directly to the minister.

Mr BARBER — That is what I am asking. And then they go to the advisers.

Mr MADDEN — Sometimes community representatives feel very strongly that they are not actually really being heard through the panel process or considered until they have actually gained the ear of the minister. I can give you an example.

Mr BARBER — Or the minister’s adviser.

Mr MADDEN — I will give you an example. I cannot speak specifically in relation to any matter that Mr Jarvis may or may not have met about.

Mr BARBER — No, no.

Mr MADDEN — I cannot specifically.

Mr BARBER — No, no, you can.

Mr MADDEN — But put it this way — —
Mr BARBER — You can, because you are accountable to this inquiry and I am asking you if anybody made a representation to Mr Jarvis.

Mr MADDEN — I would not expect so.

Mr BARBER — Will you go away and check?

Mr MADDEN — Can I make this point? I will give you an example. The other day I was leaving the building at Nicholson Street and a group — a community group had recently put to an independent panel a matter that they felt strongly about — approached me on the street, not because they sought to but because I walked past them as they were conferencing as they left the building.

Mr BARBER — They got lucky.

Mr MADDEN — Of course they chewed my ear for a while and I had a conversation with them.

Mr GUY — That is how to do it: hang around Nicholson Street.

Mr MADDEN — That is right, if you hang around long enough. But I did make the point to that group that if they had put a strong submission to the independent panel, then, knowing the professionalism of panels Victoria, that would be given appropriate weight. I did explain to them the process and that if they put up a convincing presentation that would be considered along with other presentations, and if they felt they had had a good hearing, that would be good.

Mr BARBER — This is not an inquiry into that matter.

Mr MADDEN — No, but an answer to your question, Mr Barber, is that — —

Mr BARBER — I was not after a generic or a philosophical answer; I was after a specific answer. Did anybody go to Justin Jarvis and make a presentation on this decision, that you know of? You cannot attest here today that they did not or did.

Mr MADDEN — I am not aware of anybody making a submission to Mr Jarvis in relation to these matters.

Mr BARBER — This is not an inquiry into that matter.

Mr MADDEN — No, but an answer to your question, Mr Barber, is that — —

Mr BARBER — I was not after a generic or a philosophical answer; I was after a specific answer. Did anybody go to Justin Jarvis and make a presentation on this decision, that you know of? You cannot attest here today that they did not or did.

Mr MADDEN — I am not aware of anybody making a submission to Mr Jarvis in relation to these matters.

Mr BARBER — Fantastic. I will take your word for it.

Mr MADDEN — That is right, if you hang around long enough. But I did make the point to that group that if they had put a strong submission to the independent panel, then, knowing the professionalism of panels Victoria, that would be given appropriate weight. I did explain to them the process and that if they put up a convincing presentation that would be considered along with other presentations, and if they felt they had had a good hearing, that would be good.

Mr BARBER — Did that happen in this matter?

Mr MADDEN — No, I do not believe so.

Mr BARBER — No, so that is irrelevant to this matter; that is fine.

Mr MADDEN — But I do allow people to put a point of view to me if they feel strongly, as a courtesy.

Mr BARBER — I take your point.

Mr MADDEN — But I also direct them to the appropriate places.

Mr BARBER — You said your staff should not pre-empt or second-guess or anticipate your decisions. But they do advise you; that is what advisers are there for, to advise you as to what they think you should do, having considered all the evidence.

Mr MADDEN — Yes.

Mr BARBER — What did your staff advise you in relation to this matter?

Mr MADDEN — Put it this way: the advice comes to me from the Department. The advice comes with a brief. It comes with the like of a panel report, and that is presented to me. If members of my office feel strongly
about a project, they will express what their advice might be. But in this instance, as I have mentioned in my statement, this was presented to me by the Department at a briefing. I was briefed by the Department. I do not believe there were extensive conversations — or I do not recall any extensive conversations to the contrary of any advice that I was receiving from the Department.

I considered not only the briefing but the brief before me and the advice from the panel. The logic was fairly coherent and clear in relation to these matters. From time to time a panel report may not necessarily provide clarity in relation to a decision, so it is important to have a report provided to you by a panel which is coherent and clear and gives direction. In this instance it was accordingly very clear, and the advice was consistent from the Department, so it was not difficult for me to entertain and make the decision I made.

Mr BARBER — So none of your advisers ever suggested to you at any point, ‘After we have received the independent Committee’s report maybe we could put it out for further public consultation and get some more input from the community’? None of your advisers ever put that idea to you?

Mr MADDEN — No, I do not recall any of my advisers making any such suggestion.

Mr BARBER — Do I take it that you say that you actually have not spoken to Ms Duke since the media plan came to light; you personally have not faced her?

Mr MADDEN — No, I have seen her very briefly to wish her well, in the sense that I have passed her in a hallway of a building and said, ‘Good luck; hope you’re all right’ — wishes like that — but nothing more of any great technical detail.

Mr BARBER — So you did not ask her where she formed the idea that she put into her media plan?

Mr MADDEN — No.

Mr BARBER — You did not interrogate her: ‘Why are you writing that? Where did you hear that? How did you form that view?’.

Mr MADDEN — No, I did not, and I will explain to you why I did not do that: because, as I have said before, on the basis of the way in which Ms Duke was. She was quite traumatised by what had happened.

Mr BARBER — You must have heard that second-hand?

Mr MADDEN — No, I saw her. Having explained to me what had happened, I saw her on that occasion when it was — —

Mr BARBER — On that day?

Mr MADDEN — It was on the Thursday. I think that was the 25th.

Mr BARBER — Yes. You saw her on the day that it was all going public?

Mr MADDEN — Yes, that is right, and she was quite traumatised.

Mr GUY — Didn’t it go public late afternoon, at 5 o’clock?

Mr MADDEN — No. That might have been when it was reported, Mr Guy. My understanding is that I was — —

Mr BARBER — You had a heads-up.

Mr GUY — Parliament was sitting.

Mr MADDEN — Yes, and I will explain to you the details, if you wish to hear. My understanding was that — —

Mr TEE — Is he having another go at questions?
Mr MADDEN — Yes.

Mr GUY — Are you trying to protect him again?

Mr TEE — He is 20 minutes out of the — —

Mr VINEY — He is up to 21 now; it is up.

Mr MADDEN — The information around the circumstances of this document was relayed to me after question time on Thursday the 25th. I saw Ms Duke on that occasion, but she was relatively speechless and traumatised, so — —

Mr BARBER — You did not ask her where she got this idea from, that the thing might go to a further public consultation?

Mr MADDEN — No, not at all, because it was not the time or the place for interrogation because she was quite traumatised. She was traumatised by all this and — —

Mr BARBER — It would not have been appropriate.

Mr MADDEN — My job is, and on that occasion was, to go out and speak to the media in relation to these matters. It was not to chastise or interrogate or investigate any one individual or any series of individuals. That is not my job. I do not micromanage my office. That is for other members of my office, who have that responsibility, to undertake. My responsibility is in other areas; it is not to interrogate, micromanage or chastise members of my staff, and that is not the way I operate, Mr Barber. Whilst you might see me from time to time being a bit loud in the parliamentary chamber, anybody who knows me personally knows that I am a relatively gentle soul.

Mr BARBER — By way of preamble to my last question then, Minister, I could disagree with you.

Mr MADDEN — You do not think I am a gentle soul?

Mr BARBER — I do not know you that well.

Mr TEE — Is this a question?

Mr BARBER — It is the preamble to my next question. Minister, I think your responsibility in going out and speaking to the media was to actually defend the integrity of the Planning and Environment Act and say that nothing untoward was being pulled here by way of manipulating the process in a way to produce a political outcome. So it has been my view that you would have asked her where did she get that information from and why did she think that was going to be the process. But you have told me you did not ask her; that is fine. So you actually cannot help us shed any light on that.

You have told me that you have not received representations yourself and that your staff did not give advice to you that perhaps this matter should go out for further public consultation.

My only other question — the only other thing you can help us with — is: did you ask your own staff, such as Justin Jarvis and others, whether they had been talking about or floating an idea of putting the Windsor matter out to further public consultation, and was that where Peta Duke got her information from?

Mr MADDEN — I did not ask any of my other staff in relation to these matters. All I did was to indicate to my staff that they should not pre-empt my decisions in any way.

Mr BARBER — Don’t ask, don’t tell.

Mr HALL — Minister, at the start of your statement today you outlined that you have been a minister for the best part of 11 years now. The first question I want to ask is: during that time have you always had a media adviser assigned to you?

Mr MADDEN — In that time there has always been a media adviser assigned to me.
Mr HALL — Over that period of time, how many media advisers would you have had — in round figures?

Mr MADDEN — Offhand, probably half a dozen or more.

Mr HALL — Just to help the Committee in terms of understanding this, could you therefore describe the relationship — the working arrangement is a better term — between a minister and a media adviser?

Mr MADDEN — Sure, I am happy to, Mr Hall. Basically I may speak to a media adviser through the course of a day. Much of that has to do with inquiries from the media. If the media make inquiries in relation to various matters, I may have a series of short conversations across a day or a phone call or two. If I attend events where there is likely to be media in attendance, the media adviser might attend with me and might brief me on the matters at hand on any given day — either matters in my portfolio that members of the media might be interested in or matters outside my portfolio that the media might also be interested in but with which I might not be well acquainted on any given occasion. Occasionally the media adviser will come to me if there is likely to be an event organised around an announcement, and matters around the form of that announcement might be discussed — the location or the time of day. Predominately those are the sorts of conversations you have with a media adviser.

More broadly, a media adviser might prepare a media release that goes out with an announcement. If you are not standing on the steps of Parliament or at an event in front of the media, you might make an announcement via a press release, and from time to time a press release might be presented to me in relation to an impending announcement that we need to make publicly. Predominately that is the vast majority of a media adviser’s work.

Mr HALL — From your answer I gather therefore that a media adviser has both a proactive role and a reactive role in terms of your needs as a minister and that you would meet on a regular basis, probably daily, with the media adviser?

Mr MADDEN — I would not say we would meet — we would meet infrequently. Often conversations take place over the phone. As mentioned in my statement, the media advisers are assigned to a portfolio. They are assigned from the media unit, which is located in the Premier’s building at 1 Treasury Place. It is not often I have formal meetings — it is very rare that I would have a formal meeting with the media adviser. More often than not they are informal conversations. Depending on where I am and depending on where that media adviser is located, those informal conversations could take the form of a phone conversation or a quick conversation in person somewhere. Occasionally there is a more formally structured meeting when there is a likely event that needs to be discussed.

Mr HALL — The proactive part of the role that they play may be to give you advice, as you say, in terms of media responses to issues that are likely to be raised?

Mr MADDEN — A media adviser often goes through the sorts of things that the media are likely to ask and the areas that the media have expressed interest in to the media adviser. Media advisers do not give policy advice. It is not their place to give policy advice, and they certainly do not give advice on any decisions before me or in relation to those decisions before me. In a sense the media adviser is responding to announcements I am making or decisions I have made and they are responding to events around that which are external to me. Normally those external events are the external events of the media itself and how an event may be taking place.

An example might be I will do what is often known as a doorstop out the back of Parliament in relation to a matter on a parliamentary day — maybe even not on a parliamentary day because the media often locate there for an announcement. If I am at a public event where there is an announcement, the media adviser will attend that announcement and inform me of the sorts of questions that a particular media person might want to know about, vaguely. They identify those sorts of things on the media’s list of areas of interest.

Mr HALL — In responding to your needs in terms of the media, is it routine that an adviser has access to your diary? As you said, in this case, in the media plan that was produced by Peta Duke, she obviously had access to your diary. Is that routine for all the media advisers you have had over your years?

Mr MADDEN — As I have said, I do not micromanage my office. I know the staff in my office meet regularly to discuss what does or does not get entered into a diary. It might be events or announcements or
opportunities or invitations, and there are discussion by my staff members as to what does or does not go into my diary.

Mr HALL — And the media adviser has access to that?

Mr MADDEN — I am not involved in those meetings. Sometimes those matters are brought to my attention, but if they are the sorts of events that I would tend to do normally, if they are not highly unusual or if they are not at highly unusual times, they are located in the diary and I am presented with that diary a month or so out, and if I have got questions about those I will raise those. But basically if they are not highly unusual events or announcements, then normally they enter the diary and I will look at the diary later to just confirm those.

Mr HALL — Yes. And as you said, the media — —

Mr MADDEN — The vast majority of those are standard sort of diary entries. We all have standard things we do throughout the course of our work.

Mr HALL — Sure, but the question was that — —

Mr MADDEN — But if there are events or unusual things, they might need to be confirmed, and I confirm them with my staff.

Mr HALL — You mentioned in your witness statement that Peta Duke was a media adviser for you from October 2009 through to 25 February 2010, so for a period of five months or thereabouts. You also said by way of answer to a question, I think from Mr Guy, that she was just starting her career. Does that imply that this was her first assignment as a media adviser to a government minister?

Mr MADDEN — I think she may have worked in one of my ministerial colleague’s offices for a short period of time. I am not entirely sure of the extent of that, but I am aware that she was in another ministerial office prior, I understand, for a short period of time. As I mentioned before, I am a fairly gentle soul, so I am very enthusiastic about encouraging my staff to develop, and whilst I was under the impression she was not highly experienced, I thought it was a good opportunity for somebody starting their career to be encouraged. As some members of this Committee might appreciate, I was a teacher in my former life. I am very enthusiastic about people acquiring skills, developing those skills and being encouraged to develop those skills.

Mr HALL — You mentioned in respect to the media plan in question that it was an ‘inappropriate document’ — those were the words that you used. Minister, is it appropriate under any circumstances for a media adviser, in the proactive role in which they serve you as minister, to develop a media plan?

Mr MADDEN — I would have expected that there might be a sort of a schedule of events developed based on the diary activities that I am going to be undertaking. But I would not expect a document of this sort to be developed pre-empting, anticipating decisions I may or am likely to make, or assuming what those decisions might be. I think that is not appropriate at all. I also think the tone and the language in that document was not appropriate. There are some other references there in relation to some of my other portfolio responsibilities that I think are not appropriate. The language and the tone I think are just not appropriate, in terms of not only the language and tone but also the sort of form they are written in. To discover a document of this nature existed was startling enough, but to understand that the tone, the language and the presentation of that document were such as they were was also quite startling.

Mr HALL — So what you are indicating to me is that it is appropriate, at times, for a media adviser to develop a media plan, but in this particular instance you have made it very clear that the content of the media plan is inappropriate.

Mr MADDEN — I have not said it is necessarily appropriate to develop a plan at all. I think I use a different form of words, which was ‘schedule of events’, which is different from a plan. I think it is appropriate for people to acknowledge my schedule, but the plan as it is presented I think is highly inappropriate. My understanding — and it relates to the comments the Premier had made in relation to what is provided to cabinet, so I do not think I am speaking out of school — is that we are provided with a schedule of ministers’ announcements across any given week, which is a schedule — —
Mr HALL — Peta Duke described it as a media plan.

Mr MADDEN — As I said, which is a schedule. The word ‘plan’ I think conjures up a whole lot of impressions, and if you were to describe a schedule as a plan, that might be appropriate, but in this instance the sort of formation of the plan, the detail in the plan, the speculation in the plan, the tone of the document and the tone of the language I think are in no way appropriate.

Mr HALL — In the 11 years that you have served as the minister has there been any other similar media plan or media schedule presented to you?

Mr MADDEN — I do not believe I have ever seen a media plan of this nature, as such, in my 11 years in my role as minister. I have seen schedules, but I do not believe I have ever seen a plan of this nature or this type with material pre-empting a minister’s decision in any area before.

Mr HALL — In response, again, to previous questions and indeed I think to questions that have been asked by media outside of this chamber you have repeatedly said that Peta Duke acted alone in the production of this particular document. Did she tell you that she acted alone in its compilation?

Mr MADDEN — No, I did not speak to her, as I said before, in relation — —

I have had very little conversation with Peta Duke since this matter was brought to my attention, basically because in the time immediately after this matter came to my attention it was just not an appropriate time to talk to Ms Duke, because she was obviously quite distraught. I do not use the word loosely, but she seemed to be traumatised by it. She was quite vulnerable in terms of her emotional state, as one might be if they were — —

Mr GUY — If their minister blamed them for it.

Mr MADDEN — No. That is very inappropriate, Mr Guy.

Mr GUY — You did.

Mr MADDEN — It is inappropriate.

The CHAIR — Mr Guy, the minister is answering the question.

Mr MADDEN — They are the sorts of remarks — —

Mr GUY — But you did it; that is the point.

Mr MADDEN — They are the sorts of ill-considered and insensitive remarks that have traumatised these people.

Mr GUY — It is insensitive to blame her. You claim that she is traumatised, and you blamed her.

Mr MADDEN — It was not the appropriate time to have that conversation.

Mr HALL — I accept that.

Mr MADDEN — She was reassigned, and since that reassignment I understand that conversation has taken place within the unit she has been reassigned to, and the information from that conversation has been relayed to me about the way in which the formation of that document took place.

Mr HALL — Could you repeat that, because I am trying to understand if she did not tell you she acted alone, how do you know she acted alone?

Mr MADDEN — That information was provided to me via the Premier’s unit, and I understand she was counselled in relation to these matters within the Premier’s unit.

Mr BARBER — We have tried to call them too, but they will not come.

Mr GUY — They will not come either.
Mr Madden — It is very hard to call people if your summonses are defective.

Mr Kavanagh — I would like to thank you, Minister, for attending today, but I would like to express first my exception to your comments, repeated so many times earlier, about a political witch-hunt. At the same time as you are expressing your sensitivity about your character being besmirched, or something like that, you are saying that the members of this Committee are prepared to make findings of fact without evidence to back them up. I resent that. It is not true. The Committee is investigating things that are of serious public interest, and I am not going to find findings of fact against people if there is no evidence. I do not believe most of the members of this Committee are going to do it either.

Mr Madden — Mr Kavanagh, I accept your point. If I have offended you in any way, I am happy to withdraw that offence. I also acknowledge, Mr Kavanagh, that you have not tried to pre-empt the proceedings here or pre-empt the Committee hearings by releasing press releases in relation to this Committee. I acknowledge that.

Mr Kavanagh — Thank you. You have said in point 8 that you have always been willing to cooperate. That is not really consistent with your position today that this Committee is a witch-hunt, is it?

Mr Madden — Mr Kavanagh, as I have said before, I have had a very high public profile for more than 30 years. I have undertaken an enormous amount of community representation and community work with a public profile over the course of 30 years. For more than six months I have been unable to attend this Committee because this Committee has not sought to hear from me in relation to these matters. So for more than six months I have had to listen to the rumour, the innuendo and the speculation of the media and have my reputation dismantled publicly waiting to get to these proceedings here today to explain myself.

I know that collectively decisions are made around this table in relation to when hearings will be undertaken. It is unfortunate that Mr Guy has left the room, because I am also conscious that I have had motions moved against me in the Parliament in relation to my reputation, in a chamber that has the numbers stacked against me. I also recognise and thank you, Mr Kavanagh, for the fact that you were not prepared to make a call in some of those proceedings until you had heard from me in this place, but there have been other members of this Committee who have been very quick to criticise me and to move and support motions of no confidence before I had had the opportunity to present my case.

Mr Kavanagh — You are very concerned about reputation, Minister.

Mr Madden — No, Mr Kavanagh, I make the point that you might be a little bit offended because of remarks I have made here today, but you have not had motions moved against you by parties pre-empting the results of any Committee. Those have been played out very publicly in the media, and whilst I have very broad shoulders and I am a fairly gentle fellow, I do not really take those motions moved against me lightly. I would expect that you would not expect me to discount those or take them lightly. I recognise that those motions of no confidence that have been moved against me by the Legislative Council have not only gained a significant amount of public interest and attention but I feel they have been completely unwarranted.

Mr Kavanagh — Thank you. You had the time to debate that within the chamber. You are concerned about reputation, yet as a result of your actions — I think on 12 March you came in here to actually try to besmirch the reputation of the Committee, did you not? The histrionics were designed to give the impression that the Committee was not acting on a rational basis, were they not?

Mr Madden — Mr Kavanagh, I was invited by the Committee to attend that day, and then for some reason unknown to me, you decided to cancel me at the last minute without any explanation. It would be different if you had not invited me. If you had not invited me, I would not have turned up on that occasion, but I was invited to attend that day, so I turned up.

Mr Guy — No, that is factually not true.

Mr Tee — That is right.

Mr Guy — That is misleading. That is completely not true, and you know it.

Mr Tee — On 3 March we wrote to him and invited him to attend.
Mr GUY — There was no RSVP, and he just turned up. You know that is the fact. He just turned up himself. Give me a break!

The CHAIR — Mr Guy and Mr Tee! Mr Kavanagh has the call.

Mr KAVANAGH — You are here to give evidence today, but you have said for months that you were the person to come here and give us the evidence and that Ms Duke, who is the only person who knows, is not the person to do that. Yet we found out today that you have not even asked Ms Duke for the information that obviously the Committee would be wanting to hear.

Mr MADDEN — I know, Mr Kavanagh, that any conversation that I was going to have with Ms Duke post the events in any form would be matters that you would all be particularly interested in once you established this Committee. I am not able to answer those questions because I have not had the conversations with her. Other people have had them.

Mr KAVANAGH — You said that six months ago was not the appropriate time, but there have been plenty of opportunities since, have there not, which you have not taken up?

Mr MADDEN — Let us not forget, Mr Kavanagh, this Committee instigated an Ombudsman’s investigation, and I think if you read in detail the Ombudsman Act— —

Mr GUY — Two months ago; it has been four months.

Mr MADDEN — If you read in any great detail the Ombudsman Act — I do not want to — —

Mr KAVANAGH — How long was there, Minister, between the period when you decided not to ask her questions six months ago and when the Ombudsman’s investigation began?

Mr VINEY — Is the minister obligated to undertake his own inquiry?

Mr MADDEN — As I have said, Mr Kavanagh — —

Mr VINEY — Where under ministerial accountability is he obligated to undertake any kind of inquiry into his staff?

Mr GUY — He has spoken to no-one. That is the point.

Mr BARBER — Don’t ask, don’t tell.

Mr KAVANAGH — Excuse me.

Mr VINEY — Where is the obligation?

Mr GUY — He has not spoken to anyone.

Mr VINEY — He has given a reason.

The CHAIR — Mr Viney!

Mr GUY — What, incompetence?

Mr KAVANAGH — The point, Minister, is that there were months when you could have asked Ms Duke, even without an ongoing Ombudsman’s investigation being ongoing.

Mr MADDEN — Yes, Mr Kavanagh, but I am not a policeman.

Mr GUY — You are a minister! That is the point of this.

Mr KAVANAGH — No, you are the person who said that you would come here and give the evidence, which you have now told us you have made no attempt to find.

Mr MADDEN — No, that is not quite correct, Mr Kavanagh.
Mr KAVANAGH — Then what is correct?

Mr MADDEN — There are a few things that this Committee seems to have forgotten and chooses to forget. It seems to have selective memory in relation to the fact that I was invited, I presented myself and the Committee declined to hear me. The Committee chose not to invite me until now, and in that time the Committee has also instigated an Ombudsman’s report that has not been completed, and it now chooses to ignore the fact that there is an Ombudsman’s report that should be presented before furthering the inquiry, so — —

Mr KAVANAGH — You had the opportunity to make a long statement, Minister.

Mr MADDEN — Mr Kavanagh, I think I have been fairly gracious to you at every opportunity. I try to be at every opportunity.

Mr BARBER — You are amazing.

Mr KAVANAGH — Thank you.

Mr MADDEN — I try to be very gracious to you.

Mr BARBER — Let’s keep the people of Victoria in here somewhere.

Mr MADDEN — I am seeking to be very gracious to you, Mr Kavanagh, but again, let’s not forget that this — you might be offended by the fact that this is grandstanding and trying to undermine my reputation. You may not interpret it that way, but I do.

Mr KAVANAGH — There is grandstanding, and there are attempts to ruin someone’s reputation.

Mr MADDEN — I do, Mr Kavanagh. You are attempting to ruin my reputation.

Mr KAVANAGH — No, I am not doing that.

Mr MADDEN — I think you need to think about how you conduct these inquiries. I think you also need — —

Mr GUY — So why did you blame Peta Duke directly? Whose reputation is undermined there?

Mr MADDEN — I think you also need to think about how you present motions to the Parliament, and I think you also need to know when you vote in support of those motions that are presented to the Parliament and also acknowledge the fact that despite my having had a reputation for 30 years that has been about fair play and about representing the community, some members of this Committee have been very happy to jump onboard the political rhetoric of undermining my reputation and my goodwill across the community at every opportunity. There are some members of this Committee — and you can draw your own conclusions — who have undertaken those motions of no confidence for reasons of a political witch-hunt. You may be offended at that. I have tried to be very gracious to you, Mr Kavanagh, about not having you offended by these remarks, but I cannot help it if you are offended by the fact that you are trying to undermine my reputation and undertake a political witch-hunt in this forum, having not wanted to see me for six months and now telling me that I am not doing what you would like.

For six months I have been prepared to present myself, but you have not been willing to call me. In the meantime you have wanted to and sought to establish an Ombudsman’s investigation, let it run through the press, undermine my reputation, and now — because you have not seemed to report in a timely manner — this Committee seems to want to drag me in here again and undermine my reputation publicly again because it suits — —

Mr GUY — You do a good enough job of it yourself. We do not have to try and undermine you.

Mr MADDEN — It suits the political convenience of the political cycle.

Mr VINEY — Coincidentally just before an election; just by coincidence.
Mr GUY — You are good at undermining your own reputation, mate. You do not need anyone else to help you.

The CHAIR — Minister.

Mr MADDEN — If you are sensitive to that, you know, be sensitive about it.

Mr KAVANAGH — I would like to ask you some questions to you to answer, Minister, if possible.

Mr HALL — It is September, Minister, grand final time; the games are tough.

Mr MADDEN — I do have broad shoulders, Mr Hall, and I am quite happy to have them.

Mr KAVANAGH — One of your main offences has been that the content of the email in question was speculative, but there is nothing speculative about saying, ‘We have a strategy to do this’, is there. That is not speculative.

Mr MADDEN — It is not my document, Mr Kavanagh. It is not a document I use — —

Mr KAVANAGH — I am asking about speculativeness here.

Mr MADDEN — I have already made a comment, Mr Kavanagh, that says it is not the document I would use — —

Mr KAVANAGH — Yes. Is it speculative?

Mr MADDEN — I have not seen that document. I am not going to make comments about the language in that document — —

Mr KAVANAGH — You have before, and they were wrong. I am asking you now to make a correct one.

Mr MADDEN — It is not my document, Mr Kavanagh.

Mr KAVANAGH — No, but is it speculative?

Mr MADDEN — It is not my document.

Mr KAVANAGH — You said 50 times in an interview that it was speculative, when it was not. You have given reasons why you think Ms Duke should not attend, but you have not acknowledged that the Clerk of the Legislative Council says that attempts to prevent such a person attending are in fact in serious contempt of the Parliament. You are aware of that, though?

Mr MADDEN — As I have said before, there are — —

Mr VINEY — That is not proven, by the way. That is just an opinion. It is nothing more than an opinion.

Mr KAVANAGH — Okay. We will stick to the truth.

Mr MADDEN — Mr Kavanagh, there are views — —

Mr KAVANAGH — He expressed an opinion — —

Mr VINEY — It is just an opinion.

The CHAIR — Mr Kavanagh, Mr Viney, the minister is answering.

Mr TEE — We never did answer those questions from the attorney.

The CHAIR — Thank you, Mr Tee. The minister is answering.

Mr MADDEN — There are a range of views, legal and otherwise, about whether people who are advisers should attend or should not attend these sorts of hearings, but I make the point — and I made it earlier on —
there were three reasons why they did not attend. The third of those reasons was that the subpoenas were considered defective, so — — —

Mr KAVANAGH — Not by the Clerk of the Legislative Council.

Mr VINEL — It does not matter. We did not answer that.

Mr TEE — Yes, but we never communicated that back to the attorney. That was always the problem.

Mr MADEN — I am not the legal expert here, Mr Kavanagh, but I understand these subpoenas have been considered defective, so I would have thought — — —

Mr KAVANAGH — By whom?

Mr GUY — By whom? Yes, your Attorney-General mate and cabinet.

Mr MADEN — I would have thought that if this Committee was serious about actually wanting the advisers to attend rather than grandstanding about the fact that they did not attend, then you would seek to have the subpoenas corrected and then reissue those subpoenas, but I understand that has not been the case.

Mr KAVANAGH — If they did not need correction, then you would not do that, would you?

Mr VINEL — And the Committee has never responded to the Attorney-General’s letter — — —

The CHAIR — Mr Viney!

Mr KAVANAGH — Thank you. That is a different matter.

Mr GUY — We do not need to; they are lawful.

Mr KAVANAGH — Quickly, with all the problems in this email, one of them that has hardly got a mention is that it largely announced a plan for your election as the member for Essendon. There is a plan there. Is it appropriate for a government-employed media adviser in a government department to be running your political campaign for you like that?

Mr MADEN — As I said, it is not a document I would have seen, Mr Kavanagh. It is not a document I did see.

Mr KAVANAGH — Okay, you did not see the document, but is it appropriate for a government public servant to be doing that?

Mr MADEN — In relation to whether it is or is not appropriate, I have said the document is inappropriate — I have said that all the way along — for all those reasons.

Mr KAVANAGH — In this respect you agree that that is inappropriate.

Mr MADEN — I have said the document is inappropriate, Mr Kavanagh.

Mr KAVANAGH — It is inappropriate for a person in that position to be your campaign manager, really.

Mr MADEN — I have said and I say again, it is an inappropriate document.

Mr KAVANAGH — All right; good. The question is really whether this represents a culture in this Department, is it not? That is the big question. Is it an aberration or does it represent part of the culture?

Mr VINEL — She was an adviser, not a Departmental employee.

Mr MADEN — I have said on a number of occasions that this staff member had not been a media adviser for a long period of time and was relatively inexperienced.

Mr BARBER — Impressionable, no doubt.
Mr MADDEN — She developed a document which was inappropriate. I have said it is inappropriate. I have said the material in the document is inappropriate. I have said the tone of the document is inappropriate. How many more times do I have to say the document was inappropriate, and how many times do I have to say I did not see the document, it is not a document I use and they are not my words, they are hers?

Mr KAVANAGH — I understand that. The question, though, really is do employees not get a sense of the culture of an institution from the leaders of that institution, whether it is a government department or a company? People do not go and tell racist jokes if the first time they tell one, they are told, ‘Don’t tell racist jokes’.

Mr VINEY — Mr Kavanagh, this is not a departmental employee.

Mr KAVANAGH — Do people write a memo like this contrary to the dominant culture of a department?

Mr MADDEN — As I have said, Mr Kavanagh, it is not a document I had seen. It is not a document I would see. It is not a document I support. I have said it is inappropriate.

Mr KAVANAGH — That is all true, but could you answer the question?

Mr MADDEN — And I would believe a document of that type would not be produced again, because if the point you are making is that it is an inappropriate cultural issue, you are probably right. You are probably right in the sense that I would not like to see a document of that type, tone, language or expectation developed again, and I am sure it will not be.

Mr KAVANAGH — The point I am making is that there would be good reasons to think that a document like this would not be written unless it was consistent with the culture of a workplace. What do you say about that?

Mr MADDEN — All I can say, again, is that it is not a document I had seen. It is not a document I would want developed.

Mr KAVANAGH — So you do not say anything about that point at all?

Mr MADDEN — No, I am agreeing with you in the sense that the tone of the document, the language of the document, the speculation in the document and the form of the document are completely inappropriate. As I said before, an appropriate document would have been a schedule of events, but to have that much detail in it horrified me. I think the fact that I was horrified by it reflects the fact that I have an expectation of the culture within my organisation which does not pre-empt minister’s decisions — —

Mr GUY — But you do not micromanage people.

Mr MADDEN — And does not pre-empt announcements I might make.

Mr BARBER — You cannot have it both ways.

Mr MADDEN — I think if people understand my cultural values, they will understand that. That document reflects a lack of understanding of my cultural values and the cultural values I have upheld for the last 30 years at least.

Mr KAVANAGH — Thank you very much, Minister. I think it is disappointing to us that you have not even asked the only person who knows the information for the information that we were obviously going to seek today.

Mr MADDEN — I understand that the Committee is frustrated by the fact that it has not spoken to a number of people and would love me to speak with those people. I understand the Attorney-General made an offer of ways in which that information could be communicated.

Mr TEE — Including that very proposition.

Mr GUY — But he has never talked to her. How could he? He knows nothing about it. He does not micromanage anything.
Mr TEE — But the Attorney-General has said he would if that would resolve the issue.

The CHAIR — Mr Tee, you have had your chance. Minister?

Mr GUY — He shows great incompetence. That is what he shows.

The CHAIR — Mr Guy, the minister is answering.

Mr TEE — We never responded.

Mr VINEY — If we had sent the Attorney-General a letter with questions, we would have had the answers today.

Mr TEE — Exactly.

Mr MADDEN — My understanding is that there was an offer made by the Attorney-General for me to seek those answers and to relay them to the Committee.

Mr TEE — And they never responded.

Mr MADDEN — I have not sought to — I have not received the direction from the Attorney-General because the Attorney-General has not received a response from this Committee in relation to those matters. Mr Kavanagh, you can make out how hard done by you and the Committee have been in relation to these matters — —

Mr VINEY — All we had to do was write up a list of questions.

Mr TEE — The offer is there.

Mr MADDEN — But again, this Committee did not respond to the Attorney-General’s letter. Time and again — —

Mr GUY — Why would we? We are trying to get staff members to appear, not — —

Mr TEE — Because you wanted the answer, and now you are saying, ‘Why didn’t you — —

Mr GUY — We wanted the staff. We did not want him.

Mr VINEY — If you wanted the answers, you would have got them today. If you had questions you wanted answers to, you could have got them today.

Mr MADDEN — You seem to be very sensitive about the fact that I have described this as a political witch-hunt, but how can you not extrapolate that from the fact that there have been lines of communication opened that have not been responded to by this Committee — —

Mr TEE — Objections that have not been responded to.

Mr GUY — Because the incompetence is extreme.

Mr MADDEN — And then the rigour in terms of the legal work that has developed in relation to — —

Mr GUY — A document you claim you have been done over for for 10 months, and you have never even talked to her.

Mr MADDEN — The summonses have been considered defective.

Mr GUY — No, they have not. That is just not true. That is not true, for a start.

Mr MADDEN — No, they are considered defective. I have legal advice provided to me that they are defective.

Mr GUY — By the Attorney-General — that is independent!
Mr MADDEN — Again, here we have a Committee that has not responded to the Attorney-General.

Mr GUY — The Labor Party wrote your legal advice, and you are claiming that as fact.

Mr VINEY — It is called the government, not the Labor Party.

Mr GUY — It is called incompetence.

The CHAIR — Mr Guy, Mr Viney, the minister is — —

Mr VINEY — You want to throw those things around. You cannot throw those things around other than by substantive motion.

Mr GUY — I am — at him and at you.

Mr VINEY — So go into the house and move it as a substantive motion, but do not throw that stuff around in here, misusing the forms of this Committee and the forms of the Parliament.

Mr GUY — Nice try.

Mr VINEY — Do not do it.

Mr MADDEN — I just put on record that here we have a Committee that has issued defective summonses — —

Mr KAVANAGH — No, it has not.

Mr MADDEN — It has then had lines of communication open with the Attorney-General that it has not responded to, and then today when matters were raised about whether this Committee has sought legal advice as to whether this Committee is in breach of the Ombudsman Act, you, Chair, cannot answer.

Mr GUY — He did: he said it was not.

Mr MADDEN — Then members of this Committee suddenly get highly sensitive about the fact that I might describe this as a political witch-hunt. How can I not see this as a political witch-hunt if you are very happy to undermine my reputation of more than 30 years but this Committee is not prepared to undertake the rigour in relation to either acquiring the information that it might seek, providing appropriate summonses to those they wish to call or, alternatively, seeking appropriate advice in relation to the potential breach of the Ombudsman Act. How can anybody not see this as political grandstanding and not see this Committee as anything more than a political witch-hunt that you have dragged out across the course of six to eight months before you have called me — although it has always been about me anyway — and you have only called me a couple of months out from an election? How can anybody not see this as political grandstanding on any front? Then they come in here and claim how sensitive and vulnerable they are to the criticism presented before them when they are yet to receive a no-confidence vote before the Parliament but are prepared to support one against this member twice because it suits their political interests?

Mr KAVANAGH — On the record, the summonses were not defective.

Mr VINEY — You assert.

Mr KAVANAGH — Again, I resent this talk of political witch-hunt for the reasons already stated, but I would like to thank you for your evidence today.

Mr TEE — I want to start by asking you about the design. I know that when the government architect gave evidence he described the design for the redevelopment as excellent, and I am wondering what your view is. Having been an architect for a number of years, how does the design complement or fit into the area and the urban design around Melbourne. What is your view on that?

Mr MADDEN — I think it is important to recognise that whilst it is not for me to defend the project per se, it is a project of great significance and the urban design qualities are important to recognise, particularly because the architect used by the proponent — Denton Corker Marshall — are noteworthy architects. They are
architects of international standing, and they are architects used by governments of all persuasions at various times in relation to sound public architecture. Also there are some very significant examples around Melbourne of the great work that Denton Corker Marshall have undertaken. Their work is about not only good architectural design for a building’s sake but the contribution to the urban environment — the likes of the Bolte Bridge, the Melbourne Museum and what some would describe as the yellow cheese stick on the freeway, those works there at the gateway entrance of the freeway to Melbourne. They are just a few of the examples, as well as No. 1 Collins Street, I understand. A number of these buildings are located in a particular urban context. The projects undertaken by Denton Corker Marshall also often have to consider heritage buildings in the vicinity, the likes of the Melbourne Museum and the exhibition buildings. I also understand that Denton Corker Marshall have recently been involved in works at the interpretation centre, I think it is, at Stonehenge out of London. It is hard to get a building or structure any more historic than Stonehenge, but they are at the forefront of those sorts of works. The fact that they are involved in a very noteworthy building like the existing Windsor Hotel of course is a great test of their design ability.

The other issue in relation to the Windsor is the Windsor has been a project, a building or an operation which has struggled in recent years. The building itself has struggled to capture what might have been its traditional market — the 5-star, 6-star hotel-type market — because that market has changed in recent years. This is not a compliment or a criticism in relation to the way in which people seek to be accommodated when they are in world-class cities, but if one wants to be accommodated in a world-class city in a renowned hotel, there are certain things that those hotels have. They have car-parking facilities, concierge facilities and the likes of swimming pools and conference facilities. Of course the Windsor Hotel has none of those. The proposal complements the building with those to bring the Windsor back to the equivalent of a 5 or 6-star hotel.

The other issue that is worth considering is there are examples around the world where those sorts of projects have been undertaken to bring an imperial-style hotel up to an international standard. There are hotels around the world where there have to be extensive works undertaken to bring those buildings up that 5 or 6-star quality, whether that is the likes of the Peninsula Hong Kong hotel, the Raffles Hotel in Singapore or the Imperial Hotel in India. Some of those have to undertake quite extensive works and complement the initial existing heritage building with very significant works which are undertaken in contemporary circumstances, sometimes with a contemporary style.

The great challenge for the project, which I believe needed, to be objectively tested too, was the finish of the proposed tower. The tower form was one with an innovative quality. That innovative quality was one where there was a curtain effect — more than just curtain architecture, but the form of a curtain which had those elements to it. It was quite an innovative concept that would sparkle at night, and that needed to be tested objectively through an independent panel process, and I believe it was, and I believe that the panel reflected positively on that.

At the end of the day I expect that the decision I have made in relation to the Windsor Hotel development will secure the future of the Windsor Hotel. It will secure it as a world-class international premium hotel in an international world-class city that hosts significant international events, and it will add to the fabric and operation of this city. I believe that the design solution and the logic behind that design solution is a clever, innovative and coherent contemporary design which complements the history, traditions and operations of the Windsor Hotel.

I am also very mindful, and have been mindful, that the great challenge to the Windsor Hotel is that parts of some of the areas that will be demolished present challenges — the area that has been colloquially known as the old Hard Rock Cafe, which was built in the 1950s or 1960s, has presented challenges for the Windsor Hotel over many years. That being removed and replaced with a new contemporary design that has those service components that I mentioned before will provide a significant complement to the hotel, the hotel industry, the hotel sector and the events industry, and ensure that the historic components of the Windsor Hotel will operate in a way which will deliver that heritage and have it presented at its best and that business can reinvest in that over time.

One of the great challenges to any heritage building is to maintain the operation of that building in the form in which it was designed. Once you determine that you cannot operate it as was originally intended for its use, then often the use of that heritage building undermines the operation of that building.
Mr TEE — So it is the survival of the building that requires that reworking.

Mr MADDEN — Absolutely. Good examples of that are often some of those old post office buildings that we have scattered around Melbourne and Victoria where, because they could not be transformed appropriately, either through access requirements or through technology requirements and the change in technologies, they no longer operate specifically as post offices. So the post offices have moved to somewhere else. And to find the right shape and fit in those buildings has sometimes proved problematic for some of those buildings. I think the solution provided by the proponent and by the internationally renowned architects is one which will hold the Windsor Hotel and Melbourne in good stead for decades, maybe centuries, in the years ahead.

Mr TEE — Thank you. The other issue, and it was touched on earlier, is the issue around consultation. I think you gave some evidence about the fact that you get approached from time to time. Under the legislation and under the framework provided for by the act, what was the process for consultation and how did that take place?

Mr MADDEN — The advisory panel was the opportunity for that public consultation, and that was a very important component in forming my decision. I want to make this point very clear to the panel today — very, very clear. If at any stage someone had wanted the project to be rejected — if the minister, the authority, had wanted the project to be rejected — it could have been rejected under a 20(4), which is just an intervention. I have that ability, I have that discretion, within the act and the authority, and at any time I can undertake to intervene, even in my own decision. Because I am the initial authority, I can intervene, and it is mentioned in my statement; I can intervene with what is known as a section 20(4) and reject the proposal outright with no appeal rights, should I choose to. I have that discretion within my authority. And not only do I have that discretion, but also all I need to do on the basis of that discretion is report to Parliament and adhere to the guidelines of intervention. This project is one which could be one of state significance, because the building is heritage listed on the state heritage register.

Mr BARBER — That is a different act.

Mr MADDEN — Had I wanted to intervene, I could have. I could have intervened with a section 20(4) and rejected the proposal outright, had I sought to or wanted to. But that has not been the case, and from the very beginning I was eager to have the project objectively tested through a forum where people could make their views heard and present to that panel so that the process would objectively test the assumptions of the designers, the architects and the proponents and have all those matters considered on their merits.

Mr TEE — Thank you. Mr Blacher in his evidence — and I think you have summarised it here — talked about the process, the fact that the application came in, went to the Department, there was some notice, provisions were set out so that people were notified and ultimately the Department I think recommended and you accepted the advisory mechanism. That mechanism then came back with recommendations which were again considered by the Department and I think ultimately accepted, and the Department’s recommendations came back to you with the panel report and you ultimately accepted that. That was really the process that I think he outlined some time ago.

Mr BARBER — We know what the Department recommended.

Mr TEE — Mr Blacher indicated in his evidence that this was the usual process, or not an unusual process, that there had been nothing untoward and that there had been no third-party interference, no manipulation and so on, and those views were, I suppose, tested by the two independent auditors who then came to this Committee and gave similar evidence in terms of the process and the fact that there was no third-party interference or manipulation. From your perspective, from your advantage point as the minister and the authority, did you have any concerns about the process? Was there anything untoward from your perspective?

Mr BARBER — Leaving aside the memo.

Mr TEE — In terms of the process that occurred. I mean the memo, as has been the evidence, was irrelevant because — —

Mr BARBER — Apart from that, Mr Lincoln, how was the opera?
Mr MADDEN — That is a very good point, Mr Tee. The process was not an unusual process. The process was adhered to. That was complemented by the reports of both probity auditors, and the decision was made. As I mentioned in my statement, those decisions have been tested and challenged by various parties, and they have not been accommodated or accepted. So the processes by which this has been entered into and been gone through and then decisions have been arrived at have been appropriate processes, and they have been not unusual and they have been ticked off by relevant probity auditors. So again I make the point that I come before you today knowing that whilst there might be members of this Committee who are highly sensitive to my description of this as a witch-hunt, I still believe it is a witch-hunt.

Mr TEE — The other issue is that Mr Blacher talked about the fact that he had been around for a number of years and he had seen a number of changes, as I think he described them — and this is in respect of the planning process more broadly, not in relation to this particular matter — and more broadly Mr Blacher’s evidence was that things had improved in terms of accountability, transparency and so on. Can I ask: in your experience, what initiatives has the government introduced around ensuring that we do get a planning regime which is accountable, that is transparent and that is fair?

Mr MADDEN — Again, that is another very good point, Mr Tee. Across the avenues of government we have introduced a number of critical procedures and processes which guarantee transparency and adhere to process. Basically, the panel system itself allows for transparency, because any decision that either accepts or rejects a panel report is known and all the information provided to it and considered and the consultation — —

Mr BARBER — But sometimes you ignore the panel report and reverse it; you told us earlier.

Mr TEE — And gives reasons for that.

Mr MADDEN — Yes, and I give reasons for that, and I report to Parliament on those things, as well. The important thing is — —

Mr TEE — Otherwise he would be handing over the powers to the advisory Committee.

Mr BARBER — What is the point of that?

Mr TEE — It is an option for him.

Mr MADDEN — So the important thing here, Mr Barber and Mr Tee, is that people are aware of whether the government accepts or rejects that advice. So it is a transparent process, because the panel reports are released accordingly. I have made it standard practice that I release my announcements when I release the panel reports. The panel reports I may accept or reject, but I release both at the same time. That has always been my practice. So again, any suggestion that I would do otherwise is incorrect. It is not what I would do, because it is not my standard form.

The CHAIR — We have run out of time, so I will have to end the hearing there. Minister, thank you for your evidence this afternoon. The Committee will have a draft version of the transcript to you in the next couple of days for any corrections. Thank you for your submission and your attendance today.

Committee adjourned.