LEGISLATIVE COUNCIL

STANDING COMMITTEE ON
FINANCE AND PUBLIC ADMINISTRATION

7th Report to the Legislative Council

INQUIRY INTO VICTORIAN GOVERNMENT
DECISION MAKING, CONSULTATION AND
APPROVAL PROCESSES

FIRST INTERIM REPORT – APRIL 2010
LEGISLATIVE COUNCIL
STANDING COMMITTEE ON
FINANCE AND PUBLIC ADMINISTRATION

INQUIRY INTO VICTORIAN GOVERNMENT DECISION
MAKING, CONSULTATION AND APPROVAL PROCESSES

FIRST INTERIM REPORT

APRIL 2010

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STANDING COMMITTEE ON
FINANCE AND PUBLIC ADMINISTRATION

Committee Members

Mr Gordon Rich-Phillips – Chairman
Member for South Eastern Metropolitan Region

Mr Matthew Viney – Deputy Chairman
Member for Eastern Victoria Region

Mr Greg Barber
Member for Northern Metropolitan Region

Ms Candy Broad
Member for Northern Victoria Region

Mr Peter Hall
Member for Eastern Victoria Region

Mr Matthew Guy
Member for Northern Metropolitan Region

Mr Peter Kavanagh
Member for Western Victoria Region

Substituted Members

Mr Brian Tee for Ms Candy Broad

Committee Staff

Mr Richard Willis – Secretary to the Committee
Ms Susan Brent – Research Officer
Mr Anthony Walsh – Research Officer
Mr Sean Marshall – Research Assistant

Address all correspondence to –

Council Committee Office
Department of the Legislative Council
Parliament of Victoria
Spring Street
EAST MELBOURNE VIC 3002

Telephone: (03) 9651 8696
Facsimile: (03) 9651 6799
ESTABLISHMENT OF STANDING COMMITTEE

On 21 November 2007, the Legislative Council resolved to appoint a Standing Committee on Finance and Public Administration with a Membership of seven Members. The Council’s resolution came into operation on 1 April 2008 and the Committee’s inaugural meeting was convened on 7 April 2008.

In accordance with the establishing resolution, the following Members were appointed to the Committee:

- Mr Greg Barber - Australian Greens,
- Ms Candy Broad - Australian Labor Party,
- Mr Peter Hall – Nationals,
- Mr Matthew Guy - Liberal Party,
- Mr Peter Kavanagh - Democratic Labor Party,
- Mr Gordon Rich-Phillips - Liberal Party, and
- Mr Matthew Viney - Australian Labor Party.

At its inaugural meeting the Committee elected Mr Rich-Phillips as Chairman, and Mr Viney as Deputy Chairman.

The establishing resolution provides the Committee with a wide range of powers. Some key features of the Standing Committee include:

- The Standing Committee exists until the Parliament is either prorogued or dissolved.
- Members of the Committee may be substituted by another Member from the same political party.
- The Committee has the power to inquire into any matter or thing relevant to its functions, which is either referred to it by resolution of the Legislative Council, or determined by the Committee.
- The power to appoint sub-committees to inquire into matters.
1. Pursuant to Legislative Council Sessional Order No. 22 (10), the Standing Committee on Finance and Public Administration may inquire into any proposal, matter or thing that is relevant to its functions which is referred to it by resolution of the Council or determined by the Committee.

2. On 3 March 2010, the Committee resolved to inquire into and report on Victorian Government decision making, consultation and approval processes, and any knowledge and/or involvement of Ministers, Ministerial staff and/or Victorian Government officers since 1 December 2006 and in particular issues arising from media plans prepared within the Victorian Government since 1 December 2006.

3. The Committee agreed that the first matter to be investigated under the new inquiry would be the Windsor Hotel redevelopment planning process.

4. Legislative Council Standing Order No. 24.15 states: ‘a Select Committee may report on its deliberations and present its minutes, evidence or other documents from time to time’. Legislative Council Sessional Order 22 (24) states the provisions of the Standing Orders relating to Select Committees also apply to the Standing Committee on Finance and Public Administration.

5. This first interim report is a listing of all correspondence relating to invitations and summonses to witnesses to give evidence at public hearings in relation to the Windsor Hotel redevelopment planning process. A schedule listing the documents being tabled with this report is provided on the following page.
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3 March 2010

Mr. Yehudi Blacher
Secretary
Department of Planning and Community Development
GPO Box 2392
MELBOURNE VIC 3001

Dear Mr Blacher,

Re: Parliamentary Inquiry into Victorian Government decision making, consultation and approval processes

The Legislative Council’s Standing Committee on Finance and Public Administration today met and resolved to inquire into and report on:

Victorian Government decision making, consultation and approval processes, and any knowledge and/or involvement of Ministers, Ministerial staff and/or Victorian Government officers since 1 December 2006 and in particular issues arising from media plans prepared within the Victorian Government since 1 December 2006.

The initial focus of the inquiry will be on the Windsor Hotel redevelopment process.

To this end, the Committee requests your office provide a copy of the memorandum/email headed ‘Minister for Planning Justin Madden Media Plan’ with respect to the Windsor Hotel redevelopment process and referred to in media reports last Thursday and Friday. It would be appreciated if this document can be sent to the Committee office no later than 5.00 p.m. on Friday 5 March 2010.

The Committee has further resolved to invite you to give evidence at a public hearing scheduled for Friday 12 March 2010 to discuss the Windsor Hotel redevelopment process. Can you also please reply by the end of this week as to your availability to attend a hearing on 12 March.

Yours sincerely,

RICHARD WILLIS
SECRETARY
COUNCIL COMMITTEES
APPENDIX 2
Letter to Minister for Planning

3 March 2010

Hon Justin Madden MLC
Minister for Planning
PO Box 500
East Melbourne VIC 3002

Dear Minister,

Re: Parliamentary Inquiry into Victorian Government decision making, consultation and approval processes

The Legislative Council’s Standing Committee on Finance and Public Administration today met and resolved to inquire into and report on:

Victorian Government decision making, consultation and approval processes, and any knowledge and/or involvement of Ministers, Ministerial staff and/or Victorian Government officers since 1 December 2006 and in particular issues arising from media plans prepared within the Victorian Government since 1 December 2006.

The initial focus of the inquiry will be on the Windsor Hotel redevelopment process.

To this end, the Committee requests your office provide a copy of the memorandum/email headed 'Minister for Planning Justin Madden Media Plan' with respect to the Windsor Hotel redevelopment process and referred to in media reports last Thursday and Friday. It would be appreciated if this document can be sent to the Committee office no later than 5.00 p.m. on Friday 5 March 2010.

The Committee has further resolved to invite you to give evidence at a public hearing scheduled for Friday 12 March 2010 to discuss the Windsor Hotel redevelopment process. Can you also please reply by the end of this week as to your availability to attend a hearing on 12 March.

Yours sincerely,

[Signature]

RICHARD WILLIS
SECRETARY
COUNCIL COMMITTEES
APPENDIX 3

Letter to Ms Peta Duke, Media adviser

4 March 2010

Ms Peta Duke
Media Adviser
Office of the Premier
1 Treasury Place
EAST MELBOURNE VIC 3002

Dear Ms Duke,

Re: Parliamentary Inquiry into Victorian Government decision making, consultation and approval processes

The Legislative Council’s Standing Committee on Finance and Public Administration met yesterday afternoon and resolved to inquire into and report on:

Victorian Government decision making, consultation and approval processes, and any knowledge and/or involvement of Ministers, Ministerial staff and/or Victorian Government officers since 1 December 2006 and in particular issues arising from media plans prepared within the Victorian Government since 1 December 2006.

The initial focus of the inquiry will be on the Windsor Hotel redevelopment process.

To this end, the Committee seeks your attendance at a public hearing scheduled for Friday 12 March 2010 at Parliament House to give evidence in relation to your role in any media plans, consultation and other involvement in the Windsor Hotel redevelopment process.

Can you also please reply as to your availability to attend the hearing (at a time to be determined) no later than 10:00 a.m. on Tuesday 9 March 2010. The Committee will be meeting later that morning to further consider this matter.

Attached for your information is a copy of Parliament’s ‘Guidelines for the Rights and Responsibilities of Witnesses’.

Yours sincerely,

RICHARD WILLIS
SECRETARY
LEGISLATIVE COUNCIL COMMITTEES
APPENDIX 4

Letter to Ms Fiona Macrae, Office of the Premier

4 March 2010

Ms Fiona Macrae
Media Adviser
Office of the Premier
1 Treasury Place
EAST MELBOURNE VIC 3002

Dear Ms Macrae,

Re: Parliamentary Inquiry into Victorian Government decision making, consultation and approval processes

The Legislative Council’s Standing Committee on Finance and Public Administration met yesterday afternoon and resolved to inquire into and report on:

Victorian Government decision making, consultation and approval processes, and any knowledge and/or involvement of Ministers, Ministerial staff and/or Victorian Government officers since 1 December 2006 and in particular issues arising from media plans prepared within the Victorian Government since 1 December 2006.

The initial focus of the inquiry will be on the Windsor Hotel redevelopment process.

To this end, the Committee seeks your attendance at a public hearing scheduled for Friday 12 March 2010 at Parliament House to give evidence in relation to your role in any media plans, consultation and other involvement in the Windsor Hotel redevelopment process.

Can you also please reply as to your availability to attend the hearing (at a time to be determined) no later than 10.00 a.m. on Tuesday 9 March 2010. The Committee will be meeting later that morning to further consider this matter.

Attached for your information is a copy of Parliament’s ‘Guidelines for the Rights and Responsibilities of Witnesses’.

Yours sincerely,

RICHARD WILLIS
SECRETARY
LEGISLATIVE COUNCIL COMMITTEES
APPENDIX 5

Letter to Mr George Svigos, Office of the Premier

4 March 2010

Mr George Svigos
Head of Communications
Office of the Premier
1 Treasury Place
EAST MELBOURNE VIC 3002

Dear Mr Svigos,

Re: Parliamentary Inquiry into Victorian Government decision making, consultation and approval processes

The Legislative Council’s Standing Committee on Finance and Public Administration met yesterday afternoon and resolved to inquire into and report on:

Victorian Government decision making, consultation and approval processes, and any knowledge and/or involvement of Ministers, Ministerial staff and/ or Victorian Government officers since 1 December 2006 and in particular issues arising from media plans prepared within the Victorian Government since 1 December 2006.

The initial focus of the inquiry will be on the Windsor Hotel redevelopment process.

To this end, the Committee seeks your attendance at a public hearing scheduled for Friday 12 March 2010 at Parliament House to give evidence in relation to your role in any media plans, consultation and other involvement in the Windsor Hotel redevelopment process.

Can you also please reply as to your availability to attend the hearing (at a time to be determined) no later than 10.00 a.m. on Tuesday 9 March 2010. The Committee will be meeting later that morning to further consider this matter.

Attached for your information is a copy of Parliament’s ‘Guidelines for the Rights and Responsibilities of Witnesses’.

Yours sincerely,

RICHARD WILLIS
SECRETARY
LEGISLATIVE COUNCIL COMMITTEES
4 March 2010

Mr David Hodge
Executive Director
Planning Services & Development Facilitation
Department of Planning and Community Development
GPO Box 2392
MELBOURNE VIC 3001

Dear Mr Hodge,

Re: Parliamentary Inquiry into Victorian Government decision making, consultation and approval processes

The Legislative Council’s Standing Committee on Finance and Public Administration met yesterday afternoon and resolved to inquire into and report on:

Victorian Government decision making, consultation and approval processes, and any knowledge and/or involvement of Ministers, Ministerial staff and/or Victorian Government officers since 1 December 2006 and in particular issues arising from media plans prepared within the Victorian Government since 1 December 2006.

The initial focus of the inquiry will be on the Windsor Hotel redevelopment process.

To this end, the Committee seeks your attendance at a public hearing scheduled for Friday 12 March 2010 at Parliament House to give evidence in relation to your role in the Windsor Hotel redevelopment planning process consistent with the above Inquiry terms of reference.

Can you please reply as to your availability to attend the hearing (at a time to be determined) no later than 10.00 a.m. on Tuesday 9 March 2010. The Committee will be meeting later that morning to further consider this matter.

Attached for your information is a copy of Parliament’s ‘Guidelines for the Rights and Responsibilities of Witnesses’.

Yours sincerely,

RICHARD WILLIS
SECRETARY
LEGISLATIVE COUNCIL COMMITTEES
APPENDIX 7

Letter from Mr Yehudi Blacher, Secretary,
Department of Planning and Community Development

9 March 2010

Mr Richard Willis
Secretary, Legislation & Select Committees
Department of the Legislative Council
Parliament House
EAST MELBOURNE VIC 3002

Dear Mr Willis

INVITATION TO GIVE EVIDENCE BEFORE THE STANDING COMMITTEE ON FINANCE AND PUBLIC ADMINISTRATION

I refer to your letter dated 3 March 2010 requesting the production of a document and inviting me to appear before the Standing Committee. I refer also to your letter dated 4 March 2010 to David Hodge of my Department inviting him to appear before the Standing Committee.

Document Production

You advise that the Committee seeks the provision of a copy of a memorandum/email headed ‘Minister for Planning Justin Madden Media Plan’ with respect to the Windsor Hotel redevelopment processes referred to in media reports last Thursday and Friday. There is no such document in the Department.

Witness Attendance

As the Victorian Public Service Code of Conduct notes, public servants appear before parliamentary committees on behalf of their respective Ministers. As such the convention is for Committees to request the responsible Minister to identify the most appropriate officials to provide the information sought by the Committee. That would be done in consultation with the relevant Secretary.

In this case, the Committee wrote directly both to myself and David Hodge requesting our appearance on 12 March 2010 but has since advised that Mr Hodge will not be required on that day. I confirm I shall attend to speak on behalf of the Department at 10.00 a.m., Friday 12 March 2010. Should the Committee reinvigorate its request of Mr Hodge it will be dealt with at that time.

Yours sincerely,

Yehudi Blacher
SECRETARY
APPENDIX 8
Letter from Attorney-General

Attorney-General

9 MAY 2010

Mr Richard Willis
Secretary
Standing Committee on Finance and Public Administration
Parliament House
EAST MELBOURNE VIC 3002

Dear Mr Willis

INQUIRY INTO VICTORIAN GOVERNMENT DECISION MAKING,
CONSULTATION AND APPROVAL PROCESSES

I refer to the invitations issued by the Standing Committee on Finance and Public Administration
to Mr George Srigos and Ms Fiona Maclaurie (the Advisers) to attend and give evidence at a public
hearing on 12 March 2010.

The opposition parties know full well that there is a long-standing convention that Ministerial
advisers do not appear before Parliamentary committees and the Government has no intention
of breaching that convention.

I have directed the Advisers not to attend this hearing because:

(a) in accordance with the Constitutional convention known as the McMillan Principle, Ministerial
advisers are not liable to be called to give evidence before parliamentary committees;
(b) the Advisers are advisers to Ministers who are members of the Legislative Assembly and therefore
cannot be compelled to attend by Legislative Council Committees; and
(c) evidence given by the Advisers would be subject to executive privilege (public interest
immunity).

The Advisers will therefore not be attending the hearing on 12 March.

Yours sincerely

[Signature]

ROB HULLS MP
Attorney-General
APPENDIX 9
Letter from Attorney-General

Attorney-General

1 Treasury Place
Melbourne, Victoria 3002
GPO Box 4556
Melbourne, Victoria 3001
Telephone: (03) 9651 1222
Facsimile: (03) 9651 1188
DX 210753

9 MAR 2010

Mr Richard Willis
Secretary
Standing Committee on Finance and Public Administration
Parliament House
EAST MELBOURNE VIC 3002

Dear Mr Willis

INQUIRY INTO VICTORIAN GOVERNMENT DECISION MAKING,
CONSULTATION AND APPROVAL PROCESSES

I refer to the invitation issued by the Standing Committee on Finance and Public Administration
to Ms Peta Duke to attend and give evidence at a public hearing on 12 March 2010.

The opposition parties know full well that there is a long-standing convention that Ministerial
advisers do not appear before Parliamentary committees and the Government has no intention
of breaching that convention.

I have directed Ms Duke not to attend this hearing because, in accordance with the Constitutional
convention known as the McMillan Principle, Ministerial advisers are not liable to be called to
give evidence before parliamentary committees. Moreover, evidence given by Ms Duke would
be subject to executive privilege (public interest immunity). Ms Duke will therefore not be
attending the hearing on 12 March.

Yours sincerely

ROB HULLS MP
Attorney-General
APPENDIX 10
Letter from Minister for Planning

Richard Willis
Secretary
Council Committees
Parliament House
EAST MELBOURNE VIC 3002

Dear Mr Willis,

Re: PARLIAMENT INQUIRY INTO VICTORIAN GOVERNMENT DECISION MAKING, CONSULTATION AND APPROVAL PROCESSES.

I refer to your correspondence of 3 March 2010 regarding the resolution of the Legislative Council Standing Committee on Finance and Public Administration.

Please be advised that I will be attending this Friday.

Yours Sincerely,

JUSTIN MADDEN MLC
Minister for Planning
09.03.2010
APPENDIX 11

Letter to Minister for Planning

9 March 2010

Hon Justin Madden MLC
Minister for Planning
PO Box 500
East Melbourne VIC 3002

Dear Minister,

Re: Parliamentary Inquiry into Victorian Government decision making, consultation and approval processes

I refer to the Committee’s recent invitation to you to give evidence in relation to the above Inquiry and in particular, to discuss the Windsor Hotel redevelopment process.

The Committee met today to further consider the scheduling of hearings and I can advise that the Committee wishes to reschedule your hearing to another date and time to be confirmed.

As you would be aware, the Committee is also aiming to take evidence from Department of Planning and Community Development officers, together with relevant media advisors within the Office of the Premier. The Committee wishes to receive this evidence first before proceeding with your hearing. As some of these appointments are yet to be finalised, it is preferable that your hearing time be postponed to another date.

I will liaise with your office in due course regarding a rescheduling of your hearing invitation.

Yours sincerely,

Richard Willis
Secretary
Council Committees
APPENDIX 12

First summons to Ms Peta Duke

To:
Ms Peta Duke
Media Adviser
Office of the Premier
1 Treasury Place
EAST MELBOURNE VIC 3002

I am directed by the Legislative Council Standing Committee on Finance and Public Administration to summon you to attend at the Legislative Council Committee Room, Parliament House, Spring Street, Melbourne, at 1.00 p.m. on Friday, 12 March 2010, to give evidence in relation to its Inquiry into Victorian Government decision making, consultation and approval processes. In addition to the broad terms of reference below, the Committee wishes to investigate your role in any media plans, consultation and other involvement in the Windsor Hotel redevelopment process.

Committee Terms of Reference:
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.

Could you please confirm your attendance or otherwise by contacting me on 9651 6699, or by email richard.willis@parliament.vic.gov.au, or by correspondence at the above address no later than by 5.00 p.m. on Thursday, 11 March 2010.

Evidence will be taken on Oath or Affirmation.

Yours sincerely,

RICHARD WILLIS
SECRETARY
LEGISLATIVE COUNCIL COMMITTEES
9 MARCH 2010

Summons sent by Registered Post, 9 March 2010
10 March 2010

Hon Justin Madden MLC
Minister for Planning
PO Box 500
East Melbourne VIC 3002

Dear Minister,

Re: Parliamentary Inquiry into Victorian Government decision making, consultation and approval processes

Thank you for your letter received yesterday afternoon advising you will be attending the public hearing on Friday 12 March 2010. A copy has been forwarded to the Committee Members.

As indicated in my letter to you yesterday, the Committee reiterates that you are not a required witness for the hearings this Friday. The Committee believes it is important to obtain evidence from other witnesses including the Secretary of the Department of Planning and Community Development and relevant media advisers before it reschedules your hearing appointment.

I will liaise with your office in due course regarding a rescheduling of your hearing invitation.

Yours sincerely,

RICHARD WILLIS
SECRETARY
COUNCIL COMMITTEES
APPENDIX 14

Email from Ms Peta Duke

12 March 2010

Mr Richard Willis
Secretary
Legislative Council Committees
Parliament House
EAST MELBOURNE VIC 3002

Dear Mr Willis

I refer to your letter of 9 March 2010 and to the request for me to attend the Legislative Council Committee Room at Parliament House at 1:00pm today.

I advise that I have been directed by the Attorney-General not to attend the Committee to give evidence. Accordingly, I regret to inform you that I am not in a position to do so.

A copy of the Attorney-General’s letter to me is attached for your information.

Yours sincerely,

Peta Duke

[Attachment: email attachment]
Dear Ms Duke

INQUIRY INTO VICTORIAN GOVERNMENT DECISION MAKING, CONSULTATION AND APPROVAL PROCESSES

I refer to the facsimile sent to you on 9 March 2010 by the Secretary, Legislative Council Committees, informing you that he was sending a formal summons to you to attend before the Standing Committee on Finance and Public Administration at 1.00 pm on 12 March 2010. I refer also to the direction that I provided to you in relation to the invitation previously given to you to appear before that Committee.

I again direct you, on behalf of the Executive Government, not to attend before the Committee on that date. I will inform the Committee of my direction by letter and provide you with a copy.

The reason for my direction is stated in the letter – the Committee, in seeking to summons you, has breached Constitutional convention. Further, particularly given the terms of reference of the Committee, any evidence sought from you is likely to be the subject of Executive privilege (Public Interest Immunity).

Yours sincerely,

ROB HULLS MP
Attorney-General
APPENDIX 15
Letter from the Attorney-General

Dear Mr. Willis

INQUIRY INTO VICTORIAN GOVERNMENT DECISION MAKING, CONSULTATION AND APPROVAL PROCESSES

I refer to your letter to Ms. Peta Duke dated 9 March 2010 which was faxed to her at the Office of the Premier. Ms. Duke has provided me with a copy of that facsimile. I refer also to my letters of 9 March 2010 in which I informed you of the directions that I had given to advisers not to attend before the Committee in response to invitations that had been given to them.

Your letter attaches a document titled “Summons to Witness” which you say is a copy of the formal summons which was being sent by registered post. I understand that no such summons has been received by Ms. Duke, nor has it arrived in the Office of the Premier. That document seeks her attendance before the Committee at 1.00 pm today.

The Standing Committee, which is a creature of the Parliament, and which gains its powers and privileges from the conventions of Parliament, is also bound by those conventions. Further, the Committee should abide by the Parliament’s own Guidelines for the Rights and Responsibilities of Witnesses (the Guidelines).

The Committee has breached the procedures in the Guidelines in a number of respects:

- Ms. Duke has not been given adequate notice of the meeting (see paragraph 2). This is well illustrated by the fact that she has not yet even received the formal summons;
- Ms. Duke has not been given a sufficient outline of the matters expected to be dealt with in her appearance (paragraph 2). Your letter refers to the Windsor Hotel redevelopment process but states that this is in addition to the terms of reference of the Committee itself. Merely referring to the terms of reference of a Committee – particularly where those terms include all Victorian Government decision making,
consultation and approval processes since 1 December 2006 – provides her with no assistance in identifying the questions for which she should prepare herself;

- Ms Duke has not been given the opportunity to make a submission in writing before her appearance (paragraph 6); and

- Ms Duke has not been given any opportunity before the meeting to raise any matters of concern relating to the evidence she is being asked to give (paragraph 7).

These matters, taken together, constitute a substantive denial of natural justice to Ms Duke; she has not been afforded procedural fairness.

As well as denying Ms Duke natural justice, the approach taken by the Committee has breached Constitutional convention. My letters of 9 March 2010 refer to the convention known as the McMullan Principle. The application of Constitutional convention in this case is bolstered by the fact that Ms Duke was employed as a media adviser in the Premier’s Office and allocated to the office of the Minister for Planning. This relationship between Ms Duke and the Premier is acknowledged in the addressing of your letter and was accepted by the Leader of the Opposition in the Council in debate on Wednesday 9 March 2010. As the Committee is aware, members of each House are immune from the process of the other. As my letter of 9 March 2010 states, that immunity extends to advisers to members of another House.

In these circumstances, I have reiterated my direction to Ms Duke not to attend before the Committee.

Appropriately, and as ministerial advisers are only accountable through their Ministers, I am advised that the Minister for Planning, the Hon. Justin Madden will be available to answer questions from the Committee today.

Yours sincerely

[Signature]

ROB HILLS MP
Attorney-General
APPENDIX 16

Further summons to Ms Peta Duke

LEGISLATIVE COUNCIL STANDING COMMITTEE
ON FINANCE AND PUBLIC ADMINISTRATION

FURTHER SUMMONS TO WITNESS

To:
Ms Peta Duke
Media Adviser
Office of the Premier
1 Treasury Place
EAST MELBOURNE VIC 3002

I am directed by the Legislative Council Standing Committee on Finance and Public Administration to issue a second and final summons to you to attend a public hearing in the Legislative Council Committee Room, Parliament House, Spring Street, Melbourne at 1.00 p.m. on Tuesday, 6 April 2010 to give evidence in relation to its Inquiry into Victorian Government decision making, consultation and approval processes. Matters expected to be dealt with at the hearing include, but are not limited to:

- your role in the preparation of any media plans, consultation and other involvement in the Windsor Hotel redevelopment planning process;

- the basis for the comments drafted by you in the document titled ‘Minister for Planning Justin Madden Media Plan’ relating to the Windsor Advisory Committee report and public consultation strategy; and

- any other related matters referred to in evidence received by this Committee from the Secretary of the Department of Planning and Community Development at a public hearing on 12 March 2010 (copy of transcript attached), and related matters raised in recent Parliamentary debates. (http://hansard.parliament.vic.gov.au/bins/hvhtml?form=VicHansard.adv).

This second summons follows the Attorney-General’s instructions to you to decline an initial invitation to give evidence dated 4 March 2010 and his further direction to you dated 12 March 2010 not to attend before the Committee following an order in a summons to you dated 9 March 2010.

I am further directed to advise you of the following Legislative Council Standing Orders relating to summoning of a witness:

1. If any witness does not attend pursuant to the order of a committee his or her absence will be reported, and the Council may order him or her to attend the Council. Such order may be discharged if the witness attends the committee before the time appointed for his or her attending the Council. (SQ 18.06 (2))
2. Witnesses will be summoned in order to be examined at the Bar of the Council or a Select Committee, by orders of the Council, signed by the Clerk.

[SO 18.04]

3. A witness not attending pursuant to an order of the Council or of a committee having power to summon witnesses, or pursuant to a warrant of the President, may be censured or declared guilty of contempt by the Council.

[SO 18.06]

"Legislative Council Sessional Order No. 22 (24) states: ‘The provisions of the Standing Orders relating to Select Committees apply to the Committee as if it were a Select Committee.’

Could you please confirm your attendance or otherwise by contacting the Committee Secretary, Mr Richard Willis on 9651 8696, or by email richard.willis@parliament.vic.gov.au, or by correspondence at the above address no later than by 5.00 p.m. on Wednesday, 31 March 2010.

Also attached is a copy of Parliament’s Guidelines for the Rights and Responsibilities of Witnesses. In preparation for the hearing, as outlined in paragraphs 6 and 7 of these guidelines, you are given the opportunity to make a submission in writing prior to giving oral evidence and/or to raise any matters of concern relating to a submission or your evidence. Any such submission should be received no later than 31 March 2010 and will not take the place of any oral evidence. Evidence will be taken on Oath or Affirmation.

Yours sincerely,

WAYNE TUNNECLIFFE
CLERK OF THE LEGISLATIVE COUNCIL
24 March 2010
APPENDIX 17

Letter to Mr Stephen Marks, RSM Bird Cameron

24 March 2010

Mr Stephen G Marks
Director, Probity Services
RSM Bird Cameron
Level 8 Raillo South Tower
525 Collins Street
MELBOURNE VIC 3000

Dear Mr Marks,

Re: Parliamentary Inquiry into Victorian Government decision making, consultation and approval processes

The Legislative Council’s Standing Committee on Finance and Public Administration has a current 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.

The initial focus of the inquiry relates to the Windsor Hotel redevelopment process.

To this end, the Committee invites you, and/or the appropriate RSM Bird Cameron probity advisor, to attend a public hearing scheduled for Tuesday 8 April 2010 at Parliament House to give evidence in relation to the probity report undertaken by RSM Bird Cameron for the Windsor Hotel Redevelopment.

Could you please reply as to your availability to attend the hearing (at a time to be determined) by contacting me on 9651 8696, or by email: richard.willis@parliament.vic.gov.au, or by correspondence at the above address no later than by 5:00 p.m. on Wednesday, 31 March 2010.

Attached for your information is a copy of Parliament’s ‘Guidelines for the Rights and Responsibilities of Witnesses’. A copy of related evidence received by this Committee from the Secretary of the Department of Planning and Community Development at a public hearing on 12 March 2010 can be viewed on the following webpage: http://www.parliament.vic.gov.au/council/SCFPA/PC/index.html

Yours sincerely,

RICHARD WILLIS
SECRETARY
LEGISLATIVE COUNCIL COMMITTEES
24 March 2010

Mr Jason Agnoletto
Partner
PricewaterhouseCoopers
Freshwater Place
2 Southbank Boulevard
SOUTHBANK VIC 3006

Dear Mr Agnoletto,

Re: Parliamentary Inquiry into Victorian Government decision making, consultation and approval processes

The Legislative Council’s Standing Committee on Finance and Public Administration has a current 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.

The initial focus of the inquiry relates to the Windsor Hotel redevelopment process.

To this end, the Committee invites you, and/or the appropriate PricewaterhouseCoopers probity auditor, to attend a public hearing scheduled for Tuesday 6 April 2010 at Parliament House to give evidence in relation to the probity report undertaken by PricewaterhouseCoopers for the Windsor Hotel Redevelopment.

Could you please reply as to your availability to attend the hearing (at a time to be determined) by contacting me on 9651 8996, or by email: richard.willis@parliament.vic.gov.au, or by correspondence at the above address no later than by 5:00 p.m. on Wednesday, 31 March 2010.

Attached for your information is a copy of Parliament’s ‘Guidelines for the Rights and Responsibilities of Witnesses’. A copy of related evidence received by this Committee from the Secretary of the Department of Planning and Community Development at a public hearing on 12 March 2010 can be viewed on the following webpage: http://www.parliament.vic.gov.au/council/SCTPA/PC/index.html

Yours sincerely,

RICHARD WILLIS
SECRETARY
LEGISLATIVE COUNCIL COMMITTEES
24 March 2010

Mr George Svigos
Head of Communications
Office of the Premier
1 Treasury Place
EAST MELBOURNE VIC 3002

Dear Mr Svigos,

Re: Parliamentary Inquiry into Victorian Government decision making, consultation and approval processes

The Legislative Council Standing Committee on Finance and Public Administration invites you to attend a public hearing in the Legislative Council Committee Room, Parliament House, Spring Street, Melbourne at on Tuesday, 8 April 2010 to give evidence in relation to its inquiry into Victorian Government decision making, consultation and approval processes. Matters expected to be dealt with at the hearing include, but are not limited to:

- the preparation of any media plans, consultation and other involvement in the Windsor Hotel redevelopment planning process; and

- any other related matters referred to in evidence received by this Committee from the Secretary of the Department of Planning and Community Development at a public hearing on 12 March 2010 and related matters raised in recent Parliamentary debates – see web links below:

Could you please reply as to your availability to attend the hearing (at a time to be determined) by contacting me on 9651 9996, or by email: richard.willis@parliament.vic.gov.au, or by correspondence at the above address no later than by 5.00 p.m. on Wednesday, 31 March 2010.

Attached for your information is a copy of Parliament’s ‘Guidelines for the Rights and Responsibilities of Witnesses’. In preparation for the hearing, as outlined in paragraphs 6 and 7 of these guidelines, you are given the opportunity to make a submission in writing prior to giving oral evidence and/or to raise any matters of concern relating to a submission or your evidence. Any such submission should be received no later than 31 March 2010 and will not take the place of any oral evidence. Evidence will be taken on Oath or Affirmation.

Yours sincerely,

RICHARD WILLIS
SECRETARY
LEGISLATIVE COUNCIL COMMITTEES
APPENDIX 20

Letter to Ms Fiona Macrae, Office of the Premier

24 March 2010

Ms Fiona Macrae
Media Adviser
Office of the Premier
1 Treasury Place
EAST MELBOURNE VIC 3002

Dear Ms Macrae,

Re: Parliamentary Inquiry into Victorian Government decision making, consultation and approval processes

The Legislative Council Standing Committee on Finance and Public Administration invites you to attend a public hearing in the Legislative Council Committee Room, Parliament House, Spring Street, Melbourne at on Tuesday, 6 April 2010 to give evidence in relation to its inquiry into Victorian Government decision making, consultation and approval processes. Matters expected to be dealt with at the hearing include, but are not limited to:

- the preparation of any media plans, consultation and other involvement in the Windsor Hotel redevelopment planning process; and
- any other related matters referred to in evidence received by this Committee from the Secretary of the Department of Planning and Community Development at a public hearing on 12 March 2010 and related matters raised in recent Parliamentary debates – see web links below:

Could you please reply as to your availability to attend the hearing (at a time to be determined) by contacting me on 9651 8896, or by email: richard.willis@parliament.vic.gov.au, or by correspondence at the above address no later than by 5:00 p.m. on Wednesday, 31 March 2010.

Attached for your information is a copy of Parliament’s ‘Guidelines for the Rights and Responsibilities of Witnesses’. In preparation for the hearing, as outlined in paragraphs 6 and 7 of these guidelines, you are given the opportunity to make a submission in writing prior to giving oral evidence and/or to raise any matters of concern relating to a submission or your evidence. Any submission should be received no later than 31 March 2010 and will not take the place of any oral evidence. Evidence will be taken on Oath or Affirmation.

Yours sincerely,

RICHARD WILLIS
SECRETARY
LEGISLATIVE COUNCIL COMMITTEES
APPENDIX 21

Letter to Mr Justin Jarvis, Office of the Minister for Planning

24 March 2010

Mr Justin Jarvis
Chief of Staff
Office of the Minister for Planning
PO Box 500
East Melbourne VIC 3002

Dear Mr Jarvis,

Re: Parliamentary Inquiry Into Victorian Government decision making, consultation and approval processes

The Legislative Council Standing Committee on Finance and Public Administration invites you to attend a public hearing in the Legislative Council Committee Room, Parliament House, Spring Street, Melbourne at on Tuesday, 6 April 2010 to give evidence in relation to its Inquiry into Victorian Government decision making, consultation and approval processes. Matters expected to be dealt with at the hearing include, but are not limited to:

- the preparation of any media plans, consultation and other involvement in the Windsor Hotel redevelopment planning process; and

- any other related matters referred to in evidence received by this Committee from the Secretary of the Department of Planning and Community Development at a public hearing on 12 March 2010 and related matters raised in recent Parliamentary debates – see web links below:

Could you please reply as to your availability to attend the hearing (at a time to be determined) by contacting me on 9651 9695, or by email: richard.willis@parliament.vic.gov.au, or by correspondence at the above address no later than by 5:00 p.m. on Wednesday, 31 March 2010.

Attached for your information is a copy of Parliament’s ‘Guidelines for the Rights and Responsibilities of Witnesses’. In preparation for the hearing, as outlined in paragraphs 6 and 7 of these guidelines, you are given the opportunity to make a submission in writing prior to giving oral evidence and/or to raise any matters of concern relating to a submission or your evidence. Any such submission should be received no later than 31 March 2010 and will not take the place of any oral evidence. Evidence will be taken on Oath or Affirmation.

Yours sincerely,

RICHARD WILLIS
SECRETARY
LEGISLATIVE COUNCIL COMMITTEES
28 March 2010

Mr Richard Wills
Secretary, Legislative Council Committees
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

Dear Mr Wills,

Re: Standing Committee Inquiry into Victorian Government decision-making, consultation and approval processes

I refer to your letter of 25 March 2010 which seeks my advice as to whether the direction of the Attorney-General to Ms Peta Duke not to comply with the Committee’s summons to attend its hearing on 12 March 2010 would constitute a contempt of Parliament.

Generally speaking, any act or omission which obstructs or impedes either House of Parliament in the performance of its functions can be treated as a contempt. The activities of the committees are considered to be an extension of the work of the houses and they are given particularly wide powers which are considered necessary to enable them to adequately fulfil their function. Standing Order 24:10, which applies to your committee, gives the committee the power to call persons, documents and other things. This is a very wide power giving the committee the capacity to call for any person, other than a Member or Officer of the Assembly who can only attend by leave of the Assembly, to appear to give evidence. There are no other exceptions and witnesses are expected to attend when required, particularly when summoned to do so.

The failure to respond to a summons to attend a committee hearing when required is a very serious matter. Standing Order 18:07 states that a witness who does not attend when required may be censured or declared guilty of contempt of the Council. Interference with witnesses is also a serious matter. May’s Parliamentary Practice 23rd Edition at page 150 specifically says that “any conduct calculated to deter prospective witnesses from giving evidence before either House or a Committee is a contempt” and this principle is embodied in Standing Order 18:11.
A direction to not attend a committee hearing in response to a summons would in my view fall within the definition of contempt and accordingly may be dealt with by the House. However, I have to point out to the Committee that in relation to any action taken by the Attorney-General, no further action is possible in the Legislative Council as the Attorney-General is a member of the Legislative Assembly and responsible only to that House and not to the Legislative Council.

Yours sincerely

[Signature]

Wayne Turneciffe
Clerk of the Legislative Council
APPENDIX 23
Letter from the Attorney-General

31 MAR 2010

Mr Richard Willis
Secretary
Standing Committee on Finance and Public Administration
Parliament House
EAST MELBOURNE VIC 3002

Dear Mr Willis

INQUIRY INTO VICTORIAN GOVERNMENT DECISION MAKING,
CONSULTATION AND APPROVAL PROCESSES

I refer to the invitations issued by the Standing Committee on Finance and Public Administration to Mr George Svigos, Ms Fiona Macrae and Mr Justin Jarvis to attend and give evidence at a public hearing on 6 April 2010. I refer also to my letters to you of 9 March 2010 in relation to the previous invitations to advisers to give evidence. Copies of those letters are attached.

For the same reasons as identified in my letters of 9 March 2010, I have directed the advisers not to attend the further hearing.

Yours sincerely

ROB HULLS MP
Attorney-General

*attachments are located in Appendices 8 & 9*
Email from Ms Peta Duke

Peta Duke
To richard.willis@parliament.vic.gov.au
01/04/2010 04:56 PM
cc
Subject Legislative Council Standing Committee on Finance and Public Administration

Mr Richard Willis
Secretary
Standing Committee on Finance and Public Administration
Parliament House
EAST MELBOURNE VIC 3002

Dear Mr Willis

I refer to Mr Tunnecliffe's letter to me of 24 March 2010 and to the request that I attend the Legislative Council Committee Room at 1:00pm on Tuesday 6 April 2010.

I advise that I have again been directed by the Attorney-General not to attend the Committee to give evidence. A copy of the Attorney-General's letter to me is attached for your information. Accordingly, I again advise that I am not in a position to respond to the Committee's request.

I understand that the Attorney-General has written to the Committee advising of his direction to me and indicating an alternative course of action in relation to my attendance at the Committee hearing.

Yours sincerely

Peta Duke

(See attached file: Letter to Peta Duke 1.10.10.pdf)
- 1 APR 2010

Ms Peta Duke
Office of the Premier
1 Treasury Place
EAST MELBOURNE VIC 3002

Dear Ms Duke

INQUIRY INTO VICTORIAN GOVERNMENT DECISION MAKING, CONSULTATION AND APPROVAL PROCESSES

I refer to the letter dated 24 March 2010 from the Clerk of the Legislative Council to you headed “further summons to witness” which seeks your attendance at the Standing Committee on Finance and Public Administration on 6 April 2010. I refer also to the direction that I provided to you in my letter dated 12 March 2010 in relation to the previous “summons” to appear on before the Committee on that day.

I again direct you, on behalf of the Executive Government, not to attend before the Committee on that date. I will inform the Committee of my direction in a letter and provide you with a copy.

The reason for my direction is that stated in both the attached letter and my previous letter. The Committee, in seeking to summons you, has breached Constitutional convention and thus exceeded the limits of its powers. The “summons” is also, on its face, procedurally defective. Finally, as I noted before, given the terms of reference of the Committee, any evidence sought from you is likely to be the subject of Executive privilege (public interest immunity).

I note that are also entitled to seek independent legal advice and I urge you to do so.

Yours sincerely,

ROB HULLS MP
Attorney-General
Dear Mr Willis

INQUIRY INTO VICTORIAN GOVERNMENT DECISION MAKING, CONSULTATION AND APPROVAL PROCESSES

I write in relation to the letter dated 24 March 2010 from the Clerk of the Legislative Council to Ms Peta Duke headed “further summons to witness”. In that letter the Clerk states that he has been directed by the Standing Committee to issue a second and final summons to Ms Duke.

I do not dispute the power of the Committee to issue a summons, however, I do dispute its reach – it does not extend as far as this witness. I also question the occasion and manner of the exercise of the power in this case, particularly the involvement of the Clerk of the Legislative Council.

As my letter dated 12 March 2010 noted, the Committee is a creature of the Parliament which both gains its powers and privileges from the conventions of Parliament and is bound by those conventions. Those conventions establish the immunity of the members of one House from the process of another, extend that immunity to advisers of such members, and provide that those advisers should be held to account through their respective Ministers. This convention in its application to advisers, called the McMullan principle, has been asserted by state and federal governments, whatever political party has been in power.
The Clerk of the Legislative Council’s letter states that he is directed to advise Ms Duke of a number of Legislative Standing Orders. He refers to Standing Order 18.04 which provides that witnesses will be summoned in order to be examined at the Bar of the Council or a Select Committee, by orders of the Council, signed by the Clerk. The reference to that order is not appropriate in these circumstances. It is clear that there has been no order of the Legislative Council.

The Clerk of the Legislative Council’s letter fails to refer to the one Standing Order which is relevant, namely, Standing Order 18.06(1). That order provides that a Select Committee may summon witnesses by its own order, signed by the Clerk of the Committee. If the Clerk’s letter is intended to constitute the order summoning Ms Duke, it is clearly deficient. Not only is it expressed in terms implying that it is he who is summoning the witness, it is not signed by the Clerk of the Committee. The Legislative Council’s own publications provide that the role of Clerk of Committees is performed by the Assistant Clerk — Committees and the Standing Orders clearly distinguish between the role of the Clerk and the Clerk of Committee in the issuing of summons (compare Standing Orders 18.04 and 18.06(1)). The previous “summons” directed at Ms Duke suffered similar defects, albeit that it was signed by you, the Secretary, Council Committees, who is at least an officer of the Committee (if not its Clerk).

If the Standing Committee intends to persist in calling for Ms Duke, it should do so in proper form and provide evidence of its order in the manner prescribed by the Standing Orders. The adherence to proper procedure is not a mere technicality. The letter of the Clerk outlines the potential criminal consequences of non-compliance. In such circumstances, adherence to proper procedure protects against abuse of process.

Further, in circumstances where there has been no order of the Legislative Council, the involvement in this matter of the Clerk of the Legislative Council appears to be unorthodox. Given the role of the Clerk and the form of the Standing Orders, I would have expected him to only perform such functions at the direction of the Council itself.

Given all that I have said above, I will again write to Ms Duke advising her of my view of the validity of the document served on her and directing her not to attend before the Committee. As an employee of the Crown purportedly summoned in that capacity, she is entitled to advise from her employer on how to resolve an apparent conflict between the Crown’s interest and that of a parliamentary committee.

Finally, in the interests of compromise, I suggest that the Committee identify the matters it wishes to inquire into in writing. Given that Ms Duke, whilst employed as a media adviser to the Premier, was allocated to the Office of the Minister for Planning, the Minister is amenable to raising each of the matters identified with Ms Duke, obtaining her response, and appearing before the Committee himself to provide evidence. This should provide some satisfaction to the Committee without further dragging a young woman to face an team of Opposition dominated men who’s agenda is no more than a political stunt.

Yours sincerely,

ROB HUELS MP
Attorney-General
APPENDIX 26

Letter from the Attorney-General

Attorney-General

- 1 APR 2010

Mr Richard Willis
Secretary
Standing Committee on Finance and Public Administration
Parliament House
EAST MELBOURNE VIC 3002

Dear Mr Willis

INQUIRY INTO VICTORIAN GOVERNMENT DECISION MAKING,
CONSULTATION AND APPROVAL PROCESSES

Please see attached, for the Standing Committee’s information, a copy of two letters which I have sent to RSM Bird Cameron and PricewaterhouseCoopers about their appearance before the Committee on 6 April 2010.

Yours sincerely

ROB HULLS MP
Attorney General
STANDING COMMITTEE ON FINANCE AND PUBLIC ADMINISTRATION
First Interim Report on Victorian Government Decision Making,
Consultation and Approval Processes

Attorney-General

- 1 APR 2010

Mr Stephen Marks
Director, Probity Services
RSM Bird Cameron
525 Collins Street
MELBOURNE VIC 3000

Dear Mr Marks

INQUIRY INTO VICTORIAN GOVERNMENT DECISION MAKING,
CONSULTATION AND APPROVAL PROCESSES

I understand that you have accepted an invitation to appear before the Standing Committee on
Finance and Public Administration at a public hearing on 6 April 2010 to give evidence in
relation to the probity report undertaken by your organisation for the Windsor Hotel
redevelopment. I also understand that you have sought advice from the Government about
whether any matters that could be raised in your evidence would give rise to questions of
Executive privilege.

The Government asserts Executive privilege in circumstances where (amongst others) the
disclosure of information or documents would reveal the high-level confidential deliberative
processes of Government or would otherwise genuinely jeopardise the necessary relationship
of confidentiality between Minister and a Government officer. These considerations are
reflected in paragraph 18 of the parliamentary committee guidelines for the rights and
responsibilities of witnesses (which the Committee will have provided to you).

In the course of preparing your probity report, I understand that you have obtained access to
material of the nature referred to above, at least in your review of the advice to the Minister
dated 17 March 2010. In the circumstances, and given that you were engaged by the
Government and obtained the relevant information in the course of that engagement, it is the
Government’s my view that, should the Committee ask you to disclose such information
(including the contents of the advice to the Minister), you are obliged to take the question on
notice so that the Government can determine whether to make a formal claim of Executive
privilege. Please inform me if you intend to take a different course.
To be clear, given that your report has been made public and that you are not a Government officer, no claim of Executive privilege would be made in relation to your professional opinion on the probity of the advice to the Minister or the probity of any other documents or processes that you have reviewed in the course of providing that advice.

I will provide a copy of this letter to the Standing Committee.

Yours sincerely,

[Signature]

ROB HULLS MP
Attorney-General
Mr Jason Agnoletto
Partner
PricewaterhouseCoopers
2 Southbank Boulevard
SOUTHBANK VIC 3006

Dear Mr. Agnoletto

INQUIRY INTO VICTORIAN GOVERNMENT DECISION MAKING, CONSULTATION AND APPROVAL PROCESSES

I understand that you and Mr Tony Peake have accepted an invitation to appear before the Standing Committee on Finance and Public Administration at a public hearing on 6 April 2010 to give evidence in relation to the internal audit undertaken by your firm for the Windsor Hotel redevelopment proposal. I also understand that you have sought advice from the Government about whether any matters that could be raised in your evidence would give rise to questions of Executive privilege.

The Government asserts Executive privilege in circumstances where (amongst others) the disclosure of information or documents would reveal the high-level confidential deliberative processes of Government or would otherwise genuinely jeopardise the necessary relationship of confidentiality between Minister and a Government officer. These considerations are reflected in paragraph 18 of the parliamentary committee guidelines for the rights and responsibilities of witnesses (which the Committee will have provided to you).

In the course of conducting your internal audit, I understand that you may have obtained access to material of the nature referred to above. In the circumstances, and given that you were engaged by the Government and obtained the relevant information in the course of that engagement, it is the Government’s view that, should the Committee ask you to disclose such information, you are obliged to take the question on notice so that the Government can determine whether to make a formal claim of Executive privilege. Please inform me if you intend to take a different course.
To be clear, given that the findings of your internal audit have been made public and that neither you nor Mr Peake are Government officers, no claim of Executive privilege would be made in relation to your professional opinion on the whether there has been compliance with the prescribed processes (including those under legislation).

I will provide a copy of this letter to the Standing Committee.

Yours sincerely

ROB HULLS MP
Attorney-General