

# Ombudsman investigation into the probity of The Hotel Windsor redevelopment

February 2011

Ordered to be printed  
Victorian government printer  
Session 2010 - 11  
P.P. No. 10



## Letter to the Legislative Council and the Legislative Assembly

To

**The Honourable the President of the Legislative Council**

and

**The Honourable the Speaker of the Legislative Assembly**

Pursuant to sections 25 and 25AA of the *Ombudsman Act 1973*, I present to Parliament the report of an investigation into the probity of The Hotel Windsor redevelopment.



G E Brouwer

**OMBUDSMAN**

9 February 2011

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## Executive summary

1. Since 1883, The Hotel Windsor has been a landmark of significance to Melbourne and its people. It is regarded by many as a quintessential Melbourne icon. It is little wonder that the proposed redevelopment of the heritage listed hotel, which involves the demolition of the historic rear section and northern wing of the hotel and construction of a contemporary designed 26 storey (152 guest rooms) 'glass tower' in its place, has polarised community views and provoked strong responses from individuals and advocacy groups.
2. In late February 2010, public attention intensified when it was alleged in the media that the office of the then Minister for Planning, The Hon Justin Madden MP, intended to 'run a sham public consultation process' to halt The Hotel Windsor project. The media attention resulted from an email sent by Mr Madden's then media adviser, Ms Peta Duke, to a journalist at the Australian Broadcasting Corporation (ABC). The email contained Mr Madden's media plan dated 24 February 2010 which in relation to The Hotel Windsor stated:

'Windsor Ad C'tee – report due first week of Feb report is expected to recommend that development go ahead. Strategy at this stage is to release it for public comment as this affects the entire community and then use those responses as reason to halt it as we have listened to community views.
3. At interview, Mr Madden denied any knowledge of the media plan or the strategy referred to in the media plan. Mr Madden said that 'Ms Duke used inappropriate language and poetic licence in a speculative document' and that the document was from 'a media staffer who does not provide policy advice, who does not provide any advice in relation to decision making'.
4. In response to the media plan's disclosure and the public attention it generated, Mr Madden in a media release dated 25 February 2010 instructed the appointment of an independent probity adviser and probity auditor to oversee the planning and heritage processes for The Hotel Windsor.
5. While the probity reports of the independent probity adviser and probity auditor confirmed that the statutory planning and heritage processes for The Hotel Windsor had been complied with, the role of the probity adviser and probity auditor as determined by the Department of Planning and Community Development (the Department) was restrictive as it did not enable the probity adviser or probity auditor to review the probity of Mr Madden's media plan or the involvement of his office. However Mr Madden said that he was not aware of the restrictive scope.
6. In light of the considerable public interest in The Hotel Windsor redevelopment, I am at a loss to understand that neither Mr Madden, nor his advisers looked at the Advisory Committee report when it arrived at Mr Madden's office on 8 February 2010. It is difficult to understand how a report of this nature could be simply referred to the Department for a briefing without the Minister or his staff wishing to know in broad terms the Advisory Committee's recommendations concerning the redevelopment. Especially as both within the Department and the Minister's office the report had been anticipated.

7. In March 2010, conditional planning and heritage permits were issued by Mr Madden and the Executive Director of Heritage Victoria granting approval for the proposed redevelopment. In considering whether to issue a planning permit application, Mr Madden took into consideration the report of an Advisory Committee appointed under section 151 of the *Planning and Environment Act 1987* to provide him with advice on all relevant issues relating to the planning permit application for The Hotel Windsor. The Advisory Committee recommended the granting of a conditional planning permit.
8. On 3 March 2010, the Legislative Council Standing Committee on Finance and Public Administration (the Committee), a seven member all-party standing committee, resolved to inquire into and report on *Victorian Government Decision Making, Consultation and Approval Processes*. The Committee determined that the first matter to be investigated under this inquiry would be The Hotel Windsor redevelopment planning process.
9. The Committee's first interim report to the Legislative Council was tabled in Parliament on 13 April 2010. The report noted that the then Victorian Government had refused to allow ministerial advisers to give evidence before the Committee.
10. In June 2010, the Committee requested that I investigate the probity of The Hotel Windsor redevelopment. The Committee's terms of reference were for me to investigate:
  1. the probity of the planning and approval processes undertaken by the Victorian Government in relation to the Windsor Hotel redevelopment, including but not limited to, the involvement of the Premier, ministers, ministerial staff and their offices; and
  2. the probity of, and circumstances surrounding the development of a 'strategy' referred to in the 'Minister for Planning Justin Madden Media Plan' relating to the Windsor Hotel redevelopment, including any involvement of the Premier, ministers, ministerial staff and their offices.
11. Section 16 of the *Ombudsman Act 1973* requires me to investigate any matter referred by a House of Parliament or a Parliamentary Committee, other than a matter concerning a judicial proceeding, and to report to Parliament forthwith. On 18 June 2010, I wrote to the Committee confirming that I would undertake an investigation forthwith.
12. Shortly after commencing my investigation, I received legal advices from the then Solicitor-General provided by the Secretary of the Department of Premier and Cabinet and from the then Attorney-General, The Hon Rob Hulls MP. Those advices argued that, despite the plain words of section 16 of the Ombudsman Act which provides that a House of Parliament or a Parliamentary Committee may refer to the Ombudsman for investigation any matter, other than a matter concerning a judicial proceeding, I was not able to investigate the actions of Ministers and that I had limited jurisdiction to investigate ministerial advisers, a jurisdiction that did not allow me to investigate the advisers in the context of the current referral. I closely considered the opinions of the Solicitor-General and concluded that I did have jurisdiction to investigate the actions of ministers and ministerial advisers. On that basis I undertook this investigation.



13. I also did not accept two proposals put by Mr Hulls; first that I meet with the Solicitor-General to resolve my jurisdiction and, second, that I agree to an independent arbitration to deal with that question. I considered that, in view of my conclusion regarding the Solicitor-General's advices, there was no unresolved issue and that if any person wished to challenge my jurisdiction, the appropriate means of doing so was in the courts. To provide the executive, which had an interest in this investigation, with an additional means to challenge my jurisdiction would be seen, correctly, as providing favourable treatment to particular parties and on that basis, it was not a course that I would adopt (see Appendices 2, 3, 4 and 5).
14. My officers interviewed 38 witnesses, including Mr Madden, several members of parliament and key ministerial staff. A number of witnesses who had refused to give evidence to the Parliamentary Committee were also interviewed. All witnesses cooperated with my investigation and all were interviewed on oath or affirmation.
15. I was concerned by the number of witnesses who said that they were unable to recall discussions and/or meetings which took place regarding The Hotel Windsor. At the time of interviewing these witnesses, several of these discussions and meetings had taken place within the previous six months. The failure by witnesses to make a record of these meetings and discussions compounded the situation.

### **The probity of Mr Madden's media plan**

16. It was alleged in the media that the 'strategy' referred to in Mr Madden's media plan dated 24 February 2010 involving the use of negative community feedback to halt The Hotel Windsor project, was not the work of Ms Duke's alone. The media speculated that Mr Madden's advisers and/or senior officers of the Department were responsible for formulating this strategy.<sup>1</sup>
17. My investigation revealed:
  - two senior Departmental officers gave evidence that at a meeting on 17 February 2010 with Mr Madden, Mr Justin Jarvis, Mr Madden's then Chief of Staff, raised the idea of using a public consultation process and the resulting negative feedback to refuse The Hotel Windsor project.
  - the comment purportedly made by Mr Jarvis at the meeting on 17 February 2010 occurred one week prior to Mr Madden's media plan dated 24 February 2010. The wording used by Ms Duke in the media plan is consistent with Mr Jarvis' comments.
  - at a meeting on 17 December 2009 with the Victorian Government Architect and Departmental officers, the Victorian Government Architect said that one senior Departmental officer raised the possibility of deferring The Hotel Windsor planning application until after the state election in November 2010. The two senior Departmental officers present at the meeting denied that this was discussed.

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<sup>1</sup> The Age, *Melbourne's Windsor Knot*, Mr Royce Millar, 1 May 2010.

- confusion regarding the outcomes of the meeting on 17 December 2009 is exacerbated by the failure of Departmental officers to maintain adequate records.
  - Mr Madden claims to have had no knowledge of the existence of media plans before The Hotel Windsor became an issue.
  - Mr Madden, Mr Jarvis, Mr George Svigos, the then Head of Communications in the former Premier's Private Office and Mr Madden's Executive Assistant, Mrs Valerie Taylor said that it was not their role to review the accuracy of information contained within media plans. This is despite Ms Duke's emailing of her draft media plans to Mr Madden's advisers, Mr Jarvis and Mrs Taylor and asking for comments.
  - computer records confirm that Mrs Taylor responded to Ms Duke's email dated 24 February 2010 asking for comment on the media plan. However, Mrs Taylor said she could not recall responding to Ms Duke or what she had said in her email to Ms Duke.
  - Ms Duke sent an email to Mr Svigos at his ministerial email address on Saturday 27 February 2010 referring to her having 'taken the hit' for what had occurred with the media plan and the resulting media attention. She also refers to a decision regarding her employment that was made following the release of the media plan as being a 'political decision' and 'commitments' made by Mr Svigos. Ms Duke said that the email was written in the context of concerns for her future employment situation.
  - a series of email exchanges on 19 May 2010 between Ms Duke and a former media adviser for Mr Madden, where reference is made by the former media adviser to Mr Svigos keeping Ms Duke quiet until November 2010, which coincides with the state election.
  - several examples of poor management in the then Media Unit of the former Premier's Private Office, in relation to the controls over media plans and the management of Ms Duke.
18. Ms Duke maintains that she alone was responsible for the wording which appears in the media plan regarding The Hotel Windsor redevelopment. However, in light of the influences on decision-making identified in my report, particularly Mr Jarvis' reported comments at the meeting on 17 February 2010, I consider there is an element of doubt regarding her evidence.
19. Mr Madden, Mr Jarvis and Mr Svigos also maintain that Ms Duke acted alone with regard to the media plan. However, I find it surprising that no attempt was made by any of them to ascertain how Ms Duke arrived at the wording in the media plan regarding The Hotel Windsor redevelopment or where she sourced the information. I consider this poor management.
20. While I have concerns about the conduct of Ms Duke and Mr Jarvis, I found no evidence linking the former Premier, The Hon John Brumby MP, to the 'strategy' referred to in the media plan, or any evidence that he influenced decision-making regarding The Hotel Windsor redevelopment. I therefore did not consider it necessary to interview Mr Brumby.

## **The probity of planning and heritage processes for The Hotel Windsor redevelopment**

21. While statutory processes and timeframes were met, my investigation identified issues affecting the probity of the planning and heritage approval processes for The Hotel Windsor investigation, including:
- inadequate accountability and transparency
  - limited scope of probity advice and audit
  - poor management of conflicts of interest.
22. I address each of these themes in the following sections.

### **Inadequate accountability and transparency**

23. With regard to the planning and heritage permit application processes for The Hotel Windsor, my investigation identified a lack of accountability and transparency in decision-making by the following agencies:
- The Department of Planning and Community Development
  - Heritage Victoria
  - The City of Melbourne.

#### *The Department and Heritage Victoria*

24. Despite the obligation under the *Public Records Act 1973* to 'make and keep full and accurate records', I was unable to locate records of the numerous meetings attended by Departmental and Heritage Victoria officers regarding The Hotel Windsor.
25. The poor record-keeping practices of the Department and Heritage Victoria hindered my investigation. There is little doubt that the Department and Heritage Victoria failed to comply with their statutory record-keeping obligations under the *Public Records Act* and the Public Records Office standard.
26. I am concerned that several witnesses also said that the failure of the Department and Heritage Victoria to maintain adequate records was not restricted to The Hotel Windsor planning and heritage permit applications.

#### *The City of Melbourne*

27. While my investigation did not identify any significant concerns with the City of Melbourne's decision to support The Hotel Windsor redevelopment, my investigation identified poor record-keeping in the City of Melbourne files. I consider that the City of Melbourne failed to comply with its statutory record-keeping obligations under the *Public Records Act* and the Public Records Office standard.

### **Limited scope of probity advice and audit**

28. While a probity adviser and probity auditor were engaged by the Department to review the probity of The Hotel Windsor planning and heritage permit application processes, the usefulness of the process was diminished by the Department's restricting the scope and timeframe of the review.

29. Permitting the probity adviser and probity auditor to review controls and processes performed by Mr Madden's office would have enhanced the independence of the probity advice and audit and provided the Department with a fuller assessment of the issues.
30. While the probity adviser and probity auditor were provided with access to department records, in the absence of appropriate record-keeping practices, I note that the probity review was based on limited information.
31. In my view, the scope of the probity advice and the probity audit as determined by the Department, was too narrow. As a result, the probity review did not address the primary concern which prompted the appointment of independent auditors in the first place, that is, Mr Madden's media plan and the alleged involvement of his office.
32. Mr Madden has since stated:

I personally had no input or involvement in the scope of the auditors' task, and I did not seek to have myself and/or my office excluded from their Terms of Reference.

## **Poor management of conflicts of interest**

### *Planning Panels Victoria*

33. I identified a conflict of interest issue in relation to the appointment of one of the members of The Hotel Windsor Advisory Committee, Mr Graeme Holdsworth. In the early 1980s, Mr Holdsworth had been the project coordinator responsible for overseeing an \$8 million restoration of The Hotel Windsor conducted by its previous owners, the Oberoi Group. The restoration works included refurbishment of the hotel's ballroom, main staircase, function rooms, and a number of guest suites.
34. Mr Holdsworth had also worked on this past restoration project with the heritage consultant engaged by the Halim Group to provide heritage advice on the present redevelopment of The Hotel Windsor.
35. Members of an advisory committee are not required by Planning Panels Victoria to make a formal declaration of conflicts of interests for each committee to which they are nominated.
36. While the Chief Panel Member of Planning Panels Victoria considered the potential conflict of interest situation involving Mr Holdsworth and The Hotel Windsor, and concluded there was no conflict of interest, despite his previous involvement with The Hotel Windsor restorations and past association with the Halim Group's heritage consultant and previous employment by former Ministers, the Chief Panel Member did not make a record of her decision-making.
37. While the conflict of interest involving Mr Holdsworth was not appropriately managed by Planning Panels Victoria, I found no evidence to indicate that Mr Holdsworth acted with bias, undue partiality, or sought to influence the decision-making of The Hotel Windsor Advisory Committee.

### *Gifts and hospitality*

38. While I did not find any evidence of gifts or hospitality being offered to, or accepted by officers from the Department, Heritage Victoria, or Mr Madden's office in relation to The Hotel Windsor redevelopment, I identified that ministerial staff did not have an adequate understanding about the risks associated with accepting gifts and hospitality.
39. I consider that the existing Ministerial Staff Code of Conduct does not provide ministerial staff with adequate guidance in respect of dealing with gifts and hospitality.

### **Conclusions**

40. I identified that within Mr Madden's office, consideration was given to halting The Hotel Windsor redevelopment. The controversial nature of the redevelopment and the potential for negative community reaction appear to be the primary reasons for this course of action to have been considered.
41. My investigation highlights an area of ambiguity with regard to accountability for media advisers and media plans. I found several examples of poor management in relation to the controls over media plans. For example, the media plan dated 24 February 2010 contained inappropriate and speculative language.
42. I was also disappointed with the standard of record-keeping, especially that of the Department, Heritage Victoria, and the City of Melbourne. This included the failure of agencies to make and keep accurate records of key meetings and events relating to The Hotel Windsor planning and heritage applications. Poor file management practices were also evident.
43. In the absence of basic records detailing key meetings and discussions with agencies and individuals regarding the proposed redevelopment, it is difficult to have a complete appreciation of the processes followed.
44. The Secretary of the Department responded that:
  - (a) your investigation found no evidence of any lack of probity on the part of the Department or its officers;
  - (b) the investigation was not assisted, however, by the absence of basic records detailing key meetings and discussions with the proponents;
  - (c) The Department should give urgent attention to improving its record keeping and file management procedures (which we have done)....

The Public Records Office of Victoria has been asked to assist the department with a review of its record keeping and management processes.

## Recommendations

45. I have made a number of recommendations, including that:

- Ministerial advisers and the Minister's Chief of Staff are made accountable for checking the accuracy of information contained within media plans.
- The Victorian Government conduct a comprehensive review of the Ministerial Staff Code of Conduct.
- The Department, Heritage Victoria and the City of Melbourne review its record-keeping and file management practices to ensure that standards meet the requirements of the Public Records Act and the Public Records Standard.
- The Department develop policies and procedures to guide the provision of future probity advice and probity audits in relation to planning and heritage applications.
- Planning Panels Victoria review its conflict of interest policies and procedures for members of planning panels and advisory committees.



## Background

46. In late February 2010, The Hotel Windsor redevelopment gained considerable media attention following an email sent by Ms Peta Duke, media adviser for the then Minister for Planning, Mr Justin Madden MP, to a journalist at the ABC. This email contained Mr Madden's media plan dated 24 February 2010. In relation to The Hotel Windsor redevelopment, the media plan referred to a strategy involving the public release of a report prepared by an Advisory Committee appointed by Mr Madden to provide him with advice on the proposed redevelopment. The proposed strategy was to use the public comments to halt the project on the basis that Mr Madden had listened to community opinion. The media plan stated (see Appendix 1):

Windsor Ad C'tee – report due first week of Feb report is expected to recommend that development go ahead. Strategy at this stage is to release it for public comment as this affects the entire community and then use those responses as reason to halt it as we have listened to community views.

47. The media alleged that Mr Madden's office had planned to 'run a sham public consultation process' to halt the project. In a media release dated 25 February 2010, Mr Madden denied that a decision had been made on the planning proposal and instructed the appointment of an independent probity auditor to oversee the planning application.

48. Mr Madden denied any knowledge of the media plan or the strategy referred to regarding The Hotel Windsor redevelopment. At interview on 13 September 2010, Mr Madden said that Ms Duke had used 'inappropriate language' and 'poetic licence' in the media plan.

## Parliamentary referral

49. On 17 June 2010, I received correspondence from Mr Gordon Rich Phillips MLC, Chairman of the Legislative Council Standing Committee on Finance and Public Administration (the Committee) requesting that I investigate the probity of The Hotel Windsor redevelopment. He advised that the Committee had resolved as follows:

Pursuant to section 16 of the Ombudsman Act 1973, the Legislative Council Standing Committee on Finance and Public Administration refers to the Ombudsman for investigation and report no later than 31 August 2010:

1. the probity of the planning and approval processes undertaken by the Victorian Government in relation to the Windsor Hotel redevelopment, including but not limited to, the involvement of the Premier, ministers, ministerial staff and their offices; and
2. the probity of, and circumstances surrounding the development of a 'strategy' referred to in the 'Minister for Planning Justin Madden Media Plan' relating to the Windsor Hotel redevelopment, including any involvement of the Premier, ministers, ministerial staff and their offices.



50. Section 16 of the *Ombudsman Act 1973* enables the Legislative Council; the Legislative Assembly; a committee of the Legislative Council or Legislative Assembly; or a committee of both Houses of Parliament to refer to the Ombudsman any matter, other than a matter concerning a judicial proceeding, for investigation and report.
51. Section 16 of the Ombudsman Act requires me to investigate forthwith any matter referred by a committee of the Legislative Council and to report thereon. On 18 June 2010, I wrote to the Chairman of the Committee confirming that I would undertake an investigation. However, as section 16 of the Ombudsman Act does not enable the Parliament, a House or a Committee to establish timelines for an Ombudsman investigation, I advised the Chairman that depending on the information that I may need to examine in the course of my investigation, the timeframe of 31 August 2010 might not necessarily be met. This proved to be the case.

### **Legislative Council Standing Committee on Finance and Public Administration**

52. On 3 March 2010, the Legislative Council Standing Committee on Finance and Public Administration, a seven member all-party standing committee, resolved to inquire into and report on *Victorian Government Decision Making, Consultation and Approval Processes*. The Committee determined that the first matter to be investigated under this inquiry would be The Hotel Windsor redevelopment planning process.
53. The Committee's first interim report to the Legislative Council was tabled in parliament on 13 April 2010. The report is a listing of all correspondence relating to invitations and summonses to witnesses to give evidence at public hearings in relation to The Hotel Windsor redevelopment planning process.
54. The Committee's public hearings on 12 March, 6 April, 1 June and 30 September 2010 were the subject of considerable media attention as the then Victorian Government refused to allow key ministerial staff and media advisers Ms Peta Duke, Mr George Svigos, Ms Fiona Macrae and Mr Justin Jarvis, to give evidence at the hearings. Despite the Committee's issuing of a summons to the advisers, they did not attend the Committee hearings. The then Attorney-General, The Hon Rob Hulls MP, in a letter to the Secretary of the Committee dated 9 March 2010 stated:

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

- a. in accordance with the Constitutional convention known as the McMullan 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).

55. The Committee's second interim report to the Legislative Council tabled in Parliament on 11 August 2010, disputed Mr Hulls' claim that ministerial advisers are not compelled to give evidence to parliamentary committees.
56. Having unsuccessfully attempted to gain the attendance of Ms Peta Duke, Mr George Svigos, Ms Fiona Macrae and Mr Justin Jarvis, to give evidence, the Committee concluded that 'its investigations have been significantly hindered as a result of the [then] Attorney-General's interference'.
57. The Committee made the following recommendation:
  - ... to order the witnesses (Ms Peta Duke, Mr George Svigos, Ms Fiona Macrae and Mr Justin Jarvis) to appear before the Standing Committee on Finance and Public Administration to answer questions in relation to its Inquiry into Victorian Government Decision Making, Consultation and Approval Processes.
58. Subsequent to referring this matter to me for investigation, the Committee continued to hold public hearings into the probity of The Hotel Windsor redevelopment. On 30 September 2010, Mr Madden appeared before the Committee to give evidence regarding his involvement in The Hotel Windsor redevelopment.

## Investigation

59. When conducting an investigation pursuant to section 16 of the Ombudsman Act, I have the power to summon witnesses, require the production of documents and interview any person under oath or affirmation who has information relevant to my investigation. This includes the power to interview and obtain information from any person I believe may be able to assist with my investigation, including public officers, members of parliament, ministers, ministerial and media advisers, private individuals and entities.
60. Within a short period of commencing my investigation, my officers had interviewed Ms Peta Duke, the media adviser responsible for Mr Madden's media plan.
61. During the course of my investigation, my officers formally interviewed 38 witnesses and examined extensive documentation and computer records obtained from various government departments, statutory authorities, a municipal council, private individuals and entities. The then ministerial and media advisers, including Mr Justin Jarvis, Mr George Svigos, and Ms Peta Duke were interviewed. All witnesses cooperated with my investigation and all were interviewed on oath or affirmation. All interviews from my investigation were audio recorded and quotations used in this report were taken from this source.
62. The list of interviewees included:
  - Mr Jason Agnoletto, Partner, PricewaterhouseCoopers
  - Mr Matt Ainsaar, Managing Director, Urban Enterprise Pty Ltd
  - Associate Professor Michael Buxton, Royal Melbourne Institute of Technology
  - Mr Carlo Carli, former member of parliament for Brunswick
  - Mr Mark Chester, SJB Planning
  - Councillor Peter Clarke, City of Melbourne
  - Mr Glenn Coupar, Development Manager, Halim Group
  - Ms Joanne Day, Manager, Heritage Permits & Consents, Heritage Victoria
  - Ms Sofia Dedes, former Media Adviser to Mr Madden
  - Ms Prue Digby, Deputy Secretary, Department of Planning and Community Development
  - Ms Sarah Dolan, then Media Unit Manager, Mr Brumby's Private Office
  - Ms Peta Duke, then Media Adviser to Mr Madden
  - Mr Jim Gardner, Executive Director, Heritage Victoria
  - Mr Adipoetra Halim, Director, The Halim Group
  - Ms Gail Hall, Senior Planning Officer, City of Melbourne
  - Mr John Henshall, Economic Consultant, Essential Economics Pty Ltd
  - Mr David Hodge, Executive Director, Planning Services and Development Facilitation, Department of Planning and Community Development
  - Mr Justin Jarvis, then Chief of Staff to Mr Madden
  - Mr Stephen Leitch, Senior Planning Officer, Department of Planning and Community Development
  - Professor Miles Lewis, University of Melbourne
  - Mr Geoffrey London, Victorian Government Architect
  - The Hon Justin Madden MP, former Minister for Planning
  - Mrs Judy Maddigan, former member of parliament for Essendon
  - Mr Stephen Marks, Director of Probity Services, RSM Bird Cameron
  - Ms Kathryn Mitchell, Chief Panel Member, Planning Panels Victoria

Ms Amanda Oglethorpe, then Ministerial Adviser to Mr Madden  
Mr Ray Osborne, Director Operations, Heritage Victoria  
Mr Martin Purslow, Chief Executive Officer, National Trust  
Mr Bryce Rayworth, Conservation Consultant, Bryce Rayworth Pty Ltd  
Mr Bill Renehan, Manager Investments and Infrastructure Projects, Tourism Victoria  
Mr Paul Roser, Conservation Manager, National Trust  
Mr Adrian Salmon, Assistant Director, Statutory Approvals, Department of Planning and Community Development  
Mr Mike Smith, Chief Executive Officer, Inside Public Relations  
Mr George Svigos, then Head of Communications, Mr Brumby's Private Office  
Mrs Valerie Taylor, then Executive Assistant to Mr Madden  
Mr Lester Townsend, Chairman of The Hotel Windsor Advisory Committee  
Mr Shiran Wickramasinghe, then Manager, Planning and Building, City of Melbourne  
Mr Martin Williams, Executive Officer, Planning, City of Melbourne.

63. My officers also conducted an inspection of The Hotel Windsor's facilities. Architects, Denton Corker Marshall, provided my officers with a presentation on the proposed redevelopment.
64. Prior to interviewing Mr Madden on 13 September 2010, I received a letter from Dr John Lynch, Crown Counsel who acted for Mr Madden and Mr Madden's media and ministerial staff. In his letter dated 10 September 2010, Dr Lynch stated that my client Mr Madden:

... is willing to assist your investigators within the lawful limits of the inquiry's terms of reference ...

As part of the process of receiving a fair hearing, my client expects to be informed of, and given a reasonable opportunity to deal with, any material adverse to his interests which is in the possession of your officers, and which may be used in the investigation, in the preparation of your report to the President of the Legislative Council or which is relevant or may contribute to the opinions and findings you make in that report.

I respectfully submit my client is entitled to be given the opportunity to deal with such material in the course of your investigation, independently of the different and more limited procedural obligations contained in ss. 17(4) and 23(7) of the Ombudsman Act 1973. To this end my client expects at Monday's interview to be informed by your investigators of any such material and to be given a reasonable opportunity to deal with it.

65. I consider it essential that all witnesses are treated equally, fairly, and professionally by my investigators. As such, despite Dr Lynch's request, Mr Madden was treated no differently to any other witness interviewed during my investigation into The Hotel Windsor redevelopment. Mr Madden did not seek any special treatment at the interview, cooperated in the investigation process and provided evidence on oath.
66. Mr Madden has since responded to this matter:

Through Dr Lynch I sought the procedural fairness to which any witness appearing before you is legally entitled. There was no suggestion in this letter, nor anywhere else, that I should be treated any differently to any other witness in relation to procedural fairness.

## Jurisdictional issues

67. This is only the second occasion since the commencement of my office in 1973, that the Ombudsman has received a referral of a matter for investigation from a house of parliament or one of its committees.
68. The first was my investigation into the probity of the Kew Residential Services and St Kilda Triangle developments, referred to me by the Legislative Council Select Committee on Public Land Development in December 2008. I tabled my report of that investigation titled, *Ombudsman investigation into the probity of the Kew Residential Services and St Kilda Triangle developments* in Parliament on 22 June 2010. In my investigation of these matters, my jurisdiction to conduct this investigation under section 16 of Ombudsman Act was not raised as an issue by the then Victorian Government. The investigation included interviewing current and former members of parliament.
69. On commencing my investigation into The Hotel Windsor, I received a letter from the Secretary of the Department of Premier and Cabinet, dated 23 June 2010 enclosing a legal advice obtained from the then Solicitor-General of Victoria, Ms Pamela Tate SC. The legal advice prepared by Ms Tate, assisted by Ms Kristen Walker of counsel, dated 30 July 2009, considered my jurisdiction and powers under the Ombudsman Act and the *Whistleblowers Protection Act 2001*, with particular reference to my jurisdiction under section 16 of the Ombudsman Act. In essence, this advice argued that section 16 of the Ombudsman Act is qualified by section 13 of the Ombudsman Act, so that parliament cannot refer a matter to me which does not relate to administrative actions taken by, or on behalf of, Victorian government departments, statutory authorities and staff of municipal councils. In the Solicitor-General's view, my jurisdiction did not extend under the Ombudsman Act to investigating the actions of ministers. The Solicitor-General's opinion referred to, and disagreed with, the analysis and conclusions contained in an opinion from another senior counsel (whose name had been redacted from the copy of Ms Tate's advice provided to me) who had advised the Department of Premier and Cabinet on the scope of section 16. That earlier advice was not provided to me.
70. On 1 July 2010 I advised the Secretary that I did not consider Ms Tate's advice to be conclusive.
71. On 1 July 2010, the then Attorney-General, Mr Hulls also wrote to me (see Appendix 2) regarding my investigation of The Hotel Windsor redevelopment, enclosing further legal advice from Ms Tate and Ms Walker dated 1 July 2010. This advice concluded that my jurisdiction under the Ombudsman Act does not extend to investigating the actions of ministerial advisers unless that investigation is incidental to the conduct of an investigation into a government department and does not extend to requiring evidence about ministerial deliberations. Mr Hulls proposed that I meet with Ms Tate urgently to resolve the extent of my jurisdiction and that I might consider it prudent not to take any further steps 'until the extent of my jurisdiction has been resolved'.

72. On 2 July 2010 I declined Mr Hulls' invitation to hold discussions with the Solicitor-General (see Appendix 3). I advised Mr Hulls that I appreciated that his suggestion arose from the multi-faceted nature of the relationship between both the senior law officers with government bodies. I also advised that, in the current context, one particular relationship must take precedence; that of my being an independent officer of the parliament charged by a committee of the Legislative Council with the responsibility of investigating, among other things, matters directly relating to the government. Given that priority, the only dealings that I can have with persons affected by such an investigation, or their lawyers in relation to legal issues, is to receive and consider submissions and make a decision regarding such issues – not to engage in discussion or debate about my jurisdiction or the merits of the conclusions I may reach.
73. Having closely considered Ms Tate's opinions as well as that of my General Counsel, I advised Mr Hulls that I considered that I had jurisdiction to conduct the investigation referred to me and that the investigation would continue forthwith, as is required by the Ombudsman Act. I consider that the plain wording of the Act should be given its obvious and plain meaning in preference to the interpretation favoured by Ms Tate and Ms Walker.
74. I also advised that should any person affected by my decision wish to dispute my jurisdiction, the appropriate avenue for such a challenge would be in the courts. I consider that I was compelled to take this course as 'any other course could only be seen as providing favourable treatment to particular parties who are potentially affected by the investigation'.
75. Mr Hulls subsequently wrote to me on 15 July 2010 referring to the unequivocal nature of Ms Tate's legal advices regarding my jurisdiction and proposing that an independent arbitrator, such as a former judge, be appointed to resolve the issue of my section 16 jurisdiction (see Appendix 4). On 23 July 2010, I wrote to Mr Hulls declining his request as I considered, in view of my decision regarding his earlier letter, that there was no unresolved issue regarding the extent of my jurisdiction (see Appendix 5).
76. I also informed Mr Hulls that in my view, other parties with an interest in this matter, such as the two houses of parliament and the committees of those houses, would also need to be consulted and involved in any arbitration should that take place. On this basis, I would be unable to form any view as to the appropriateness of any possible arbitration without first having the benefit of their views and opinions.
77. I have not attached copies of the Solicitor-General's advices as, for reasons best known to Mr Hulls, those advices were provided under cover of a claim of legal professional privilege and I see no purpose in questioning whatever claim Mr Hulls had for such a privilege.
78. I therefore proceeded forthwith to investigate the matter referred to me by the Parliamentary Committee.

## History

79. Located at 111 Spring Street, Melbourne, in the heart of the Bourke Hill heritage precinct and opposite Parliament House, the historic Hotel Windsor is synonymous with Melbourne, having first opened for business as a hotel in December 1883. Commonly referred to as the 'Duchess of Spring Street', it is regarded by many as a quintessential Melbourne icon.
80. The Hotel Windsor has had several owners, including the Victorian Government, and has undergone countless refurbishments, renovations and alterations.
81. The Hotel Windsor is the last surviving 19th century grand hotel in Australia. For decades, The Hotel Windsor was the hotel of choice for prime ministers, politicians, actors, performers and celebrities. In 1898, the Constitution of Australia was drafted in the hotel.
82. Formerly known as 'The Grand', the hotel's rooms and facilities were refurbished in the 1920s, with the hotel renamed, 'The Hotel Windsor', in 1923. Throughout the 1930s, 40s, and 50s, a series of major works were undertaken which included renovation of suites and the extension of the ground floor lounge and foyer area. In 1961, The Hotel Windsor annexe building was constructed on the corner of Spring and Bourke Streets.
83. The heritage value of the property was formally recognised in 1974 when the National Trust classified The Hotel Windsor as being of heritage significance. However, by this time the hotel was in decline and the then owners, Windsor Hotel Ltd, announced plans for a \$12 million, 38 storey office tower on the Bourke Street corner. The Windsor Hotel Ltd declared that if no action was taken they would be forced into voluntary liquidation and have to sell the property for demolition and development.
84. At various times throughout its history, the government and the community have acted to ensure the preservation of The Hotel Windsor. When threatened with demolition in 1976, the then Victorian Government intervened and purchased the hotel for \$4.5 million.
85. Following interest from international hotel operators, the then Victorian Government leased the hotel to the Oberoi Group from 1980 until 1990. The Oberoi Group later purchased the hotel from the then Victorian Government in 1990. In the same year, The Hotel Windsor was placed on the Victorian Register of Historic Buildings to provide protection for the heritage significance of the building.
86. In the early 1980s, the Oberoi Group embarked on an \$8 million refurbishment project. Restoration works to the hotel included the lobby area and the arcade leading to the Grand Dining Room.

## Private property developer – the Halim Group

87. In 2005, a private property developer, the Halim Group (Windsor Hotel Holdings Pty Ltd), in conjunction with Mr Adam Garrison of Oriental Pacific Group (Wetherbey Capital Pty Ltd) purchased The Hotel Windsor from the Oberoi Group for \$35 million. In 2007, the Halim Group became the sole owner of the hotel after purchasing Mr Garrison's 50 per cent share in the property.

Illustration 1. The Hotel Windsor 2010



88. In 2008, the Halim Group submitted an application for a \$45 million refurbishment of The Hotel Windsor to Heritage Victoria. The plan was to construct two new prototype guest rooms as a future vision of guest room accommodation in the hotel; upgrade the hotel's services (electrical, mechanical, plumbing, etc.) and back-of-house facilities including kitchens and offices; and refurbish public areas such as the hotel lobby.
89. In order to undertake the refurbishments, the Halim Group required a heritage permit from Heritage Victoria. On 7 March 2008, the Executive Director of Heritage Victoria granted the Halim Group a heritage permit (P12465) under the *Heritage Act 1995* to complete some of the proposed refurbishments. However, proposed refurbishments to the historic Grand Ballroom and the main staircase were not permitted by Heritage Victoria.
90. The budget for the refurbishments quickly escalated to \$78 million owing to the cost of replacing the hotel's dilapidated infrastructure, such as electrical, plumbing and mechanical services. Mr Adipoetra Halim, Director of the Halim Group, commented on this issue at interview on 5 August 2010. He said:

Having to work with the existing North Building which is full with hazardous material [asbestos] and having to replace all the services. When we started with the \$45 million budget we didn't expect the services to be in such bad condition. At the end, the cost [sic] we get from our consultant just to replace all the services is about \$23 million.



91. Combined with the timing of the global financial crisis, the Halim Group opted not to proceed with the project. On completion of the prototype guest rooms and replacement of only a small percentage of the hotel's infrastructure in 2008, the Halim Group determined that in order to ensure the economic viability of the hotel into the future, a new vision was required for The Hotel Windsor.
92. In November 2008, the Halim Group engaged architects, Denton Corker Marshall, to develop design plans for the redevelopment of The Hotel Windsor.
93. The design plans developed by Denton Corker Marshall feature a 26 storey (152 guest rooms) slim-line glass tower, 91 metres high, 12 metres wide, and 59 metres long. The tower with its distinctive undulating white glass is designed to give the appearance of a 'backdrop curtain' framing The Hotel Windsor. Achieving construction of the 'glass tower' relies on the demolition of the historic rear section and northern wing of the hotel.
94. The other key feature of the proposed redevelopment was a contemporary designed seven storey building on the corner of Bourke and Spring Streets, comprising guest room accommodation, function and recreational facilities, and basement car parking. This building is intended to replace the existing north annexe building built in 1961.
95. The plans also included a \$32 million commitment to retaining and refurbishing the façade of the hotel building and its key heritage features, such as the Grand Ballroom, and reinstating the colonnades at ground level.

Illustration 2. The Hotel Windsor design sketches, Denton Corker Marshall



96. In July 2009, the Halim Group announced its plans for a \$260 million redevelopment of the hotel. In a media release dated 29 July 2009, Mr Adipoetra Halim, Managing Director of the Halim Group stated:

We want to recreate the Windsor as one of the world's great hotels. But it cannot survive as a leading hotel even in its local market without a major improvement in facilities, services and space.

97. The Halim Group engaged a project team of consultants to assist with the proposed redevelopment of The Hotel Windsor, including:
- Denton Corker Marshall, Architects
  - Countor Consultants, Town Planners
  - Lovell Chen, Architects & Heritage Consultants
  - Essential Economics, Economic Consultants
  - Cardno Grogan Richards, Traffic Engineers
  - Lincolne Scott Australia, Sustainable Design
  - MEL Consultants, Wind Consultant
  - Gardner Group, Building Surveyors
  - Irwin Consult, Structural Engineers
  - Wastetech Engineering, Waste Management Plan
  - Acoustic Logic Consultancy, Noise and Vibration Expert
  - Bureau Veritas HAS, Hazardous Building Materials Consultant.

Illustration 3. The Hotel Windsor design plans, Denton Corker Marshall



1. The probity of planning and heritage processes for The Hotel Windsor redevelopment

## Planning and heritage permit processes

98. In order for the Halim Group to achieve its vision of redeveloping The Hotel Windsor, it required the granting of two permits. First, a planning permit pursuant to the Planning and Environment Act, and second a heritage permit as regulated by the Heritage Act.
99. On 28 July 2009, the Halim Group lodged a planning permit application (No. 2009/1687) with the Department regarding the proposed redevelopment. As The Hotel Windsor is listed on the Victorian Heritage Register, an application for a heritage permit (No. P14689) was also lodged with Heritage Victoria on the same date. While the heritage permit process was conducted in parallel with the planning permit process, the decision-making processes by Heritage Victoria and the Department were conducted independent of each other.

### Planning permit process

100. The Planning and Environment Act establishes a framework for planning the use, development and protection of land in Victoria. The objectives of the Planning and Environment Act are to:
  - provide for the fair, orderly, economic and sustainable use and development of land
  - provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity
  - secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria
  - conserve and enhance those buildings, areas, or other places which are of scientific, aesthetic, architectural or historical interest or of other cultural value
  - protect public utilities and other assets and enable the orderly provision and coordination of public utilities and other facilities for the benefit of the community
  - facilitate development in accordance with the objectives set out in the points above
  - balance the present and future interests of all Victorians.
101. The *State Planning Policy Framework* guides strategic planning issues of state importance and is incorporated into all planning schemes. There is also a *Local Planning Policy Framework* which provides for a municipal strategic statement, local planning policies, and which identifies long term directions about land use and development in the municipality. It also provides the rationale for the zone and overlay requirements and particular provisions in the scheme.<sup>2</sup>
102. A planning scheme is a statutory document which sets out objectives, policies and planning provisions relating to the use, protection and conservation of land in the area to which it applies.

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<sup>2</sup> Victoria Planning Provisions User Guide, Department of Planning and Community Development.

103. The relevant planning scheme in relation to The Hotel Windsor redevelopment is the Melbourne Planning Scheme. This integrated planning framework is designed to ensure that the City of Melbourne's actions, policies and strategies help achieve the vision for the City of Melbourne, as outlined in its City Plan 2010.
104. Clause 61.01 of the Melbourne Planning Scheme requires that for developments with a gross floor area exceeding 25,000 square metres, the Minister for Planning is the responsible authority for administering and enforcing the planning scheme. As The Hotel Windsor redevelopment is 28,595 square metres, the Minister was the responsible authority for determining the planning application permit.
105. It is the Department's role in such cases to provide the Minister with statutory and strategic guidance on planning permit applications. This includes ensuring that the statutory process under the Planning and Environment Act is complied with.
106. Following lodgement of The Hotel Windsor planning permit application on 28 July 2009, the Department made the application available for public viewing.
107. On 24 August 2009, the Department wrote to the Halim Group's town planning consultant, Contour Consultants, requesting further information on the proposed redevelopment including:
  - revised and additional shadow drawings
  - additional survey levels
  - a revised site plan illustrating setback information pertaining to the roof-top pool on the revised north building
  - additional photo montages taken from nominated locations along Bourke Street.
108. This information was required within 60 days and was provided by Contour Consultants with its letter dated 17 September 2009. In a further letter dated 25 September 2009, the Department advised Contour Consultants of the notification requirements that apply to the application under section 52 of the Planning and Environment Act. The letter stated:

Under delegation of the Minister for Planning I consider that granting of a permit may cause material detriment to other people; I therefore require you to give notice of the application.
109. The Halim Group was required to display a copy of the public notice of the application for a planning permit on signboards at the hotel for 14 days; provide a copy of the public notice of the application to over 300 owners/occupiers in an area identified by the Department in close proximity to the hotel; and publish a copy of the application in the public notice section of The Age and Melbourne Weekly Times newspapers for one issue each.
110. In October 2009, the National Trust (Victorian Branch) launched the 'Save the Windsor' campaign and website in opposition to the proposed redevelopment. The National Trust publicly stated that the 'proposal involves the demolition of most of the rear and side wing of the original hotel. Such a level of demolition could only be justified on the basis of an acceptable replacement. A 27 [sic] storey tower is not acceptable'.<sup>3</sup>

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3 National Trust 'Save the Windsor' website <[www.savethewindsor.com](http://www.savethewindsor.com)>.

111. The National Trust's 'Save the Windsor' campaign asked objectors to complete a pro-forma email or postcard registering their concern which in turn was sent to Mr Madden and the Lord Mayor of the City of Melbourne. On 25 March 2010, the National Trust also held a public rally at the steps of Parliament House to protest against the redevelopment.
112. In total, 180 submissions were received by the Department relating to the proposed redevelopment, of which 176 were objections. Of the objections received, 143 were email pro-forma or postcard objections related to the National Trust's 'Save the Windsor' campaign.
113. Individual submissions, of which there were 33, were received from local residents, business operators and other interested parties, including some members of parliament.
114. Objectors raised a variety of issues, including: the effect of the proposed redevelopment on the heritage precinct; the height of the proposed tower; and the impact on residential and commercial amenity caused by issues such as dust, noise, light, traffic, and overshadowing. As required by the Planning and Environment Act, the Department made all objections available for public viewing.
115. In accordance with sections 52 and 55 of the Planning and Environment Act, the Department wrote to the City of Melbourne and the Department of Transport on 23 September 2009 advising of the planning permit application for The Hotel Windsor. These letters confirmed that the then Minister for Planning would consider any comments that the City of Melbourne or the Department of Transport wished to make regarding the planning application.
116. The Department of Transport responded on 23 October 2009 advising that it did not object to the granting of a planning permit, subject to a number of conditions. These conditions principally related to ensuring a minimum of disruption to public transport services in the immediate vicinity of The Hotel Windsor.
117. On 25 November 2009, the City of Melbourne responded to the Department advising that it generally supported the proposed redevelopment. However, the City of Melbourne raised several issues with the planning application, most notably the height of the proposed corner building, and suggested conditions if a permit were to be granted.
118. The Department notified the Victorian Government Architect, Mr Geoffrey London, of the planning permit application on 6 October 2009 and asked him to provide comment on the design of the proposed redevelopment. Mr London responded to the Department on 6 November 2009 providing his support for the architectural design of the proposed redevelopment. In his letter dated 6 November 2009, Mr London stated:

In general, we believe this design strategy results in the restoration of a fine heritage building and that the carefully considered placement of new architectural forms housing complementary functions will secure the Windsor's future and its ongoing relevance to Melbourne. The proposal offers a fully considered and exceptional outcome in terms of urban design and architectural design quality and is likely to contribute in a positive way to the existing precinct for the reasons outlined above.

119. The Department also wrote to the National Trust on 6 October 2009 advising it of the planning application and seeking the National Trust's comments on the proposed redevelopment. The Chief Executive Officer of the National Trust (Victorian Branch), Mr Martin Purslow, responded by letter dated 20 October 2009, objecting to the planning permit on the basis of the height of the proposed tower and corner building, and the effect on the heritage precinct. Mr Purslow in his letter dated 20 October 2009, stated:

I urge the Minister to refuse the permit and encourage the applicant to come forward with an alternative scheme that balances the future needs of both the hotel and the city.

### **Establishment of an Advisory Committee**

120. Under the provisions of the Planning and Environment Act, the Minister for Planning has several means available with regard to determining planning permit applications. These include:
- Allowing the statutory planning application process to proceed
  - Exercising powers under section 97 of the Planning and Environment Act to call-in a planning permit application where the Minister considers the matter raises a major issue of policy; the determination of the application may have a substantial effect on the achievement or development of planning objectives; or the decision on the application has been unreasonably delayed to the disadvantage of the applicant
  - Using powers under section 58 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, to call-in an appeal being reviewed by the Planning Division of the Victorian Civil and Administrative Tribunal, in similar circumstances as outlined above
  - Exercising powers under section 20(4) of the Planning And Environment Act to prepare, adopt and approve an amendment to a planning scheme
  - Appointing an advisory committee under section 151 of the Planning and Environment Act to advise him on any matters which he refers to them.
121. Advisory committees are generally used to assist the Minister for Planning on matters where there are complex issues or planning controls to consider, or where he would benefit from the expertise of committee members.
122. On 27 October 2009, Mr Madden agreed to the appointment of an Advisory Committee to provide him with advice and to report on all relevant issues relating to the planning permit application for The Hotel Windsor. It was also agreed by Mr Madden that the planning application process, which was dealing with the public notification process, would continue.
123. The Advisory Committee's Terms of Reference were drafted by the Department and approved by Mr Madden on 13 November 2009. Broadly, the Advisory Committee's Terms of Reference were to provide recommendations and reasons in relation to: whether a planning permit should be issued; assessment of submissions received; the impact on the heritage precinct; the relevant planning policies and controls; and economic considerations.

124. The Terms of Reference made it clear that the Advisory Committee was not to provide recommendations in relation to the heritage permit application under the Heritage Act, as this is the role of the Executive Director of Heritage Victoria.
125. On 3 December 2009, Mr Madden signed an Instrument of Appointment under section 151 of the Planning and Environment Act, appointing Mr Lester Townsend, Chairperson, Mr Graeme Holdsworth, Member, and Mr Ken Northwood, Member, to advise him on The Hotel Windsor planning permit application.
126. The Advisory Committee held a public hearing on 10 December 2009 where presentations were made to it by: the Halim Group and its consultants; the City of Melbourne; and the National Trust. The Advisory Committee also met with Mrs Judy Maddigan, the then member of parliament for Essendon, during an inspection of Parliament House; Mr Glenn Coupar, the Halim Group's Development Manager, during an inspection of The Hotel Windsor; and Mr Bill Renehan, Manager Investments and Infrastructure Projects, Tourism Victoria on 13 January 2010.
127. With regard to the potential economic benefits of the proposed redevelopment, the Advisory Committee considered an economic assessment report and presentation by consultant Mr John Henshall, Essential Economics Pty Ltd, on behalf of the Halim Group. Mr Bill Renehan, Manager Investments and Infrastructure Projects, Tourism Victoria, also presented an assessment of the likely effect of the redevelopment on tourism.
128. The Advisory Committee concluded that the redevelopment would provide some benefit to the Victorian economy through construction investment, generation of construction and associated jobs, increasing operational and associated employment, and additional ongoing visitor spending through tourism.
129. The Advisory Committee was also asked by Mr Madden to comment on whether the discretionary height controls (Melbourne Planning Scheme, Design and Development Overlay DDO2) which apply to the area in which The Hotel Windsor is located, should be mandatory. The Advisory Committee in its report dated February 2010, concluded that:

The 'default' position in the Victorian planning system is for discretionary controls unless there are persuasive reasons to mandate an outcome.

Mandatory height provisions should only be applied where there is a detailed and defined planning outcome to be achieved and there has been a detailed analysis of alternative urban forms.

130. The Advisory Committee concluded that:
  1. In terms of the impact of the proposal on the Bourke Hill Precinct as a whole, the values which form the significance of the precinct are not fundamentally altered.
  2. The height and massing of the proposal are generally appropriate in the context and in terms of the planning objectives for the area.
  3. Doing nothing will only see the hotel and the building decline.
  4. The hotel is unlikely to be refurbished under the existing permit, and a development within the 'preferred' height limits will not be viable.



5. At least 300 rooms together with conference and leisure facilities are required to allow the project to be economically viable and operate at a 5-star standard.
6. The development as proposed is an economically viable scheme that could attract bank finance.

...

In terms of the permissions required under the planning scheme, we see no reason why a permit should not be granted. The proposal responds to its context in an intelligent way and will make a positive architectural contribution to Melbourne – potentially a very significant positive contribution. We do not see that it will create any sort of precedent for development not in keeping with planning controls.

131. The Advisory Committee also made the following recommendations:

We recommend that a permit be granted subject to typical conditions to be resolved between the applicant and DPCD [Department of Planning and Community Development], but including conditions that:

- Alternative plans be prepared that:
  - Reduce the height of the pool and services 'stick'.
  - Remove the zinc clad roof top guest room abutting the existing heritage central towers.
- A wind study be carried out.
- A Car Parking and Traffic Management Plan be prepared.
- Bicycle parking and facilities be provided to the satisfaction of the Responsible Authority.
- Further details be provided on the material palette to be used.

## Appointment of probity adviser and probity auditor

132. In response to concerns raised in the media regarding the probity of the planning application process, in March 2010 the Department engaged the services of a probity adviser, RSM Bird Cameron, to provide specific probity advice on the Department's advice to Mr Madden regarding the planning permit application. In a letter dated 17 March 2010, RSM Bird Cameron, stated that:

... we are satisfied that the advice provided to the Minister is acceptable from a probity perspective in that, it is consistent with the supporting information.

133. PricewaterhouseCoopers were also engaged by the Department in March 2010 to undertake an independent internal audit of the activities undertaken by the Department, the Advisory Committee and Heritage Victoria, in relation to the processing of the planning and heritage permit applications.
134. In a report dated 15 March 2010, PricewaterhouseCoopers advised that it had found no evidence of non-compliance with agreed [statutory] compliance requirements undertaken by the Department, the Advisory Committee or Heritage Victoria in relation to the processing of the planning and heritage permit applications.

135. While noting the probity reports, I consider that the role of the probity adviser and probity auditor as determined by the Department was restrictive as it did not enable the probity adviser or probity auditor to review the probity of Mr Madden's media plan or the involvement of his office. This is discussed in greater detail in the chapter of my report dealing with the roles of the probity adviser and auditor.

## Ministerial decision-making

136. The Advisory Committee provided its report to Mr Madden on 8 February 2010 with a recommendation that the planning permit application for the proposed redevelopment be granted, subject to certain conditions.
137. According to Mr Madden and his then Chief of Staff, Mr Justin Jarvis, in line with office practice the Advisory Committee's report was immediately referred to the Department for the preparation of a ministerial briefing note detailing the Advisory Committee's findings. Both Mr Madden and Mr Jarvis said that they did not see the report when it arrived at Mr Madden's office on 8 February 2010 and were not aware of its findings until late February 2010.
138. In light of the considerable public interest in The Hotel Windsor redevelopment, I am at a loss to understand that neither Mr Madden, nor his advisers looked at the Advisory Committee report when it arrived at Mr Madden's office on 8 February 2010. It is difficult to understand how a report of this nature could be simply referred to the Department for a briefing without the Minister or his staff wishing to know in broad terms the Advisory Committee's recommendations concerning the redevelopment. Especially as both within the Department and the Minister's office the report had been anticipated.
139. Mr Jarvis has since responded:
- In essence, I did not see any need to read a report that constituted only part of the material necessary for the consideration of this application. Further input and advice from a number of sources (Heritage and DPCD) was required before I would be in a position to engage in a fulsome discussion with the Minister.
140. For the community to have confidence in Victoria's planning framework it is essential that the Planning and Environment Act strikes an appropriate balance between social, economic and environmental considerations.
141. In accordance with section 61 of the Planning and Environment Act, when considering a planning application, the Minister for Planning may decide to grant a planning permit, grant a permit subject to conditions, or refuse to grant a permit on any grounds he thinks fit.
142. Under section 60 (1) of the Planning and Environment Act, the Minister for Planning as the responsible authority must consider the following matters before deciding upon a planning permit application:
- (a) the relevant planning scheme; and
  - (b) the objectives of planning in Victoria; and
  - (c) all objections and other submissions which it has received and which have not been withdrawn; and

- (d) any decision and comments of a referral authority which it has received;  
and
- (e) any significant effects which the responsible authority considers the use or development may have on the environment or which the responsible authority considers the environment may have on the use or development.

143. The Department provided Mr Madden with a briefing note dated 17 March 2010, which was a detailed analysis of the findings of the Advisory Committee. The Department concluded that 'the analysis, findings and outcomes of the Advisory Committee are sound'. Mr Madden was also provided with supporting information, including: the Advisory Committee's report; the probity reports; submissions received on the proposal; and responses received from the various authorities.

144. The Department concluded that:

Having regard to the above analysis [in the briefing paper] and your powers under section 61 of the PEA [the Planning and Environment Act] in relation to making your decision on the application, it is recommended that a permit be granted consistent with the recommendations of the Advisory Committee, the comments of referral authority and the Melbourne City Council.

145. On 18 March 2010, Mr Madden wrote to the Halim Group, advising of his decision to approve the application for a planning permit for The Hotel Windsor redevelopment. The Notice Of Decision To Grant A Permit (Application No. 2009/1687) signed by Mr Madden on 18 March 2010 included the following conditions:

- reducing the height of the pool and services structure on top of the new building on the corner of Spring and Bourke Streets
- removing the zinc clad roof top guest room abutting the existing heritage central towers
- commissioning a wind study
- providing a car parking and traffic management plan including bicycle parking facilities
- further details on the building materials to be used.

146. In a media release dated 18 March 2010 regarding the granting of a conditional planning permit for The Hotel Windsor, Mr Madden stated that he:

... accepted the recommendation of the independent advisory committee to grant the permit following an open and comprehensive planning process, as verified through the independent probity advice.

The Advisory Committee found that in terms of the permissions required under the Melbourne Planning Scheme there was no reason why a permit should not be granted.

In fact it found that without the redevelopment the hotel would only decline and that the expanded hotel required at least 300 rooms to make the refurbishment economically viable.

## Heritage permit process

147. As The Hotel Windsor is a registered place on the Victorian Heritage Register, a heritage permit was also required to carry out the proposed redevelopment.
148. Pursuant to section 74 of the Heritage Act, the Executive Director of Heritage Victoria has the power to determine applications for heritage permits. He may determine to: issue the permit; issue a permit for some of the proposed works or activities; or refuse the permit. The Heritage Act requires that the Executive Director's decision-making is conducted independent of the planning application process.
149. The statutory approval process which applies under the Heritage Act is similar to the planning permit application process. On 28 July 2009 the Halim Group lodged an application for a heritage permit (No. P14689) with Heritage Victoria. Included with its submission was a Heritage Impact Statement and Conservation Management Plan prepared by Lovell Chen Architects and Heritage Consultants.
150. On 28 August 2009 Heritage Victoria wrote to the Halim Group's heritage consultant, Lovell Chen Architects and Heritage Consultants, advising of the requirement to provide public exhibition and notice of the heritage permit application. A copy of the heritage application was also made available for public viewing at the offices of Heritage Victoria and on its website.
151. The process of public notification and exhibition of the heritage application permit was very similar to the planning application permit.
152. Heritage Victoria received 116 submissions in response to the public notice of the heritage permit application. Of the submissions received by Heritage Victoria, over 100 were pro-forma submissions received as part of the National Trust's 'Save the Windsor' campaign.
153. On 15 October 2009, Mr Paul Roser, Conservation Manager at the National Trust, wrote to Heritage Victoria expressing the National Trust's objection to the heritage permit application for The Hotel Windsor. In broad terms, the National Trust objected to the redevelopment on the basis of its detrimental effect on the cultural heritage significance of the hotel and the impact on the heritage precinct in which the hotel is situated.
154. On 29 July 2009 Heritage Victoria also referred a copy of the heritage permit application to the City of Melbourne for comment. The City of Melbourne responded to Heritage Victoria on 17 September 2009, advising that while 'the proposal is broadly supportable', the council objects to the height of the corner building.
155. Under section 73 of the Heritage Act, the Executive Director must determine an application within 60 days after its receipt, unless that period has been extended by the Heritage Council.

156. On 5 November 2009, the Executive Director of Heritage Victoria requested that the Heritage Council extend the 60 day period, by granting a further period of 60 days to determine the application. This request was granted by the Heritage Council on 5 November 2009.

### **Executive Director decision-making**

157. When determining a heritage permit application, the Heritage Act requires that the Executive Director must consider a range of matters, including:
- the extent to which the application, if approved, would affect the cultural heritage significance of the registered place or registered object
  - the extent to which the application, if refused, would affect the reasonable or economic use of the registered place or registered object, or cause undue financial hardship to the owner in relation to that place or object
  - any submissions
  - any matters relating to the protection and conservation of the place or object that the Executive Director considers relevant.
158. On Saturday 13 March 2010 the Executive Director, Mr Gard'ner, issued a heritage permit to the Halim Group. Mr Gard'ner said that the permit had been issued on a Saturday as the statutory timeframe for making a decision on the permit was due to expire the following day. He also said that he had attended work on the Saturday and used this as an opportunity to evaluate all aspects of the application.
159. The permit contained a number of conditions including that the height of the proposed new corner building be reduced in line with the existing hotel, and that the proposed reduced rooftop extension be modified.
160. In a media statement dated 16 March 2010, Mr Gard'ner commented on the issuing of the heritage permit for The Hotel Windsor:

I have decided to grant a permit to allow for significant reinstatement and conservation works as well as redevelopment of the site.

### **Status of The Hotel Windsor redevelopment**

161. On 7 April 2010, the National Trust lodged an application for review with the Victorian Civil and Administrative Tribunal (VCAT) requesting a review of Mr Madden's Notice of Decision to Grant a Permit. The National Trust maintained that Mr Madden had failed to comply with heritage overlays under the Melbourne Planning Scheme, which it argued require the need for a separate permit. On 27 May 2010, VCAT determined that it did not have jurisdiction to hear an appeal on heritage overlay grounds.
162. The National Trust made an application to the Supreme Court of Victoria on 25 June 2010, seeking a review of the VCAT decision. On 22 September 2010, the Supreme Court upheld VCAT's decision.

163. On 10 May 2010, the Halim Group lodged an appeal with the Heritage Council of Victoria in relation to the conditions of the heritage permit issued by the Executive Director of Heritage Victoria on 13 March 2010. Specifically, the Halim Group appealed against conditions 1 (a) and (b) of the permit in relation to the reduced height of the corner building. The Halim Group stated that the reduction in the height of the building would affect the financial viability of the hotel. On 9 November 2010, the Heritage Council upheld the decision of the Executive Director requiring a reduction in the height of the corner building.

## Conclusions

164. The Department, Mr Madden, the Advisory Committee and Heritage Victoria, complied with the statutory requirements of the Planning and Environment Act and the Heritage Act in relation to the processing of the planning and heritage permit applications for The Hotel Windsor redevelopment.
165. While statutory processes and timeframes were met, my investigation identified a number of issues affecting the planning and heritage approval processes, including:
- inadequate accountability and transparency
  - limited scope of probity advice and audit
  - poor management of conflicts of interest
  - economic and other influences on decision-making.
166. These issues are discussed in greater detail in the following chapters of my report.

## Inadequate accountability and transparency

167. By its very nature, planning is a complicated and contentious area of government administration. It is an area of government administration about which I receive a number of complaints each year. On this basis, it is important that there be a planning framework in place for Victoria which provides for accountable and transparent decision-making by government administration. It must also ensure that the effect on the environment, individuals and social and economic factors are considered when decisions are made about use and development of land.
168. The conservation and protection of heritage buildings and places can be an equally emotive issue. This can lead to a divided community with differing views about whether heritage or commercial considerations should be paramount in decision-making about the future use of heritage buildings and places.
169. In this context, accountability and transparency are essential to ensuring community confidence in government decision-making. Accountability requires that government is able to demonstrate and justify its decision-making. While inter-related, transparency involves the preparedness of government to open a project and its processes to scrutiny and possible criticism.
170. The failure of agencies to maintain adequate records compromises an agency's functions, undermines its credibility and impacts negatively on the public's perception.
171. Good record-keeping is a necessary element of good governance. Good record-keeping supports efficiency and accountability through the creation, management and retention of meaningful, accurate, reliable, accessible and durable records of important government activities and decisions. Good records are necessary for government to keep track of what it has done, so that future activities can be examined on the basis of a comprehensive and accurate knowledge of what has occurred and what has been decided in the past.<sup>4</sup>
172. With regard to the planning and heritage permit application processes for The Hotel Windsor, my investigation identified a lack of accountability and transparency in decision-making by the following agencies:
- The Department of Planning and Community Development
  - Heritage Victoria
  - The City of Melbourne
  - Planning Panels Victoria.

### The Department and Heritage Victoria

173. My concerns with the Department and Heritage Victoria relate to their failure to make and keep adequate records regarding The Hotel Windsor planning and heritage permit applications. Poor file management practices, including the failure of officers to file documents accurately and folio files, were also evident.

<sup>4</sup> Australian Public Service Commission, *Note for File: A report on recordkeeping in the Australian Public Service*, 31 August 2007.

174. In large or complex redevelopments, such as The Hotel Windsor it is routine for consultation to take place between the responsible authority and the applicant prior to lodgement of an application for a planning or heritage permit. These are commonly known as pre-application meetings.
175. The Department's publication, *Using Victoria's Planning System*, outlines the benefits of these preliminary discussions:
- It is advisable to discuss a proposed application with planning officers of the responsible authority before the application is finalised and submitted. This can avoid both cost and delay.
176. Pre-application meetings can cover a range issues relevant to the application including:
- the reasons why a permit is required
  - the nature and amount of supporting information to submit with an application
  - any state and local planning policies (including the Municipal Strategic Statement) that should be addressed as part of the application; any relevant guidelines, requirements or particular provisions that may apply
  - any referral authorities relevant to the application that must be notified.<sup>5</sup>
177. In December 2008, the Halim Group's Development Manager, Mr Glenn Coupar, initiated pre-application meetings with representatives of the Department and Heritage Victoria regarding the proposed redevelopment of The Hotel Windsor. The purpose of these meetings was to present sketch concept plans of the redevelopment which had been prepared by Architects, Denton Corker Marshall.
178. At interview on 22 July 2010, Mr Coupar commented on the pre-application meeting process. He said:
- One of the things in my development experience is no developer is going to go and spend one, two, three million dollars on a proposal without having a sense that there is some opportunity that the proposal may go ahead. Why would you do it otherwise?
- ...
- So it's a normal process on any development to expect a series of pre-application meetings.
179. Between 18 December 2008 and the lodgement of the planning and heritage permit applications on 28 July 2009, the Halim Group was involved in 14 separate pre-application meetings with various agencies and individuals, including the Department, Heritage Victoria, the City of Melbourne, Mr Madden and his ministerial advisers, the National Trust, and Tourism Victoria.

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<sup>5</sup> Department of Planning and Community Development, *Using Victoria's Planning System* <www.dpcd.vic.gov.au>.



180. Despite the obligation under section 13(a) Public Records Act to ‘make and keep full and accurate records’, I was unable to locate records of the various meetings attended by Departmental and Heritage Victoria officers. The Public Record Office Standard (PROS) 97/002 requires public officers to ‘make adequate records of their administration for the purposes of government accountability and the purposes of future government’. Given the importance of these meetings to the progress and development of The Hotel Windsor project I consider that these meetings should have been recorded and the failure to take this step indicates failure to comply with statutory obligations and the Public Record Office standard.
181. Mr Coupar was asked at interview about the nature of the pre-application discussions which took place with the Department and Heritage Victoria. He said:
- We weren’t left feeling that it was a proposal that we shouldn’t further investigate. There was nothing positive at all, but we weren’t sent packing out of the room in the first five minutes. That’s standard fare for what a person who works for the government in a planning sense would usually give you.
182. Officers from the Department attended pre-application meetings with the Halim Group on 30 January 2009, 26 February 2009, 17 June 2009 and 23 July 2009. Heritage Victoria officers also attended pre-application meetings with the Halim Group on 18 December 2008, 17 March 2009, 17 June 2009, and 9 July 2009.
183. One of the pre-application meetings involved a presentation by the Halim Group and its consultants of the plans for the proposed redevelopment to Mr Madden. The meeting with Mr Madden and his advisers took place on 17 June 2009 at the Department’s offices. Mr David Hodge, Executive Director, Planning Services and Development Facilitation attended from the Department. Heritage Victoria was represented by Ms Joanne Day, Manager, Heritage Permits & Consents.
184. While some notes were made of the discussions by an officer who attended, an official record was not made of this meeting or its outcomes by the Department or Heritage Victoria. The meeting with Mr Madden on 17 June 2009 later became the subject of media attention in July 2010, when the Department in response to a freedom of information request from a journalist, stated that ‘no notes were made of this meeting’.<sup>6</sup> The Department maintained that personal notes made by the officer who attended the meeting with Mr Madden on 17 June 2009 did not meet the definition of a document under the *Freedom of Information Act 1982*. As a result, the Department refused to release the notes under freedom of information legislation.
185. In August 2010 I received a complaint about the Department’s decision to refuse the release of the officer’s notes under the Freedom of Information Act. I was concerned with the Department’s interpretation of the Freedom of Information Act. In my view, the notes form part of the public record and should be attached to the Department’s Freedom of Information file and assessed for their release. Following my intervention in this matter, the Department agreed to the release of the notes of the meeting in 17 June 2009 under the Freedom of Information Act.

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6 The Age, *Meeting notes on Hotel Windsor plan withheld*, Mr Jason Dowling, 29 July 2010.

186. Following lodgement of the planning and heritage permit applications on 28 July 2009, the Halim Group met with officers from the Department on 10 August 2009, 12 August 2009, 20 October 2009, and 29 October 2009. Meetings with representatives of Heritage Victoria also took place on 4 November 2009, 12, February 2010, 24 February 2010, 25 February 2010, 29 March 2010, and 11 June 2010. Again, I was unable to identify records made of these meetings by officers who attended from the Department or Heritage Victoria.
187. One of the meetings attended by Departmental officers, Mr Stephen Leitch, Senior Planning Officer, and Mr Adrian Salmon, Assistant Director of Statutory Approvals, on 12 August 2009, involved a site inspection of The Hotel Windsor. However, I was unable to locate any record made detailing the inspection of the hotel or the outcomes of this inspection.
188. Mr Leitch has since responded:
- At the site inspection I took a number of site photos. These are stored on the shared electronic server with the other Windsor documents and a print out can be made available on request.
189. Mr Salmon also stated:
- Stephen Leitch and I attended the site inspection of The Hotel Windsor on 12 August 2009. I did not take any written notes taken [*sic*] during the site inspection as it consisted of a “walk through” of the site with the applicant.
190. The Department and Heritage Victoria officers generally did not make a record of telephone conversations with applicants, consultants, agencies or objectors to a proposed redevelopment.
191. Mr Leitch, the Department’s case manager for The Hotel Windsor planning permit application was asked at interview on 27 July 2010 whether there is a requirement to make a record of pre-application discussions with applicants. He said:
- Not necessarily. They are fairly informative meetings in order to provide the applicant with as much information as possible as what we are requiring. They tend to address all of these issues within their planning reports. In any event, in these sort of meetings we don’t say anything one way or the other.
192. Mr Salmon, the Department’s Assistant Director of Statutory Approvals said at interview on 28 July 2010 that he would not normally expect a record to be made of the pre-application meetings.
193. Mr Salmon has since stated:
- I would expect that a record of pre-application meetings would be made by Department officers in the form of a note in the relevant officer’s note book.
- I would not normally expect a formal file note being made of all pre-application meetings, as a file may not have been created at the pre-application stage, as often projects that are discussed do not proceed to the application stage.

194. Heritage Victoria officers were also asked about their record-keeping practices. At interview on 3 August 2010, Mr Ray Osborne, Director Operations, Heritage Victoria, said:

I get involved with so many meetings that I don't necessarily go away and write a detailed précis of those meetings and the outcomes.

195. When asked whether there would be any benefit in Heritage Victoria making a record of meetings and discussions so that there is clarity as to what occurred, Mr Osborne said:

Yes, with hindsight.

196. Mr Salmon was asked at interview whether there were any learnings for the Department regarding its handling of The Hotel Windsor planning application. He said:

I might have probably documented a number of phone calls and details like that.

197. Mr Salmon has since added:

... it is unfortunate that we do not have the time or resources to allow us to take a written note and details of all telephone conversations.

198. On 18 May 2010, Mr Madden appeared before the Public Accounts and Estimates Committee's 'Inquiry into budget estimates 2010–11'. In response to questioning about his meetings with consultants regarding The Hotel Windsor and records of these meetings, Mr Madden stated:

I am meeting with all sorts of people interested in the planning system. Whether that be community groups, whether it be local government, whether it be prospective proponents in relation to projects, I meet with those sorts of people all the time. In any given day it is likely I will meet with any one or more of those sorts – and have those sorts of meetings. I also meet with industry groups. I meet not only with industry groups but with specific representatives from industry who also might want to put a case either about specific proposals or strategies in relation to development or renewal or any issues that might present themselves about the planning system.

I would expect that at all those meetings I would be accompanied in one form or another not only by an adviser from my office but also accompanied by a member of the department, and where those meetings occur, of course, I would expect those departmental officers to take notes in relation to those meetings. Of course, they are fed into the system in relation to those matters.

199. Mr Madden was asked at interview on 13 September 2010 about the record-keeping practices of the Department and Heritage Victoria. He said:

... the Secretary of the Department and those managers below the Secretary manage the operation of the Department. But I would expect there would be some – some identification that not only a meeting took place but some of the matters covered. And I wouldn't expect they'd necessarily need to be in great detail.

But if – my concern would be if personnel were replaced at some stage, in any organisation, that you’ve at least got some consistency in terms of the administration of – of the way in which these matters are being dealt with. Because – and I’m conscious of that because I – I have heard criticisms of some planning authorities where they have staff turnover, that sometimes somebody has a discussion, they have to start again because the new personnel is not able to acquaint themselves with what may have been undertaken prior to those discussions or prior to – not prior to those discussions but prior to say new discussions with the new personnel. So I would then suggest operational consistency, which would have some reference to conversations in some form.

## Conclusions

200. The poor record-keeping practices of the Department and Heritage Victoria hindered my investigation. There is little doubt that the Department and Heritage Victoria failed to comply with its statutory record-keeping obligations under the Public Records Act and the Public Records Office standard. The Department also failed to comply with Mr Madden’s expectations regarding record-keeping standards.
201. I am concerned that several witnesses also said that the failure of the Department and Heritage Victoria to maintain adequate records was not restricted to The Hotel Windsor planning and heritage permit applications.
202. My investigation identified a lack of understanding amongst Department and Heritage Victoria staff regarding expected record-keeping standards. I also identified poor file management practices in that documents were filed in a haphazard manner, files were not folioed and file covers did not record movement of files between officers.
203. In the absence of basic records detailing key meetings and discussions with agencies and individuals regarding the proposed redevelopment, it is difficult to have a complete appreciation of the processes followed.

## Recommendations

I recommend that:

### Recommendation 1

The Department and Heritage Victoria review its file management practices to ensure that standards meet the requirements of the Public Records Act and the Public Records Standard.

### *The Department’s response*

The Public Records Office of Victoria has been asked to assist the department with a review of its record keeping and management processes.

## Recommendation 2

The Department and Heritage Victoria provide training to its staff on record-keeping and file management practices.

### *The Department's response*

See response to Recommendation 1.

## The City of Melbourne

204. Under the Planning and Environment Act, and the Heritage Act, the City of Melbourne was asked to comment on the planning and heritage permit applications for The Hotel Windsor.

### *Response to Heritage Victoria – heritage permit*

205. Ms Gail Hall, Senior Planning Officer at the City of Melbourne was responsible for assessing The Hotel Windsor heritage and planning permit applications.

206. To assist in responding to Heritage Victoria's request for comments on the proposed redevelopment, on 5 August 2009 the City of Melbourne sought the advice of its heritage adviser, Mr Bryce Rayworth, Conservation Consultant of Bryce Rayworth Pty Ltd. In his report dated 17 September 2009, Mr Rayworth concluded:

... it is my view that the proposal is broadly supportable in relation to:

1. the extent of the demolition of the historic building
2. the extent of retention and restoration etc to the historic building
3. the extent and nature of the proposed rear tower behind the Windsor Hotel
4. the essential concept of a modern addition at the corner of Spring and Bourke Streets, replacing the existing modern addition, including the contemporary architectural character that is proposed.

...

However, in relation to point 4 above, I believe that the height of the corner facades of the proposed new envelop is approximately one storey too high or possibly two storeys too high.

207. In light of this heritage advice, Ms Gail Hall of the City of Melbourne wrote to Heritage Victoria on 17 September 2009, advising that while 'the proposal is broadly supportable', the council objects to the height of the corner building.

### *Response to the Department – planning permit*

208. Following receipt of the Department's letter dated 23 September 2009 requesting the City of Melbourne's comments on the planning permit application, the council's planning officers undertook a separate assessment of the planning application.

209. On 29 October 2009, Ms Hall prepared a report on The Hotel Windsor planning permit application for discussion at the City of Melbourne's Senior Officers Discussion Meeting. This is a weekly meeting of City of Melbourne senior planning officers to discuss any application that is being proposed to be refused; that has objections to the granting of a permit; or is considered contentious.

210. Ms Hall in her report dated 29 October 2009 raised concerns about the height of the hotel in Windsor place.
211. At interview on 21 July 2010, Ms Hall was questioned on her assessment of the planning permit application. She said:
- My major concern in relation to the proposal was the height of the tower building because it was excessively high compared to two of the design development overlays on the site which required a much lower building to be built.
212. Following discussion of the planning permit application and Ms Hall's report at the Senior Officers Discussion Meeting on 29 October 2009, it was recommended by the senior officers present at this meeting that the City of Melbourne object to the proposed redevelopment.
213. I requested a copy of the minutes of the Senior Officers Discussion Meeting held on 29 October 2009, where The Hotel Windsor planning permit application was discussed. I established that that were no separate minutes kept of this meeting. I was advised by the City of Melbourne that the minutes of the meeting are in fact Ms Hall's report dated 29 October 2009.
214. Following the Senior Officers Discussion Meeting on 29 October 2009, Ms Hall's planning report dated 29 October 2009, objecting to the planning application, was circulated to the elected councillors of the City of Melbourne for discussion at a 'Councillor Only Meeting' on 10 November 2009.
215. During my investigation, I requested clarification from the City of Melbourne regarding the purpose of 'Councillor Only Meetings'. Mr Keith Williamson, Manager Governance Services, City of Melbourne, stated in a letter received 12 July 2010, as follows:
- 'Councillor Only Meetings' are informal and there are no policies or procedures relating to when they are used, how are they constituted, who attends, what matters are considered, what notice is given of the meeting, what minutes are produced or who they report to. There are no minutes of the meetings and they don't report to anyone.
216. At interview on 2 August 2010, Councillor Peter Clarke of the City of Melbourne was asked about the purpose of 'Councillor Only Meetings' He said:
- They're about getting a flavour of where we [the elected council] might be on matters, but no-one is held to that position ...
- ... they [Councillor Only Meetings] are not resolutions, they are not someone taking a course of action.
217. An agenda for the 'Councillor Only Meeting' held on 10 November 2009, confirms that The Hotel Windsor was listed for discussion by councillors on this day. Following this meeting on 25 November 2009, a letter was sent by Mr Shiran Wickramasinghe, Manager, Planning and Building, City of Melbourne, to the Department, supporting the planning application. The letter stated:

I advise that the City of Melbourne generally supports the application.

...

This application is very important as it concerns one of the most significant buildings in the City of Melbourne and the proposal has the potential to become one of Melbourne's future architectural features.

218. Mr Wickramasinghe's letter 'generally supporting the proposal' was circulated to all City of Melbourne councillors with the opportunity to make comment or to refer the matter to the Future Melbourne (Planning) Committee, prior to the letter being sent on 25 November 2009.

## Conclusions

219. The decision-making processes of the City of Melbourne planning department and of the elected council in relation to The Hotel Windsor planning permit application would have benefited from better record keeping of meetings and decisions. However, I did not identify any significant concerns with the City of Melbourne's decision to support The Hotel Windsor redevelopment.
220. My investigation identified poor record-keeping in the City of Melbourne files examined. Files were generally in an inadequate condition, with documentation not kept in chronological order and several documents filed loosely. Documents were not folioed and file covers failed to record the historical movement of files between officers. As such, the City of Melbourne has failed to comply with its statutory record-keeping obligations under the Public Records Act and the Public Records Office standard.

## Recommendations

I recommend that:

### Recommendation 3

The City of Melbourne review its file management practices to ensure its standards meet the requirements of the Public Records Act and the Public Records Standard.

#### *The City of Melbourne's response*

The City of Melbourne is currently developing an organisational Records Management policy in accordance with the requirements of the *Public Records Act 1973* and the standards issued by the Public Records Office of Victoria.

### Recommendation 4

The City of Melbourne provide training to its staff on record-keeping and file management practices.

#### **The City of Melbourne's response**

See response to Recommendation 3.

## Planning Panels Victoria

221. During my investigation, the National Trust (Victorian Branch) raised with me concerns regarding the accuracy of comments attributed to it by the Advisory Committee in its report regarding The Hotel Windsor redevelopment. The Advisory Committee's report dated February 2010, stated:

It was suggested by the National Trust and the City of Melbourne that a shorter tower was to be preferred.

222. Planning Panels Victoria is responsible for managing the conduct of independent planning panels and advisory committees which are appointed by the Minister for Planning.

223. On 10 December 2009, Mr Paul Roser, Conservation Manager, National Trust, made a presentation to the Advisory Committee's public hearing on The Hotel Windsor redevelopment. At interview on 26 July 2010, Mr Roser commented on this matter:

I'm a bit miffed by how it was then subsequently written up. They [the Advisory Committee] had a copy of our submission that is really clear.

...

Then we got into this speculative stuff about 'what would you accept, what would you agree to'. And I think in terms of trying to help the Committee we then started talking about reduction in height, or would you widen the tower. It then became reported as shorter and fatter. Now I don't think that adequately ... reflects what I actually said ...

224. The Advisory Committee does not record its public hearings, instead relying on the note-taking of its members.

225. At interview on 17 August 2010, Mr Lester Townsend, Chairman of The Hotel Windsor Advisory Committee, was asked whether the hearings should be recorded so as to avoid any potential for misrepresentation of witnesses. He said:

Should we have a digital recorder ... on the table, perhaps we should.

## Conclusions

226. In my view, audio recording of all planning panel and advisory committee hearings should be made mandatory. I consider that this would assist members of planning panels and advisory committees in the preparation of their reports, while also ensuring the accuracy of comments attributed to witnesses.

## Recommendation

I recommend that:

### Recommendation 5

Planning Panels Victoria implements mandatory audio recording of all planning panel and advisory committee hearings.

### The Department's response

The Department did not specifically respond to this recommendation.



## Limited scope of probity advice and audit

227. My investigation identified that while a probity adviser and probity auditor were engaged by the Department to review the probity of The Hotel Windsor planning and heritage permit application processes, the usefulness of the process was diminished by the Department's restricting the scope and timeframe of the review. Importantly, the probity adviser and probity auditor were unable to review the probity of Mr Madden's media plan or the involvement of his office.
228. Following the release of Mr Madden's media plan to an ABC journalist and the media's reporting of an alleged 'sham consultation process' in relation to The Hotel Windsor planning application, Mr Madden instructed the Department to appoint an independent probity adviser and probity auditor to provide probity advice and conduct a probity audit of the planning and heritage application processes.
229. In a media release dated 25 February 2010, Mr Madden explained the purpose of the probity audit:
- In order to address any perception issues created by this poorly worded sentence [referred to in the media plan], I have instructed my Department to appoint an independent probity auditor to oversee the application.
230. At interview, Mr Madden elaborated on the reasons for appointing an independent probity auditor:
- ... so that public confidence could be maintained in the process as it had to be continued, that probity auditors would be appointed to oversee the fulfilment of the process.
231. In March 2010, the Department engaged the following probity services to review the probity of the planning and heritage application processes in relation to The Hotel Windsor redevelopment:
- RSM Bird Cameron, probity adviser
  - PricewaterhouseCoopers, probity auditor.
232. The role of a probity adviser is to establish and manage the probity process, while the probity auditor independently reviews the nature and conduct of the probity process.
233. The duties of a probity adviser may include:
- establishing a process to monitor and identify any conflicts of interest
  - reviewing and advising on important project documentation such as ministerial briefings
  - providing probity training
  - implementing conflict of interest documentation
  - attending meetings and ensuring that proceedings are conducted in accordance with agreed ethical standards
  - providing advice and probity on probity issues which arise.

234. The functions of a probity auditor role may include:
- monitoring compliance with established processes
  - investigating and reporting on conflicts of interest
  - monitoring the adequacy of staff probity training
  - providing assurance on the integrity of the process
  - checking completeness of registers and records of meetings
  - furnishing a probity clearance report.<sup>7</sup>

## Probity advice

235. Mr Stephen Marks, Director of Probity Services at RSM Bird Cameron, was principally responsible for providing probity advice to the Department. Mr Marks is a Fellow of the Institute of Chartered Accountants in Australia, with over 15 years of experience as a probity practitioner throughout Australia. Mr Marks is also a member of the Victorian Government Purchasing Board's Probity Practitioner Panel. The Panel consists of 11 vendors selected to provide probity auditing, advisory and mentoring services to Victorian government departments and agencies.

236. At interview on 23 July 2010, Mr Marks was asked how RSM Bird Cameron had first become aware of the Department's need for probity services. He responded:

We had heard the Minister [Madden] say on the radio that he was seeking a probity adviser for the project.

...

We were being proactive and responded to that.

237. An email was sent to the Department by Mr Jean-Marc Imbert, Partner, of RSM Bird Cameron on 27 February 2010, offering the probity services of RSM Bird Cameron.

238. Mr Marks explained the appointment process and the scope of the probity services which RSM Bird Cameron were engaged to provide, as follows:

In my capacity as a member of the Victorian government's probity panel I, together with a colleague, attended a meeting with representatives of the Department of Planning and Community Development on 3 March 2010 to discuss the possibility of providing probity services to the department in regard to the Windsor Hotel redevelopment application.

Following that meeting, we were requested by letter on 3 March 2010 to provide a quotation for probity services to the department for:

advice on the decision-making process for the planning application and any relevant options open to the minister; and

ongoing advice on the application process from this point forward.

We responded with our proposal on 10 March 2010. Our proposal was accepted by the department on 11 March 2010.

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<sup>7</sup> Victorian Auditor General Report, *New Ticketing System Tender*, October 2007.

239. He also said:

We were not requested to, and nor were we in a position to, undertake a probity audit of the events which occurred prior to the date of our appointment [11 March 2010], nor was it part of the scope of our engagement.

...

Basically our role was quite a limited role.

240. Mr Marks explained at interview that he was not engaged to look retrospectively as to: what had occurred with the decision-making process for the planning application; the probity of the media plan; the involvement of ministerial or media advisers; or Mr Madden.

241. Mr Marks said that the provision of probity advice by RSM Bird Cameron primarily centred on a review of a ministerial briefing prepared by the Department for Mr Madden. This briefing outlined the decision-making process for The Hotel Windsor planning application and the various options available to Mr Madden.

242. At interview, Mr Marks commented on the probity advice provided to the Department regarding the ministerial briefing:

They gave me initially a copy of the brief to read. I went through it and I made certain comments to them ... I felt there was certain areas of it that needed to be strengthened, that they needed to provide more information to the Minister to ensure that he had everything available to him, so that it was defensible. So they went back and re-drafted certain sections or included additional information in the brief which I felt needed to be included.

243. Mr Marks said that the changes he recommended to the ministerial briefing had included providing Mr Madden with further information on: the objections to the planning permit; the various options available to him; and the proposed recommendations. Mr Marks confirmed that all of his recommended changes were accepted by the Department.

244. In his probity report to the Department dated 17 March 2010, Mr Marks stated:

In providing our probity advice we have:

- Reviewed the advice to the Minister dated 17 March 2010, following his receipt of the Advisory Committee report;
- Sighted the Melbourne Planning Scheme Permit Application 2009/1687 Windsor Hotel Advisory Committee report dated February 2010;
- Sighted the report by Heritage Victoria;
- Sighted the unqualified Internal Audit Report prepared by Messers PricewaterhouseCoopers;
- Sighted the other supporting documentation to the Brief; and
- Provided advice on matters of probity pertaining to the Brief.

Based upon this information, we are satisfied that the advice to the Minister is acceptable from a probity perspective in that, it is consistent with the supporting information.

## Probity audit

245. In March 2010, PricewaterhouseCoopers were engaged by the Department to conduct an internal audit review in relation to The Hotel Windsor planning and heritage application processes. This work was completed under the auspices of an agreement in place with the Department dated 7 July 2008, for PricewaterhouseCoopers to provide internal audit services.

246. The scope of the internal audit review was discussed and agreed between Mr Jason Agnoletto, Partner, PricewaterhouseCoopers, and Mr David Hodge, the Department's Executive Director, Planning Services and Development Facilitation. Mr Agnoletto confirmed the scope of the internal audit in his letter of engagement dated 3 March 2010, as follows:

Review and consider the compliance of state planning services, a branch of the department, with relevant requirements under the Planning and Environment Act in its receipt and processing of an application submitted by the applicant for a planning permit in relation to a proposed redevelopment of the Hotel Windsor. This planning permit application is referred to in the engagement letter as 'the planning application'.

1. Review and consider the advisory committee's compliance with its terms of reference for the provision of advice on the planning application.
2. Review and consider Heritage Victoria's compliance with relevant requirements of the Heritage Act in its receipt and processing of a secondary application submitted by the applicant for a heritage permit.

247. Two areas were specifically excluded by the Department from the scope of PricewaterhouseCoopers audit:

- An assessment of the Department's decision making in relation to the planning application against principles of fairness, transparency and accountability – as this assessment was to be undertaken by the probity adviser
- An assessment of the controls and processes performed by Mr Madden's office in making planning decisions.

248. At interview on 28 July 2010, Mr Agnoletto confirmed that PricewaterhouseCoopers had been engaged by the Department to look only at the Department's compliance procedures relating to the planning and heritage applications, not the processes undertaken by Mr Madden's office or in relation to Mr Madden's media plan.

249. Mr Madden was asked at interview about whether it was a concern to him that the probity adviser and probity auditor had not been requested to consider the media plan and the circumstances surrounding it. He said:

I'm not aware of what they did or didn't look at. My understanding though is that they had – because I had no interaction with the probity auditors at all, or the appointment of the probity auditors, nor the terms of reference for the probity auditors. So, I'm not sure what they did or didn't see in relation to these matters.

250. Mr Madden has since stated:

I personally had no input or involvement in the scope of the auditors' task, and I did not seek to have myself and/or my office excluded from their Terms of Reference.

251. Mr Agnoletto advised that this was the first internal audit that PricewaterhouseCoopers had conducted in relation to a specific Department planning and/or heritage application. However, he considered the internal audit to be a straightforward review and not dissimilar to other compliance type reviews conducted by PricewaterhouseCoopers.

252. Unlike the probity adviser, PricewaterhouseCoopers were able to review retrospectively the processing of the planning and heritage applications, from receipt of the application on 29 July 2009, up until the completion of the report on 15 March 2010.

253. The first phase of the project – Determine compliance obligations, involved PricewaterhouseCoopers understanding and documenting the key compliance requirements applying to the Department, the Advisory Committee and Heritage Victoria, in processing the planning and heritage applications.

254. The second phase of the project – Review DPCD practices against agreed compliance obligations, involved PricewaterhouseCoopers reviewing all supporting documentation associated with the applications. In this regard, Mr Agnoletto advised that PricewaterhouseCoopers had access to all Department and Heritage Victoria documentation. The PricewaterhouseCoopers audit team also met with Department and Heritage Victoria officers responsible for handling the planning and heritage applications.

255. On completion of the internal audit, PricewaterhouseCoopers provided its report to the Secretary of the Department. In the report dated 15 March 2010, Mr Jason Agnoletto advised that PricewaterhouseCoopers had found no evidence of non-compliance with agreed [statutory] compliance requirements undertaken by the Department, the Advisory Committee or Heritage Victoria in relation to the processing of the planning and heritage permit applications.

### **Reliance on the probity advice and audit report**

256. The probity reports of RSM Bird Cameron and PricewaterhouseCoopers were considered by Mr Madden in the context of his decision-making regarding The Hotel Windsor planning application.

257. Mr Madden was asked about the benefits of the probity reports at interview. He said:

... on the basis of those reports I felt confident that probity had been adhered to.

258. Mr Madden publicly commented on the probity reports in a media release dated 18 March 2010, announcing his decision to grant a planning permit for The Hotel Windsor redevelopment. He stated:

These two independent reports provide the proponent, the planning sector and the wider Victorian community with evidence that the planning system is open, efficient and robust and has been fully complied with for the Windsor redevelopment.

259. The Department also relied on the probity reports as evidence that its processes were appropriate from a probity perspective. In a letter dated 21 May 2010, which was sent to all objectors to The Hotel Windsor redevelopment, Ms Prue Digby, the Department's Deputy Secretary stated:

Additionally, an independent audit report produced by PricewaterhouseCoopers and a separate probity report produced by RSM Bird Cameron have confirmed that the approval process complies with statutory processes and was appropriate from a probity perspective.

260. Mr Marks of RSM Bird Cameron was shown a copy of this letter and the above statement and asked his views. He responded:

I'm not sure that we actually said that in our report. Our report was fairly specific.

...

I'm not sure that I would have expressed it like that.

## Conclusions

261. In my view, the scope of the probity advice and the probity audit as determined by the Department was too narrow. As a result, the probity review did not address the primary concern which prompted the appointment of independent auditors in the first place, that is, Mr Madden's media plan and the alleged involvement of his office.
262. I am satisfied that Mr Marks of RSM Bird Cameron and Mr Jason Agnoletto of PricewaterhouseCoopers performed their roles as requested. Both Mr Marks and Mr Agnoletto conducted professional probity assessments in accordance with their terms of engagement.
263. Effectively, Mr Marks was engaged to provide probity advice in a seven-day period, between his appointment on 11 March 2010 and the delivery of his final report on 17 March 2010. Mr Marks has acknowledged that his role was quite limited. He was unable to consider matters and events which occurred prior to 11 March 2010, such as Mr Madden's media plan, as this was not part of his terms of reference.
264. Permitting the probity auditor to review controls and processes performed by Mr Madden's office would have enhanced the independence of the audit and provided the Department with a fuller assessment of the issues.
265. In response to my concerns regarding the limited scope of the probity advice and the probity audit, Mr Hodge of the Department has since stated:

... it must be understood that the Department's processes and systems operate independently of the Minister's office. The Department does not have the capacity to become involved in matters of administration or process in the Minister's office.

...

The Department does not have access to documents that are produced and held in the Minister's office therefore it is not possible to brief the probity advisor and auditor to audit matters that it has no access to and may be subject to Ministerial privilege [sic].

The Department brief required an audit and probity advice relating to all matters and processes that is [sic] had access and control over.

266. The Secretary of the Department has since stated:

The Department's administrative and financial responsibilities and accountabilities are largely set out under the Public Administration Act and the Financial Management Act. The Department has no jurisdiction with respect to the offices of Ministers including the Minister for Planning. Under the **Public Administration Act** [his emphasis] the Secretary is accountable to the Minister.

...

My responsibility then as now is to ensure the probity of the department's processes.

267. However, I am concerned to note that on one hand Mr Madden clearly articulated his views on the purpose of the independent probity audit. On the other hand, the Secretary of the Department said that this was not his role and the decision specifically to exclude Mr Madden's office from the probity advice and audit was not an error of judgement. The Secretary also stated:

The scope of the advice was neither too narrow nor too broad.

268. What surprises me is that there was no evidence of a conversation having taken place between the Secretary of the Department and the Minister about the Minister's expectations and that in consequence, the Minister's stated objectives of the probity review were not met.

269. Throughout my report I have commented on the poor record-keeping practices of the Department and Heritage Victoria, including their failure to document the outcomes of key meetings and events in relation to The Hotel Windsor redevelopment. While Mr Marks and Mr Agnoletto were provided with access to Department records, in the absence of appropriate record-keeping practices, I note that the findings of the probity review was based on limited information. I stress that this is not a criticism of Mr Marks or Mr Agnoletto as they reviewed the information available to them at the time.

## Recommendation

I recommend that:

### Recommendation 6

The Department develop policies and procedures to guide the provision of future probity advice and probity audits in relation to planning and heritage applications. This should include:

- drafting the terms of engagement for future probity advice so as to ensure that a probity adviser is able to consider matters which occurred prior to their appointment
- drafting the terms of engagement for future internal audits so as to ensure that a probity auditor is able to consider the involvement of ministers and their offices.

### *The Department's response*

The Department's administrative and financial responsibilities and accountabilities are largely set out under the Public Administration Act and the Financial Management Act. The Department has no jurisdiction with respect to the offices of Ministers including the Minister for Planning. Under the **Public Administration Act** [his emphasis] the Secretary is accountable to the Minister.



## Poor management of conflicts of interest

270. My investigation into The Hotel Windsor redevelopment identified a conflict of interest in relation to the appointment of one of the members of The Hotel Windsor Advisory Committee. In my view, this conflict of interest was not appropriately managed by Planning Panels Victoria.
271. I also identified the potential for conflicts of interest to arise with ministerial staff owing to poor awareness about the risks associated with the acceptance of gifts and hospitality.
272. Public confidence in government administration demands that public sector employees act with integrity and demonstrate high standards of ethical conduct. In planning and heritage matters, where decision-making about the use and development of land has the potential to affect the community, the environment, and individuals, and where the economic and social benefits of projects can have significant financial considerations, it is essential that decision-makers act with impartiality and are perceived to be so acting.
273. In the public sector, a 'conflict of interest' is a situation where a conflict arises between public duty and private interest. The term refers to circumstances where a public official could be influenced, or could reasonably be perceived to be influenced, by a private interest when performing an official function. A range of private interests are relevant to the term conflict of interest, including but not limited to friendship, family, social or business relationships.
274. In all cases of conflict of interest, the concern is not just whether the conflict actually occurred or resulted in improper behaviour. It is also whether there is the appearance of a conflict and how that appearance is dealt with. The very appearance of a conflict of interest gives rise to the perception that improper behaviour may have resulted. I have raised my concerns about these issues publicly in the past, particularly in my two reports to parliament on conflict of interest in local government and the public sector.<sup>8</sup>

## Appointment of The Hotel Windsor Advisory Committee

275. On 3 December 2009, Mr Madden appointed the members of an advisory committee to advise him on The Hotel Windsor planning permit application.
276. I identified that one of the members of the Advisory Committee had a perceived conflict of interest which was not appropriately recorded and managed by Planning Panels Victoria.
277. Planning Panels Victoria manages the conduct of independent planning panels and advisory committees which are appointed by the Minister for Planning. It is the responsibility of the Chief Panel Member of Planning Panels Victoria to provide advice to the Minister regarding the appointment and composition of members of an advisory committee.

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<sup>8</sup> Ombudsman Victoria, *Conflict of interest in the public sector*, March 2008; Ombudsman Victoria, *Conflict of interest in local government*, March 2008.

278. During the course of my investigation, I requested information from the Department regarding the appointment of advisory committees. In a letter to my office dated 20 July 2010, the Department's General Counsel, stated:

The Chief Panel Member recommends members for an appointment based both on an evaluation of the needs of the particular project and the availability of the suitably qualified members.

Evaluating the needs of the particular project will typically involve consideration of the complexity of the proposal to be assessed, and the issues it raises.

279. The Department's General Counsel advised that members of an advisory committee or planning panel are generally selected from a 'List of Panel Members' maintained by Planning Panels Victoria. The list includes a pool of 85 senior and sessional members with a diverse range of skills and experience in areas including planning, local government, heritage, architectural design, engineering, environmental, law, business management and science.

280. To become a member of Planning Panels Victoria's 'List of Panel Members', a person needs to apply for the publicly advertised positions and undergo a selection process. The 'List of Panel Members' is periodically reviewed by the Chief Panel Member and updated as members either retire, are removed from the list based on regular reviews of their performance, or new members are recruited. While members are generally engaged for a three-year term, there is no limit on the number of times a member may be renewed.

281. At interview on 4 August 2010, Ms Kathryn Mitchell, the Chief Panel Member of Planning Panels Victoria was asked about the required skills and expertise of the 'List of Panel Members'. She said:

They have to be professionals in their field. They have to have the highest level of expertise in their field. They have to be people of integrity.

282. Ms Mitchell also advised that members of the 'List of Panel Members' are required by Planning Panels Victoria to complete a declaration of private interests, as well as undergoing appropriate police checks, prior to being accepted on the 'List of Panel Members'.

283. In relation to The Hotel Windsor, the Advisory Committee appointed to consider the planning permit application comprised the following members:

- Mr Lester Townsend, Chairman
- Mr Ken Northwood
- Mr Graeme Holdsworth.

284. Ms Mitchell advised that Mr Townsend has formal qualifications in town planning and sociology, and an interest in urban design. He is also a Senior Panel Member of Planning Panels Victoria, with experience in chairing planning panels and advisory committees. She said that Mr Northwood is an experienced strategic, business and urban planner, while Mr Holdsworth is a qualified architect with experience in managing large scale architectural projects.

285. At the time Ms Mitchell was considering the selection of The Hotel Windsor Advisory Committee, Mr Holdsworth was not a member of Planning Panels Victoria 'List of Panel Members'. At interview, Ms Mitchell explained the selection of Mr Holdsworth:

When I started thinking about the Windsor matter, I went through my list and I was looking for the architects and urban designers, and I was just feeling a bit short. And I thought well, Graeme [Holdsworth] had previously told me that he would be finishing full time work, so I called him.

...

I said words to the effect, 'are you interested in doing panel work'. He said, 'yeah'. I said, 'do you know there's an ad in the paper' [for panel members].

...

Then I said to him, 'I've also got a job you may be interested in doing'. I said ... I need to appoint an advisory committee, but you need to apply'. He said 'what job is it' and I said 'it's the Windsor Hotel'.

286. Ms Mitchell said that she was aware of Mr Holdsworth's professional reputation as an architect and had previously canvassed his interest in working as a sessional Member for Planning Panels Victoria.

### Review of conflict of interest declarations

287. On 24 November 2009, Mr Adrian Williams, Panels Business Manager, Planning Panels Victoria, prepared a briefing note for Mr Madden regarding the appointment of an advisory committee for The Hotel Windsor redevelopment. It was reviewed by Ms Mitchell and approved by Ms Prue Digby, Department Deputy Secretary. The briefing note stated:

Each member has no conflict of interest in the proposal they are required to consider.

288. Members of an advisory committee are not required by Planning Panels Victoria to make a formal declaration of conflicts of interests for each committee to which they are nominated. At interview, Ms Mitchell said:

No, there's not [a declaration of conflicts of interests]. They don't sign a form.

289. In contrast, Planning Panels Victoria has in place a process for members of a planning panel who are required to sign a declaration confirming that they have no conflicts of interest in the matter at hand.

290. Planning Panels Victoria provides all members of its 'List of Panel Members' with a Panel Member's Manual. The manual provides guidance to members in relation to dealing with conflicts of interests which may arise. For example, the manual states:

If panel members have any direct or indirect pecuniary interests in the proposal under consideration they will have a conflict of interest. This conflict would create, a clear perception of bias and it would be contrary to the principles of natural justice for such a member to sit on the Panel.

...

If Panel members have any direct or indirect association with any of the parties they may have a conflict of interest depending on the remoteness of the association.

291. The manual also cites several examples of associations with parties which may create a conflict of interest. The manual states:

A member who has carried out past work for a party may have a conflict of interest depending on how long ago the work was carried out, the frequency of such work, its relevance to the proposal under consideration, and the likelihood of future work. Usually, however, the fact that a member has done some consulting work for a party in the past would not necessarily create a conflict of interest.

292. With regard to the selection of members of an advisory committee, Ms Mitchell advised that she would generally speak with prospective members to establish whether they had any conflicts of interest in relation to the matter at hand. At interview, Ms Mitchell commented on this process:

... with advisory committees they are often different matters they have a different sort of gestation.

...

We are aware of those [advisory committees] in advance and the appointment documentation for those is different. So often there's a lot of talking on the phone between me and the members.

293. In relation to the appointment of Mr Holdsworth to The Hotel Windsor Advisory Committee, Ms Mitchell said that she asked Mr Holdsworth whether he had any conflict of interests in relation to the hotel. She said that prior to committing to the Advisory Committee, Mr Holdsworth said that he needed to check with his wife, a planning barrister, so as to ensure that she had no conflicts of interest regarding The Hotel Windsor.

294. Ms Mitchell also said that while Mr Holdsworth advised that his wife did not have any conflict of interest regarding The Hotel Windsor, he disclosed to Ms Mitchell that he had previously worked on a refurbishment project at the hotel some years ago. At interview, Ms Mitchell said:

... he [Mr Holdsworth] did tell me that some 15 years ago, there was another proposal for the Windsor and he had provided some architectural advice.

...

He [Mr Holdsworth] said, 'would that be a conflict?' And I said, 'well, this is a different proposal ... I don't think it is a conflict, but I'll think about it'.

295. Ms Mitchell was asked at interview about her eventual decision-making on the potential conflict of interest issue raised by Mr Holdsworth. She said:

It was an internal re-fit or refurb [refurbishment] and I didn't see that as an issue.

296. My investigation identified that in the early 1980s, Mr Holdsworth had been the project coordinator responsible for overseeing an \$8 million restoration of The Hotel Windsor conducted by its previous owners, the Oberoi Group. The Hotel Windsor Conservation Management Plan, prepared by Lovell Chen Architects and Heritage Consultants, November 2007, refers to Mr Holdsworth's involvement in the project and the extent of the restoration works. The Plan states:

The restoration work was carried out by project coordinator, Graeme Holdsworth, interior designers, Davenport Campbell and Partners, and heritage consultants Peter Lovell and Suzanne Forge, under the supervision of the Government Buildings Advisory Committee.

...

The restoration of the interior spaces eventually cost Oberoi an estimated \$8 million. In the course of the works the lobby area was refurbished and the original arcade leading to Grand Dining Room was restored.

297. The restoration works also included refurbishment of the main staircase, function rooms, and a number of guest suites.

298. Heritage Consultant, Mr Peter Lovell, also worked on this restoration project together with Mr Holdsworth. Mr Lovell is a founder and director of Lovell Chen Architects and Heritage Consultants, the company engaged by the Halim Group to provide heritage advice on the present redevelopment of The Hotel Windsor.

299. At interview, Ms Mitchell was informed about the extent of work undertaken by Mr Holdsworth at The Hotel Windsor in the early 1980s. She was asked whether this knowledge would have changed her decision-making regarding the selection of Mr Holdsworth for The Hotel Windsor Advisory Committee, and responded:

I don't think it would have changed my mind.

...

The issue of conflict of interest relates to association with the current project at hand and he [Mr Holdsworth] declared that he did not have a conflict of interest with the current project at hand.

300. Chairman of The Hotel Windsor Advisory Committee, Mr Lester Townsend, was also asked at interview whether he was aware of Mr Holdsworth's previous work association with The Hotel Windsor. He said:

Yes. I know he worked on one of the previous incarnations [hotel refurbishments]. He was quite open about that.

301. When asked whether he considered this to be a conflict of interest, Mr Townsend responded:

I turned my mind to it, whether it was an issue or not. And on the balance I thought it was good [Mr Holdsworth's participation on the Advisory Committee] because he actually understood the building.

...

It raises issues that people ought to turn their minds to, for sure.

302. While Ms Mitchell considered the potential conflict of interest situation involving Mr Holdsworth and The Hotel Windsor, in the Planning Panel Victoria files examined I was unable to locate any formal record of her decision-making on this issue. Ms Mitchell was asked at interview whether she had made a record of her telephone conversations with Mr Holdsworth, or of her decision-making on the potential conflict of interest situation. She said:

No, I didn't.

303. In March 2010, The Hotel Windsor Advisory Committee gained attention when the then Shadow Minister for Planning, Mr Matthew Guy MP, raised concerns in parliament regarding Mr Holdsworth's selection on the Advisory Committee.<sup>9</sup> Mr Guy referred to Mr Holdsworth in parliament as a 'Labor mate', as Mr Holdsworth had previously worked for former federal Minister for Finance, Lindsay Tanner, and The Hon Richard Wynne MP, the then Victorian Minister for Housing, Local Government and Aboriginal Affairs.

304. Mr Townsend was asked whether he was aware of Mr Holdsworth's associations with the former federal Minister for Finance, and the then Victorian Minister for Housing, Local Government and Aboriginal Affairs. He said:

I became aware of it during the course of the [Advisory Committee] hearing.

305. When asked whether Mr Holdsworth's associations with the former federal Minister for Finance and the then Victorian Minister for Housing, Local Government and Aboriginal Affairs influenced the decision-making of the Advisory Committee, Mr Townsend said:

No, because the issues [for the Advisory Committee] are really not party political.

306. Ms Mitchell was also asked whether she was aware of Mr Holdsworth's associations at the time of appointing him to The Hotel Windsor Advisory Committee. She responded:

Yes, I was aware that he had associations with the Labor Party.

...

People's political leanings don't interest me at all ... it's never been a consideration.

307. In relation to the media reports concerning Mr Holdsworth, Ms Mitchell also said:

I was upset about it because I felt that Graeme [Holdsworth] had shown true professionalism in the process and I just thought this is uncalled for and in fact the headlines are wrong, because panels or the advisory committee can make a recommendation, and because the Minister can uphold that recommendation or not.

308. My investigation officers sought to interview Mr Holdsworth to obtain his response to the potential conflict of interest issues identified in relation to his previous restoration work at The Hotel Windsor and his associations with the former federal Minister for Finance, and the then Victorian Minister for Housing, Local Government and Aboriginal Affairs.

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<sup>9</sup> Hansard, *Planning: Hotel Windsor redevelopment*, Mr Matthew Guy MP, Legislative Council, 24 March 2010.

309. Unfortunately, due to ill-health Mr Holdsworth was not able to be interviewed in relation to these matters. In support of his non-attendance he provided a medical certificate.

## Conclusions

310. I consider that in light of Mr Holdsworth's previous involvement with the \$8 million restoration of The Hotel Windsor, his past association with heritage consultant, Mr Peter Lovell, and his associations with the former federal Minister for Finance and the then Victorian Minister for Housing, Local Government and Aboriginal Affairs, there was a perception of a conflict of interest which was not appropriately managed by Planning Panels Victoria.

311. Ms Mitchell has responded:

... I reiterate that I did not consider Mr Holdsworth had a conflict of interest in the Windsor Hotel matter.

...

In selecting members for the Windsor Advisory Committee, I considered the relevant matters relating to Mr Holdsworth's appointment. That appointment did not raise any concerns to me about a potential for or a perception of, a conflict of interest. At the time of his appointment the only issue at hand was Mr Holdsworth's previous involvement in the Windsor some 15 to 20 years ago. I felt his previous experience and knowledge of the building would in fact, be of assistance to the Committee in understanding the relevant built form issues.

...

The Terms of Reference provided to the Advisory Committee led to a hearing process that could be best described as 'round table' in nature. Almost every hearing process undertaken by Planning Panels Victoria has a Directions Hearing, where declarations (if necessary) are made. Because of the nature of these Terms of Reference, there was no such opportunity for this. It is at the Directions Hearing that declarations and other relevant issues are recorded by the Chair of any matter.

312. My investigation found no evidence to indicate that Mr Holdsworth acted with bias, undue partiality, or sought to influence the decision-making of The Hotel Windsor Advisory Committee. According to Ms Mitchell, Mr Holdsworth was open about declaring his past work association with The Hotel Windsor and his associations with the former federal Minister for Finance and the then Victorian Minister for Housing, Local Government and Aboriginal Affairs. Witnesses interviewed by my investigators advised that Mr Holdsworth acted both professionally and with integrity in his dealings with The Hotel Windsor Advisory Committee.
313. It is essential that all members of planning panels and committees are required to make a formal declaration of conflicts of interests for each panel or advisory committee to which they are nominated.

314. While the completion of conflict of interest declarations is important, it is critical that the declarations are reviewed and that any conflict of interest are identified and appropriately managed by the Chief Panel Member of Planning Panels Victoria. This should include consideration as to whether the member should be excused from the planning panel or committee on the basis of the conflict of interest identified. In this regard, Ms Mitchell failed to make a written record of her decision-making regarding the conflict of interest situation involving Mr Holdsworth.

315. In response, Ms Mitchell has stated:

Since the interview I had with your office in early August [2010], Planning Panels Victoria has implemented additional procedures to ensure that all members are required to complete conflict of [sic] declaration forms for any matter they are invited to sit on, including not only Panels, but also Advisory Committees and EES Inquiries. This also extends to the Senior full time members at Planning Panels Victoria. Additionally, Planning Panels Victoria has prepared a new report entitled "Planning Panels Victoria, Guidance to Members, Conflicts of Interest" as a supplement to the Panel Members Manual (refer to section 8 of the Panel Members Manual). This document has been distributed to all members.

316. The Secretary of the Department responded that:

The only substantive issue to be identified in that regard was that Ms Mitchell did not make a record of her consideration of any potential conflict of interest arising from Mr Holdsworth's membership of the Advisory Panel and that he had not provided a formal written declaration.

## Recommendations

I recommend that:

### Recommendation 7

Planning Panels Victoria review its conflict of interest policies and procedures for members of planning panels and advisory committees, including:

- requiring all members of planning panels and advisory committees to sign a conflict of interest declaration for each panel or advisory committee for which they are nominated
- reviewing conflict of interest declarations prior to the appointment of members to planning panels and advisory committees
- ensuring that a record detailing the Chief Panel Members decision-making regarding a conflict of interest situation is made and kept on file
- maintaining a register of conflict of interests that contains clear and accurate records of all declared or identified conflicts of interest and the management of them.

### *The Department's response*

... procedures have already been put in place by Planning Panels Victoria to document conflict of interest requirements for Planning Panels. These have now been extended to Advisory Committees and a new procedures manual has been distributed to all panel members.



## Recommendation 8

Planning Panels Victoria provide initial and refresher training on conflicts of interest to all members of planning panels and advisory committees.

### *The Department's response*

See response to Recommendation 7.

## Gifts and hospitality

317. With regard to The Hotel Windsor redevelopment, the probity adviser and probity auditor appointed by the Department were not asked to consider the acceptance of gifts or hospitality by officers involved with the planning and heritage applications. In light of this, I decided to examine the acceptance of gifts and hospitality by officers from the Department, Heritage Victoria, and Mr Madden's office.
318. I identified that Mr Madden's ministerial staff did not have an adequate understanding about the risks associated with accepting gifts and hospitality.
319. In several of my reports<sup>10</sup>, I have commented on the problems that can arise from the acceptance of gifts and hospitality by public officers.
320. Gifts and hospitality should only be accepted when it is in the public interest. Gifts, even if given to express gratitude, should be avoided as they may influence, or be seen to influence, the actions of public officials by creating a sense of obligation.
321. It is important that there are policies and procedures within public agencies to guide the management of gifts and hospitality.
322. Officers interviewed from the Department and Heritage Victoria generally demonstrated a satisfactory understanding of the policies and procedures which apply to gifts and hospitality. Several officers stated that under no circumstances was it appropriate for them to accept gifts or hospitality from developers.
323. The Department has a Gifts Policy, which also applies to Heritage Victoria. The policy, which is underpinned by the State Services Authority's Gifts, Benefits and Hospitality framework, provides officers with guidance regarding: what constitutes a gift; the circumstances when gifts or hospitality can be accepted; and the process for registering gifts or hospitality. The policy states:
- A useful test for employees is to consider if it would be embarrassing or difficult to publicly explain or justify the acceptance of a gift. If this is the case, or if there is any doubt, then the gift should be politely declined.
- Gifts should never be accepted in connection with a tender process or a decision over which an employee of DPCD could be perceived to have an influence.
324. The Department's Gifts Policy provides that employees may keep token gifts with an estimated value of less than \$100, subject to approval from their manager. Gifts over \$100 are required to be formally registered on the Department Gifts Register, while gifts over \$500 in value must be surrendered to the State.

<sup>10</sup> Ombudsman Victoria, *Probity controls in public hospitals for the procurement of non-clinical goods and services*, August 2008; Ombudsman Victoria, *Ombudsman investigation into the Kew Residential Services and St Kilda Triangle developments*, June 2010.

325. In relation to ministerial staff, the Ministerial Staff Code of Conduct, September 2009, provides limited guidance on dealing with the acceptance of gifts and hospitality. The Code of Conduct states:

Ministerial staff must declare to their Minister in writing the details of gifts and sponsored travel received in association with their employment.

326. At interview on 5 October 2010, Mr Justin Jarvis, Mr Madden's Chief of Staff, was asked about the policies and procedures which applied to gifts and hospitality in Mr Madden's office. He said:

There is a procedure for recording certain types of hospitality of a certain value. But can I just say, I avoid events as much as I can. I don't have a history of attending events. Because I don't want to be in a situation where people continually come up and raise issues about developments. I think that is very difficult to deal with and I don't want to do that, so I am pretty careful to make sure that I don't.

...

I certainly don't encourage people to [accept hospitality], but on occasions people do attend events particularly if there is a government involvement in the event or they might have a reason why people go for stakeholder purposes.

...

We operate within a general code of practice, but there isn't a specific policy as these situations are all very different and there's a difference between different types of hospitality.

327. Mr Jarvis was also asked whether ministerial staff are required to seek approval prior to accepting a gift or hospitality. He said:

They [ministerial staff] would make a judgement call as to whether I needed to know or not. But I can't really recall too many examples. It's a fairly rare practice in our office.

328. My investigation revealed evidence of an inappropriate culture in relation to ministerial staff using their position to obtain free tickets. These tickets were offered by both private and public agencies.

329. For example, Mr Jarvis received emails from a friend on 15 June 2009, 24 June 2009, 10 July 2009 and 12 November 2009, seeking free tickets to the Australian Open Tennis, the Australian Masters Golf, and a breakfast hosted by former United States of America Vice President, Mr Al Gore, to launch Safe Climate Australia. The email to Mr Jarvis dated 12 November 2009, stated:

... freebies oh freebies wherefore art ye.

330. While Mr Jarvis said that he did not obtain free tickets in 2009 to the Australian Open Tennis or the Australian Masters Golf, he did seek out and accept free tickets from VicSuper Pty Ltd to the breakfast hosted by Mr Gore in July 2009, which he attended with his friend. He said about his attendance at this breakfast:

Given we were talking about environmental issues in the city, I would have thought Al Gore quite relevant ...

331. Mr Jarvis also accepted a hospitality invitation from VicUrban to attend the Australian Open Tennis in 2010.
332. In relation to the acceptance of gifts and hospitality, Mr Jarvis has since stated:
- I do not believe that my attendance with a colleague at the breakfast hosted by Al Gore was improper in any way. Further I do not accept that my attendance represents a conflict of interest (real or perceived) with respect to the application under consideration or any other matter.
- ...
- In my view, my attendance at the Australian Open with VicUrban fell squarely within my responsibilities and duties as the then Chief of Staff.
333. In another case, the partner of a media adviser sent an email dated 25 February 2010 to the media adviser enquiring about access to free tickets to the Australian Formula One Grand Prix (see Appendix 6).
334. The media adviser responded to the email by saying that they would ask about free tickets (see Appendix 6).

## Conclusions

335. In relation to The Hotel Windsor redevelopment, I found no evidence of gifts or hospitality being offered to, or accepted by, officers from the Department, Heritage Victoria, or Mr Madden's office. However, there was evidence of Mr Jarvis accepting hospitality from other sources.
336. Within the public sector, the potential problems that can arise from the acceptance of gifts and hospitality are widely recognised. In contrast, my investigation identified that ministerial staff did not have an adequate appreciation of the risks associated with accepting gifts and hospitality. For example, ministerial staff did not question the source of free tickets to major events or consider the perceptions that acceptance of the hospitality might cause.
337. Ministerial staff also appeared uncertain about the existing procedures which apply to gifts and hospitality.
338. I consider that the existing Ministerial Staff Code of Conduct does not provide ministerial staff with adequate guidance in respect of dealing with gifts and hospitality. This needs to be addressed by the establishment of a specific gifts policy for ministerial staff to bring this in line with the obligations placed on public officers.

## Recommendation

I recommend that:

### Recommendation 9

The Victorian Government establish a comprehensive gifts policy for ministerial staff in accordance with the State Services Authority's Gifts, Benefits, and Hospitality Policy Framework.

## Heritage and economic considerations

339. In some sections of the community, the decisions to grant planning and heritage permits to redevelop The Hotel Windsor have been viewed as a victory for economic considerations over heritage issues. Therefore, I considered it important to investigate whether these views have any legitimacy.
340. The National Trust (Victorian Branch) argued that Mr Madden and the Executive Director of Heritage Victoria should have placed heritage considerations before the economic benefits of the proposed redevelopment. In a media statement dated 16 March 2010 in response to Mr Gard'ner's granting of a heritage permit for The Hotel Windsor, the National Trust stated:

We are extremely disappointed with this decision, which has been clearly weighted to the perceived economic benefits of the redevelopment.

### Assessment of heritage and economic considerations

341. In support of its application for a heritage permit, the Halim Group commissioned an independent economic assessment by Essential Economics Pty Ltd. This economic assessment included consideration of the likely effect that the redevelopment would have on the hotel's business operations, investment, employment, service levels, and its contribution to tourism.
342. The assessment report completed by Mr John Henshall, Economist of Essential Economics Pty Ltd, dated July 2009, concluded that:

Economic benefits arising from the proposed redevelopment include:

- Investment of \$260 million, including \$130 million in construction expenditure.
- Direct construction employment equivalent to 215 FTE [full time equivalent] jobs per year and 345 FTE indirect jobs per year, allowing a 30-month construction phase.
- Additional employment of 135 FTE and further 175 FTE jobs supported through the employment multiplier effect.
- Significant improvement in the commercial viability of The Hotel Windsor through increased revenues from guest rooms, expanded conference facilities, events and food and beverage activities.
- Improved commercial outlook for The Hotel Windsor ensures the importance and unique heritage icon is retained for accommodation and associated hospitality purposes well into the future.
- Supply of an additional 152 5-star room [sic] to the Melbourne CBD market, which assists in meeting strong forecast demand for luxury accommodation in Melbourne over the coming years.
- Additional visitor spending of \$13 million pa generated by the new rooms, \$1.3 million pa of which can be considered to be 'net' economic benefit to the State.
- Increased rates revenue to Melbourne City Council in the order of \$115,000 per year, and representing a doubling of existing rate payments.

## 343. Mr Henshall further stated:

The redevelopment will enable The Windsor Hotel to significantly increase room rates and accommodation revenue, and generate considerable additional revenue from expanded conference and events activities and from its extended food and beverage offer. This improved financial outlook will ensure the on-going commercial viability of the hotel and its retention as Australia's most iconic hotel destination.

Should the redevelopment not proceed, the future of The Hotel Windsor is uncertain as it may be difficult to keep the current owners interested or to attract an investor prepared to significantly refurbish the facility (under the existing permit) in view of the relatively low commercial returns that would be expected under that permit.

### Heritage Victoria

## 344. In relation to economic considerations, section 73 (1)(b) of the Heritage Act requires that the Executive Director of Heritage Victoria in determining whether to grant a heritage permit must consider the following:

the extent to which the application, if refused, would affect the reasonable or economic use of the registered place or registered object, or cause undue financial hardship to the owner in relation to that place or object.

## 345. To assist in considering the economic merits of the application, the Executive Director wrote to the Halim Group on 17 November 2009 and 3 February 2010 requesting additional financial information relating to The Hotel Windsor's business operations. This included a request for profit and loss statements, balance sheets, market analysis and projections regarding future profitability of the hotel.

## 346. On receiving the requested financial information, Heritage Victoria engaged the services of an independent economic consultant, Mr Matt Ainsaar, Managing Director of Urban Enterprise Pty Ltd. Mr Ainsaar was asked to conduct an economic assessment of the financial information provided by the Halim Group. This review also included an independent evaluation of the economic assessment conducted by Mr Henshall of Essential Economics Pty Ltd in July 2009.

## 347. In his report dated 11 March 2010, Mr Ainsaar concluded that:

In my opinion, if the application is refused, then the reasonable and economic use of the place [The Hotel Windsor] will be totally compromised.

...

If the permit application is refused, there are critical works that need to be undertaken to ensure the continued operation of The Hotel Windsor. These critical works include replacing the building engineering services (\$19 million), removing asbestos (\$3 million to \$9 million) and undertaking the refurbishment of the original 1883-1888 building (\$32 million).

These critical works are required to enable the existing use to be continued, retain the 5 STAR rating and address compliance rating.

...

Without undertaking the work, the Hotel Windsor will progressively deteriorate and the revenue and profitability will progressively decline.

348. Mr Ainsaar concluded that The Hotel Windsor's ongoing economic viability was threatened by the potential loss of its 5 STAR accommodation rating. AAA Tourism is the national tourism body responsible for managing the STAR Ratings system, an internationally recognised system used to rate accommodation properties. In a letter dated 5 November 2009, AAA Tourism advised the Chief Executive Officer of The Hotel Windsor as follows:

As acknowledged, the facilities require updating in order to sustain its 5 STAR status ...

349. At interview on 3 August 2010, Mr Ainsaar commented on the hotel's potential loss of its 5-STAR rating:

The critical thing with the Windsor is its 5 STAR hotel rating. And one of the pieces of information that the proponent [the Halim Group] provided was the status of that 5 STAR rating and their ability to keep that 5 STAR rating was subject to pursuing the refurbishment and renovation program.

...

It was clear to me that if that didn't occur [the redevelopment], that in time they would lose their 5 STAR rating.

350. There have been relatively few cases where 'reasonable economic use' or 'financial hardship' has been claimed by an applicant for a heritage permit under section 73 (1)(b) of the Heritage Act. Mr Gard'ner commented on this issue at interview on 16 August 2010:

For most matters we determine under the Heritage Act, the argument of reasonable economic use is not made by the proponent and it's even rarer that the argument of undue financial hardship is made. So, I guess there isn't a huge amount of precedent. But in my consideration, it's whether or not it would be reasonable to refuse the permit, where that is reasonable on the ability of the owner to enjoy their property, to have an economically viable enterprise within it, that pays for the conservation and ongoing maintenance of that place.

351. Heritage Victoria sought legal advice from the Department's Legal Branch regarding the application of section 73 (1)(b) of the Heritage Act. This legal advice concluded that the fact that the owner was aware at the time of purchasing a property that it was listed on the heritage register, does not affect the requirement of the Executive Director properly to consider reasonable economic use or financial hardship.

352. While Heritage Victoria engaged an independent economic expert to assist in evaluating the economic claims made by the Halim Group, it relied on the expertise of its own heritage officers to conduct an assessment of the Halim Group's application for a permit under the Heritage Act.

353. Ms Joanne Day, Manager, Heritage Permits & Consents, and Mr Ray Osborne, Director Operations, Heritage Victoria, were responsible for conducting an assessment of the Halim Group's heritage application. This included consideration of the heritage conservation management plan prepared by Lovell Chen, Architects and Heritage Consultants, on behalf of the Halim Group.

354. Both Ms Day and Mr Osborne have professional qualifications in conservation management and considerable experience in assessing heritage permits.

355. In March 2010, Ms Day and Mr Osborne prepared a report on the heritage permit application for consideration by the Executive Director, Mr Gard'ner. This report stated:

The principal argument advanced by the applicant [the Halim Group] relates to s.73(1)(e) 'reasonable economic use' and this has to be weighed equally against the impact on cultural heritage significance, as s.73(1) is not hierarchical with more weight being advanced on one consideration over another.

The impacts of the proposed demolition works on the fabric of the hotel are considerable and this will have some impact on the cultural significance of the place.

...

In relation to the replacement building on the northern end of the building, it is considered that it is too high ...

...

Accordingly, notwithstanding the substantial changes proposal [*sic*] to the Windsor Hotel, it is considered, that subject to the required revision to the northern building, there is a clear justification for this level of change and investment to ensure its continuation as the premier luxury heritage hotel in Australia and indeed the world.

356. The heritage report prepared by Ms Day and Mr Osborne on The Hotel Windsor heritage permit application titled, 'Report and Recommendation to Executive Director on Application for a Permit', was not signed or dated by Ms Day or Mr Osborne.

357. In response, Ms Day has stated:

I note that it is normal procedure within Heritage Victoria for a report and recommendation with respect to a permit to be signed and dated, however it is not uncommon for such a document to remain unsigned. I prepared the heritage report with respect to the Hotel Windsor immediately prior to taking one week's leave commencing 6 March 2010. It was my understanding that following me commencing leave, my supervisor, Mr Ray Osborne, would make any required amendments and then sign that report before passing it onto Mr Jim Gard'ner for his approval. Although it appears that no signed or dated copy of that report exists on the Heritage Victoria file, my recollection is that I prepared it shortly before the permit was signed, which was 13 March 2010.

358. When determining a heritage permit application, section 73 of the Heritage Act requires that the Executive Director of Heritage Victoria must consider a range of matters, including:

- the extent to which the application, if approved, would affect the cultural heritage significance of the registered place or registered object
- the extent to which the application, if refused, would affect the reasonable or economic use of the registered place or registered object, or cause undue financial hardship to the owner in relation to that place or object

- any submissions
- any matters relating to the protection and conservation of the place or object that the Executive Director considers relevant.

359. At interview, Mr Gardner, Executive Director of Heritage Victoria, further explained his obligations under the Heritage Act when considering a heritage permit application. He said:

I guess the two primary issues I have to consider are the impact on significance – if I was to grant a permit, i.e. would this have an adverse impact on the cultural significance of the place or object. And I have the other item, and I have to give equal weight to this, is whether if I refuse [the permit], that has an impact on the reasonable or economic use of the owner, or causes them undue financial hardship.

360. Mr Gardner also said:

The Act [the Heritage Act] is silent on what weight I should give any of the matters I consider under section 73 (1). And so I do as much as humanly possible give equal weight to those matters. There's always a balance to be had in any kind of statutory decision-making.

...

I am confident I reached an appropriate balance of the concerns of the public; and the community as expressed in their submissions; the reasonable economic use of the owner operating The Windsor Hotel; and on the impact on significance. It's fair to say there was some very beneficial restoration works which were also proposed as part of this development, although there was some loss of historic fabric ...

361. With regard to the weight given to heritage and economic issues under the Heritage Act, Associate Professor Michael Buxton, Royal Melbourne Institute of Technology, School of Global Studies, Social Science and Planning, was asked his views about this matter at interview on 1 July 2010. He said:

... it's an absolutely extraordinary clause to have in a Heritage Act that is ostensibly, with all its objectives, designed to protect heritage. And yet it allows an applicant to argue – an economic argument. And not only an economic argument of benefit but an economic argument on financial hardship.

362. Mr Martin Purslow, Chief Executive Officer of the National Trust (Victorian Branch) also commented on this issue at interview on 21 July 2010. He said:

The Heritage Act is there to protect buildings – it was set up to protect registered buildings. If the only argument, the only real argument that can be put forward is on economic grounds, why does it take precedence over anything else? Aesthetic significance, cultural significance, social significance ... why are all those things not given due weight?

### **The Advisory Committee**

363. Under section 60 (1A) of the Planning and Environment Act, one of the matters the Minister for Planning must consider before deciding upon a planning permit application is 'any significant social and economic effects of the use or development for which the application is made'.



364. The Advisory Committee appointed by Mr Madden to provide him with advice on The Hotel Windsor planning application was specifically asked to provide an assessment of the potential economic benefits of the proposed redevelopment to Victoria.
365. The Advisory Committee considered the conclusions of Mr Henshall of Essential Economics Pty Ltd as detailed in his economic report dated July 2009. Mr Henshall also presented the findings of his report to the Advisory Committee at its hearing on 10 December 2009.
366. As a means of independently validating the economic findings of Mr Henshall, particularly with regard to the effect of the proposed redevelopment on tourism, the Advisory Committee sought the views of Tourism Victoria.
367. Mr Bill Renehan, Manager Investments and Infrastructure Projects, Tourism Victoria, provided the Advisory Committee with a tourism assessment on 13 January 2010. The Advisory Committee report dated February 2010 summarises Mr Renehan's tourism assessment as follows:

Mr Renehan's view was that the economic assessment [prepared by Mr Henshall of Essential Economics Pty Ltd] appeared accurate and realistic and that the figures for capital expenditure, employment creation, visitation projections and visitor spend were all reasonable and within Tourism Victoria's own expectations.

368. At interview on 6 August 2010, Mr Renehan confirmed the need for additional 5-STAR accommodation in the Melbourne central business district. He also said that in his view the location of The Hotel Windsor, within close proximity to Melbourne sports, theatre, shopping and restaurant precincts, together with its heritage features, would appeal to many local and international visitors.
369. On the basis of the economic evidence presented to it, the Advisory Committee concluded that:

There is sufficient latent demand in the Melbourne CBD 5-star hotel accommodation market to justify the additional capacity proposed by the redevelopment of the Hotel Windsor.

The Hotel Windsor will provide some benefit to the State economy through construction investment, generation of construction and associated jobs, increasing operational and associated employment, and additional ongoing visitor spend.

## Access to economic information

370. During my investigation, Mr Martin Purslow, Chief Executive Officer of the National Trust, raised concerns regarding the refusal by Heritage Victoria and Mr Madden to allow the economic reports commissioned on the proposed redevelopment to be made public.
371. Mr Purslow said that the National Trust had been denied access to the economic reports on the basis of the commercially sensitive nature of the information contained within them. He also said that the National Trust had offered to sign a confidentiality agreement in respect of the economic reports, in order to be fully informed regarding the matter.

372. I note that the Advisory Committee's report dated February 2010 provides a summary of the economic and tourism assessments conducted by Mr Henshall and Mr Renehan. This report was made available to the public by Planning Panels Victoria via its website following the decisions to grant planning and heritage permits.

## Conclusions

373. Heritage Victoria and the Advisory Committee took appropriate steps to verify independently the economic and tourism benefits of the proposed redevelopment, as detailed by the economic consultant engaged by the Halim Group. This included Heritage Victoria commissioning detailed financial information from the Halim Group relating to The Hotel Windsor's business operations, and providing this information to an independent economic consultant for consideration as part of a detailed economic assessment.
374. The independent report commissioned by Heritage Victoria confirmed the economic benefits of the proposed redevelopment and the poor economic outlook if the hotel is not redeveloped.
375. The tourism assessment provided to the Advisory Committee also supported the need for additional 5-STAR accommodation in the Melbourne central business district and the benefits of this project to tourism in Victoria.
376. The primary purpose of the Heritage Act is 'to provide for the protection and conservation of places and objects of cultural heritage significance and the registration of such places and objects'. However, the Heritage Act is silent on what weight the Executive Director of Heritage Victoria should give to heritage and economic considerations in the assessment of a heritage permit.
377. While I consider that issues relating to 'reasonable economic use' or 'financial hardship' should be considerations in determining whether to issue a heritage permit, the National Trust has raised questions on this issue. This is particularly the case in situations such as The Hotel Windsor, where the owners were aware at the time of purchasing the property of its status on the heritage register and the limitations which may apply to its future use and/or development.
378. There have been relatively few cases where 'reasonable economic use' or 'financial hardship' has been claimed by the owners of heritage listed properties when applying for a heritage permit. I consider that Heritage Victoria would benefit from establishing guidelines to assist its officers in the assessment of matters where an applicant is claiming 'reasonable economic use' or 'financial hardship' under section 73 (1)(b) of the Heritage Act.
379. The Secretary of the Department has since responded:
- ... as you are aware, the legislation is not prescriptive as to how this provision of the Act should be interpreted. It is not unreasonable that the Director of Heritage Victoria should have exercised his discretion in giving them equal consideration.

380. The transparency of the Executive Director's decision-making would have been enhanced by ensuring that a summary of the economic reports, with the exception of commercially in confidence financial information, were made publicly available. This would have assisted the general public in understanding the economic benefits of the redevelopment. It may have also alleviated the perception that economic imperatives outweighed heritage considerations in the decision-making process.

## **Recommendations**

I recommend that:

### **Recommendation 10**

Heritage Victoria develop guidelines and provide training to its staff to assist in the assessment of matters where an applicant is claiming 'reasonable economic use' or 'financial hardship' under section 73 (1)(b) of the Heritage Act.

#### *The Department's response*

The Department did not specifically respond to this recommendation.

### **Recommendation 11**

Heritage Victoria develop procedures to ensure that a summary of economic reports are made publicly available to assist with the transparency of decision-making in matters where 'reasonable economic use' or 'financial hardship' has been claimed.

#### *The Department's response*

The Department did not specifically respond to this recommendation.

### **Recommendation 12**

Heritage Victoria ensure that heritage officers sign and date heritage reports to the Executive Director and maintain a copy on file.

#### *The Department's response*

The Department did not specifically respond to this recommendation.

## 2. The probity of Mr Madden's media plan

## Influences on decision-making

381. In the lead-up to decision-making regarding The Hotel Windsor redevelopment, there were mounting concerns within the then Victorian Government about the potential for negative community reaction if the project was approved. I identified evidence that within Mr Madden's office, consideration was given by Mr Madden's Chief of Staff, Mr Justin Jarvis, to halting The Hotel Windsor redevelopment.
382. In relation to the second term of reference referred by the Parliamentary Committee, I found no evidence linking Mr John Brumby, the former Premier of Victoria, to the 'strategy' referred to in the media plan, or any evidence that he influenced decision-making regarding The Hotel Windsor redevelopment. I therefore did not consider it necessary to interview Mr Brumby.
383. It was alleged in the media that the 'strategy' referred to in Mr Madden's media plan dated 24 February 2010 involving the use of negative community feedback to halt The Hotel Windsor project, was not the exclusive work of Mr Madden's former media adviser, Ms Peta Duke. The media has speculated that ministerial advisers and senior Departmental officers were responsible for formulating this strategy.<sup>11</sup>
384. There is little doubt that the proposed redevelopment polarised community views and provoked strong responses from individuals and advocacy groups opposed to the redevelopment.
385. Two senior Departmental officers gave evidence that at a meeting on 17 February 2010 with Mr Madden, Mr Justin Jarvis, Mr Madden's then Chief of Staff, raised the idea of using a public consultation process and the resulting negative feedback to refuse The Hotel Windsor project.
386. This meeting occurred one week prior to Mr Madden's media plan dated 24 February 2010 and suggests that the idea to refuse The Hotel Windsor redevelopment had been contemplated within Mr Madden's office. The wording used by Ms Duke in the media plan is very similar to Mr Jarvis' comments.
387. I consider that the following factors may have influenced decision-making, culminating in the 'strategy' referred to in Mr Madden's media plan.

## Members of parliament

388. During the course of the planning and heritage permit application process, several members of parliament raised concerns with Mr Madden about The Hotel Windsor redevelopment.
389. In August 2009, Mrs Judy Maddigan, the then Member for Essendon, approached Mr Madden seeking further information on the proposed redevelopment on behalf of several members of parliament. On 2 September 2009, Mr Madden arranged a briefing for interested members of parliament. Mr Adrian Salmon, the Department's Assistant Director, Statutory Approvals, gave a presentation to the group on the project.

<sup>11</sup> The Age, Mr Royce Millar, *op. cit.*

390. At interview, Mr Madden described the concerns raised by members of parliament at this briefing. He said:

They seemed to be interested more in the heritage issues. There were two issues that I sense were in the discussion, the height of the proposed tower ... and others were also conscious of the heritage issues.

391. One of the members of parliament who attended this briefing was Mr Carlo Carli, the then Member for Brunswick. At interview on 26 August 2010, Mr Carli commented on the briefing:

We really got a bit of a hard sell that this was a good project mainly because it involved jobs and economic development.

392. Mrs Maddigan, Mr Carli, Mr Steve Herbert, the then Member for Eltham and Mr Robert Hudson, the then Member for Bentleigh, signed a joint letter to Mr Madden dated 15 October 2009, formally objecting to the redevelopment. They raised concern with the proposed redevelopment, as in their view it conflicted with:

- the design objective in the Melbourne Planning Scheme;
- heritage controls; and
- height controls in the heritage precinct.

393. Mrs Maddigan also made her views known to the Advisory Committee appointed by Mr Madden. Mrs Maddigan arranged for members of the Advisory Committee to attend Parliament House and view the parliamentary precinct from its rooftop. Mrs Maddigan explained her views about the parliamentary precinct at interview on 31 August 2010:

It would be wrong to build it [the tower], it would wreck the parliamentary precinct ... they would then make it very difficult to knock back other applications for these other buildings and you would then lose that whole other aspect that has been there for one hundred and fifty years.

## **Deferral of The Hotel Windsor planning application**

394. During my investigation it was stated that a senior Departmental officer had discussed the possibility of deferring a decision on the planning application for The Hotel Windsor redevelopment until after the state election in November 2010.

395. In October 2009, the Department asked the Victorian Government Architect, Mr Geoffrey London, to provide comment on the design of the proposed redevelopment. Mr London responded to the Department on 6 November 2009 providing his support for the architectural design of the project.

396. Mr London arranged a meeting on 17 December 2009 with Mr Adrian Salmon, the Department's Assistant Director, Statutory Approvals, and Mr David Hodge, the Department's Executive Director Planning Services and Development Facilitation, to discuss his views on the design of the proposed redevelopment.

397. In an email dated 28 April 2010 sent to Mr Phillip Reed, the then Deputy Secretary of the Department of Premier and Cabinet, Mr London referred to the discussions which took place at this meeting. Mr London's email was prompted by a telephone call he received in late April 2010 from Mr Royce Millar, a journalist from The Age newspaper, seeking information for an article he was writing for the newspaper on The Hotel Windsor redevelopment. In the email, Mr London stated:

He [Mr Millar] asked whether I knew of a plan devised by DPCD [Department of Planning and Community Development] to suggest to the Windsor Hotel 'proponents' that they defer their planning application until after the State election.

I did not advise him [Mr Millar], during a meeting with DPCD senior officers ... one of the DPCD officers had floated deferral as a possibility.

398. At interview on 24 September 2010, Mr London was asked about the meeting with Departmental officers on 17 December 2009. He said that he could not recall who from the Department had raised the possibility of deferring The Hotel Windsor planning application. He also said:

I do recall it [deferral] coming up as an issue but it never got legs in the discussion.

...

My memory was the concept of deferral was related to election ... it was deferral after election.

399. In relation to discussions which took place with Mr London at the meeting on 17 December 2009, Mr Hodge has since stated:

This is not correct, this matter [deferral of The Hotel Windsor planning application] was not discussed with the Victorian Government Architect [Mr London].

As the Responsible Authority the application is required to be determined in 60 days, there is no way an application can be deferred by the Responsible Authority. If the matter is not determined within 60 days the applicant has the right to appeal to VCAT against the failure to make a decision. Deferral of the application for 11 months is not feasible or possible and was not discussed.

400. Mr Salmon has also since stated:

A number of issues were discussed at that meeting, including Mr London's views of the Windsor permit application as well as other applications.

I cannot recall the possibility of deferring The Hotel Windsor planning application until after the State election in November 2010, being discussed at the meeting on 17 December 2009.

I strongly believe that the deferral of the application until after the November 2010 election was not considered at the meeting, as the permit application had a 60-day time period within which a decision had to be made.

401. This is another example of the confusion caused by the lack of contemporaneous records.
402. The Secretary of the Department has since responded to my concerns:
- I do not accept the draft report's analysis and conclusions with respect to an alleged discussion by departmental officers with the Government Architect about possible deferral of consideration of the Windsor planning application for 12 months until after the election. In that regard ... the two departmental officers denied emphatically that any such proposition was ever discussed.
403. I identified an electronic calendar entry confirming that immediately following his meeting with Departmental officers on 17 December 2009, Mr London had also arranged to meet with Mr Justin Jarvis, Mr Madden's Chief of Staff.
404. Mr London said that he could not recall whether he had attended this meeting with Mr Jarvis or whether he had discussed The Hotel Windsor redevelopment. Mr Jarvis also said he could not recall this meeting or any discussions with Mr London about The Hotel Windsor. I was puzzled that Mr London and Mr Jarvis could not recall this meeting.
405. Mr Jarvis has since stated:
- My inability to recall any discussion about The Hotel Windsor redevelopment proposal with Mr London may well be because we did not have one [a meeting] or because it was passing in nature.
406. Mr London's email dated 28 April 2010 documenting the approach by Mr Millar, was also forwarded to Mr George Svigos, the Head of Communications in Mr Brumby's Private Office.

## **The Altona by-election**

407. On 13 February 2010, a by-election was held in the state electorate of Altona following the retirement of the local member of parliament, Ms Lynne Kosky. Traditionally, Altona has been one of the Australian Labor Party's (ALP) safest seats in Victoria. While the standing ALP candidate, Ms Jill Hennessey MLA, was elected to the seat, there was a 12 per cent swing in voting against the ALP.
408. At interview, Mr Carli, a former Parliamentary Secretary, said that following the Altona by-election there appeared to be a shift in the then Victorian Government's views about The Hotel Windsor. Mr Carli said:
- ... If you asked us in Christmas we would have said the Windsor plans were going ahead. If you asked me immediately after Altona [by-election], I would have said feel the atmospherics to a 50/50 thing, it could go either way ...
409. However, Mr Madden did not agree that the Altona by-election had any influence on his decision-making. He said at interview:
- I don't think there was certainly any shift in my thinking at all on the basis of what had occurred in terms of a by-election, by-elections come and go, polls come and go my role as the Planning Minister is to make decisions on balance based on their merit.



## **‘Strategy’ to halt The Hotel Windsor redevelopment**

410. During my investigation, two senior Departmental officers gave evidence that at a meeting on 17 February 2010 with Mr Madden, Mr Justin Jarvis, Mr Madden’s Chief of Staff, raised the idea of releasing the Advisory Committee’s Report for public comment and if community views were against the proposal, the project could then be refused.
411. Each week senior Departmental officers met with Mr Madden to discuss major planning matters. Mr Madden, Mr Jarvis, and Departmental officers, the Deputy Secretary, Ms Prue Digby, the Executive Director Planning Services and Development Facilitation, Mr David Hodge, and the Executive Director, Planning Policy and Reform, Mr Jeff Gilmore, were present at the meeting on 17 February 2010.
412. At interview on 20 August 2010, Mr Hodge was asked about the discussions that took place at the meeting on 17 February 2010 in relation to The Hotel Windsor. Mr Hodge said:
- ... Justin [Mr Jarvis] basically identified the idea or floated the idea of what’s been reported in the papers, which was this idea that we would release the report for consultation and then make a decision based on what came back.
413. When asked whether Mr Jarvis had discussed using negative community views to halt The Hotel Windsor redevelopment. Mr Hodge said:
- ... that was put to me by him or put to the group by him.
414. Mr Hodge also said:
- I just listened I didn’t do anything ... Justin’s the sort of guy who talks a lot generates a lot of ideas typical Chief of Staff, you know real motor mouth got so many things going through his head so you sort of got to take those things as they come just let him talk.
415. The Department’s Deputy Secretary, Ms Digby, was also asked at interview on 30 August 2010 about her recollection of the meeting of 17 February 2010. She said:
- ... there was one other comment which I do recall although it was just a comment and it was very brief and it was that the Chief of Staff [Mr Jarvis] made a comment that and I can’t get these words right because I just can’t remember the exact words, but to the effect of well if we release the report and everybody got upset, maybe we could refuse it.
416. When asked about her reaction to Mr Jarvis’ alleged comment, Ms Digby said:
- ... to be honest I didn’t really take a lot of notice to the comment and it wasn’t discussed in the sense was the Minister was not involved in a discussion it was a comment by one person.
- ...
- ... it was a flippant comment was the way I would describe it.

417. Mr Jarvis was asked at interview about the comments attributed to him at the meeting on 17 February 2010. He said:

I don't recall the discussions, I don't deny that they happened ...

... that would not have been what I said. I would not have been putting forward a view that this should not have been, that it should have been released to then somehow subjugate the process ... and to be honest with you the Minister is actually against releasing reports.

418. Mr Madden said that he had little recollection of the meeting and was not aware of Mr Jarvis' comments. Mr Madden also said:

No I don't recall that [discussion]. What I do recall is, since that – part of the discussion prior to these matters, and often some of our discussions were about local government issues.

419. When asked whether there was any discussion at this meeting about refusing The Hotel Windsor development, Mr Madden said:

I don't get a sense that it was. I get a sense that the discussions were more around – this was certainly where my emphasis was in my head – what are the City of Melbourne saying about this? What do their councillors say? And that was where my area of interest was.

420. I note that while Mr Hodge and Ms Digby said that they could recall Mr Jarvis' comments at the meeting on 17 February 2010, Mr Madden and Mr Jarvis had no recollection.

421. Mr Jarvis' comments at the meeting on 17 February 2010 are very similar to the wording used by Ms Duke in Mr Madden's media plan dated 24 February 2010, as follows:

'Windsor Ad C'tee – report due first week of Feb report is expected to recommend that development go ahead. Strategy at this stage is to release it for public comment as this affects the entire community and then use those responses as reason to halt it as we have listened to community views.

422. Ms Duke has since added:

I was not present at any meeting on 17 February 2010 and have no idea of what was discussed. I maintain that the wording of the Media Plan was mine and I was responsible for it.

...

These paragraphs suggest a link between that meeting [17 February 2010] and the wording of the media plan. Nothing was ever conveyed to me from a meeting that related to the Windsor redevelopment.

...

These paragraphs suggest that there was a strategy proposed by Mr Jarvis. I was never told of any strategy or plan in relation to community consultation. As far as I understood, the Advisory Committee's Report is something the Minister considers before making a decision and as I indicated in evidence, I was not aware until after 24 February 2010 that the report had been sent to the Minister.

## Conclusions

423. According to two senior Departmental officers, consideration was given by Mr Jarvis to halting The Hotel Windsor redevelopment. The controversial nature of the redevelopment and the potential for negative community reaction appear to be the primary reasons for this course of action to have been considered.

424. I consider that Mr Jarvis did make such a comment at the meeting on 17 February 2010. I note that this meeting occurred one week prior to Mr Madden's media plan dated 24 February 2010 and the comment is consistent with the wording used by Ms Duke in the media plan.

425. Mr Jarvis has since responded:

I can only repeat what I said on oath when I gave evidence to your investigators and my statement in this matter; that I may have raised in the context of forward planning, the possibility of adverse public response to the proposed redevelopment of The Hotel Windsor. I specifically and vehemently refute that I devised or even raised for consideration a strategy incorporating adverse public opinion in order to, in effect, refuse the proposal. To do so would involve a deviation from the mandatory process required which in any event had not been completed.

...

Whilst I maintain without equivocation that I did not suggest, float or otherwise the subversion of the appropriate process for this application for redevelopment I point to the fact that Mr Hodge and Ms Digby did not place any weight on the 'comments' they believe I said. As I read the draft report, I understand that this is not because Mr Hodge and Ms Digby were dismissive of what they allege I said but because they did not characterised [*sic*] what they heard as anything akin to a plan or a strategy ... If my summation is correct it cannot be said that any strategy or plan was devised or put in place at that meeting that was intended to subvert due process.

426. Mr Jarvis has also stated:

As the then Chief of Staff to the Minister for Planning I am unaware of there being any consideration of implementing a process consistent with the words used in the Media Plan where those words are understood to convey a process contrary to that mandatorily required.

...

I am perplexed as to what my supposed motivation might have been so as to engage in conduct that I consider reprehensible to a person in my then position. In any event I note that if had attempted to engage in improper conduct of this type then it would have been fruitless as the refusal of a proposal such as this ultimately rests with the Minister.

I can do no more than impress upon you the veracity of my account given to your investigators whilst under oath.

427. Having concluded that Mr Jarvis did propose such an approach I consider it was inappropriate.

428. The Ministerial Staff Code of Conduct requires ministerial staff to read and apply the State Services Authority's *Code of Conduct for Victoria Public Sector employees*. However, its principles and values are only applied 'as appropriate'. The Code states that ministerial staff must 'not make improper use of their position or access to information to gain or seek to gain advantage for themselves or any other person'. It also states that a 'breach of the Code may result in disciplinary action, which may include termination of employment'.
429. I consider that the Ministerial Staff Code of Conduct requires strengthening to ensure that ministerial staff are held accountable to appropriate standards of ethical and professional conduct.

## Recommendations

I recommend that:

### Recommendation 13

The Victorian Government conduct a review of the Ministerial Staff Code of Conduct. This review should:

- acknowledge that ministerial staff do not have the power to direct public officers in their own right and that public officers are not subject to their direction
- recognise that executive decisions are the preserve of Ministers and public officers and not ministerial staff acting in their own right.

### Recommendation 14

The Victorian Government provide initial and refresher training programs for ministerial staff on the revised Ministerial Staff Code of Conduct.

## The media plan

430. The probity of Mr Madden's media plan and its reference to a 'strategy' in relation to The Hotel Windsor redevelopment generated considerable debate in the community. Theories abounded whether this was simply a case of a mistake made by a media adviser, or whether it was part of a more deliberate plan by senior officers and/or ministerial advisers to undermine due process.
431. While Ms Duke maintains that she alone was responsible for the wording which appears in the media plan, in light of the influences on decision-making identified earlier in my report, particularly Mr Jarvis' reported comments at the meeting on 17 February 2010, I am not satisfied that this is the case. In my view, there is an element of doubt regarding Ms Duke's evidence.
432. I am also concerned about the lack of controls within Mr Madden's office and Mr Brumby's Private Office which allowed the creation and distribution of a speculative and factually inaccurate document.

## The role of media advisers

433. Debate about the role of media advisers, their function in government decision-making, and the lack of accountability, has intensified as a result of this case.
434. The *Public Administration Act 2004* refers to the conditions which apply to the employment of ministerial officers, including media advisers, in the Victorian Government. Section 98 (1) of the Public Administration Act states that:
- The Premier may employ a person as a Ministerial officer for a term, not exceeding 4 years, and on terms and conditions specified in the person's contract of employment.
435. However, the Public Administration Act does not provide further guidance on the conditions of employment that apply to ministerial officers. I also note that ministerial and media advisers are not subject to the *Charter of Human Rights and Responsibilities Act 2006*.
436. According to Mr Svigos, the former Head of Communications in Mr Brumby's Private Office, the main duties of a media adviser include:
- timely and accurate response to media enquiries
  - arranging media access to Ministers
  - providing advice to the Premier, Ministers, Premier's Chief of Staff, Media Directors and other Ministerial staff on media communications and issues management
  - researching and preparing media statements for the Premier and Ministers
  - organising the appropriate and timely release of government decisions and actions
  - liaising with the media on behalf of the Premier and Ministers
  - contributing to the development and the implementation of a coordinated government media strategy

- liaising with senior departmental Communications Officers and Senior Ministerial Advisers to ensure there are appropriate media opportunities made available to the government
- keeping the Head of Communications, the Principal Media adviser and the Ministers' Chiefs of Staff informed of feedback and emerging issues.

437. Mr Svigos also said that media advisers do not provide policy advice or advice on decision-making to their minister. He also said that media advisers do not perform any role in the administration of the agency for which the minister is responsible.

### **Ms Peta Duke**

438. Ms Duke commenced employment as a media adviser in Mr Brumby's Private Office in 2008. Ms Duke has worked for three ministers:

- the then Minister for Children and Early Childhood Development and Women's Affairs, The Hon Maxine Morand MP (May 2008 – February 2009);
- the then Minister for Community Services, Seniors and Mental Health, The Hon Lisa Neville MP (February 2009 – October 2009); and
- the then Minister for Planning and Respect, The Hon Justin Madden MP (October 2009 – February 2010).

439. At interview on 9 July 2010, Ms Duke explained her duties as a media adviser for Mr Madden:

My duties as a media adviser may be broadly characterised as follows: On one hand I am required to assist ministers to develop media strategies. This involves identifying issues of public interest, anticipating public reaction, and advising the Minister on how to present responses to those issues. I am required to have a comprehensive understanding of the Minister's policy agenda and intimate knowledge of public events as they affect the Minister's portfolio. This in turn involves close consultation with the relevant Minister, the staff of his or her office, and senior departmental Communications Officers. On the other hand I am required to assist the Minister in preparation of his or her responses to current issues. This involves drafting media releases and other documents in plain English, organising media events, liaising with departmental Communications Officers, contacting media outlets and liaising with reporters. In this capacity I am required to always be aware of the Minister's diary and current and future public commitments.

440. In relation to her employment with Mr Madden, Ms Duke said:

I was seconded to Mr Madden's office in October 2009. I performed much the same duties as with other ministers, although my new role involved more contact with external government agencies such as VicUrban, Heritage Victoria, the Building Commission and the Growth Area Authority.

441. Although she had worked for three different ministers, according to Ms Duke the duties of a media adviser are similar in that the function they perform and tasks they carry out are comparable. However, she said the required knowledge of a specific portfolio is very different. Their internal processes, policy agendas, legislation and statutory requirements in which the portfolios function differentiate the portfolios.
442. At interview, Mr Madden commented on Ms Duke's knowledge of the planning portfolio and her competency as a media adviser:

Her interaction with myself, she seemed to be quite competent. She hadn't been in our office very long.

...

Ms Duke – the impression I had of Ms Duke was she was quite competent. She was – but she may not necessarily have had the same level of experience that some of the other Media Advisers that I had had prior, had. And that she may not have been as – as fully across some of the technical issues around planning as may have been necessary.

...

And I wasn't entirely sure that she had a sufficient in depth understanding of those technical issues and that that was sometimes a little – sometimes a little problematic in that there was sometimes assumptions about how the process operated when it didn't operate that way. I had that impression.

### **Media Unit – Mr Brumby's Private Office**

443. Media advisers are governed by the Ministerial Staff Collective Agreement 2007 and individual employment contracts. They are not subject to the Victorian Public Sector Agreement.
444. Media advisers were employed by Mr Brumby or his delegate as Ministerial Officers and operated within the Media Unit of Mr Brumby's Private Office, being assigned to individual ministers.
445. Although assigned to Mr Madden as his media adviser, Ms Duke predominantly worked out of the Media Unit in Mr Brumby's Private Office. In February 2010, Ms Duke's direct line manager was Ms Sarah Dolan, Media Unit Manager. Mr Svigos, the Head of Communications reported to Mr Dan O'Brien, Mr Brumby's Chief of Staff.
446. Mr Svigos was responsible for 22 media advisers and two speech-writers in the Media Unit. His duties included providing media advice to Mr Brumby and cabinet ministers and overseeing major government announcements, statements and events. He also coordinated the weekly master media plan that was then presented to Mr Brumby and all ministers at a weekly meeting.

### **The purpose of media plans**

447. The media plan is an internal working document used by media advisers to identify and schedule a minister's forthcoming media events, such as speeches, interviews, and upcoming announcements. It is also used to identify issues of likely interest to the media. This may include upcoming reports, significant projects, or changes to legislation.

448. According to Ms Duke, in her role as Mr Madden's media adviser, she would update the media plan each Wednesday and send it electronically in an email in draft format for comments to Mr Madden's advisers, Mr Madden's Chief of Staff, Mr Jarvis, and Mr Madden's Executive Assistant, Mrs Valerie Taylor.
449. Depending on the responses received, Ms Duke would either accept or reject the changes and forward the final version of the media plan, on the same day, to senior management within the Media Unit of Mr Brumby's Private Office, including Mr Svigos, the Head of Communications.
450. Weekly media plans for all ministers were forwarded to Mr Svigos who in turn was responsible for creating a master media plan from the information received. At interview on 27 August 2010, Mr Svigos commented on the media plan process:

Information for media plans is generally sourced from ministerial office staff, electorate office staff and the communications unit with relevant departments and agencies. However, media plans might also include the personal opinions of the author on certain issues.

...

This [master plan] is a document which consolidates the Government's media for a particular week. It's prepared from a whole of Government perspective.

...

Once the master media plan is complete, it is taken each week by myself or the Principal Media Adviser to a meeting of the Premier and Ministers for approval.

451. Mr Svigos also said:

The final decision about what is included in the media plans is based on the personal judgement of individual Ministerial media advisers.

452. Ms Duke described the media plan process from her perspective:

Material for the media plan is taken from a variety of sources and a number of people in the Minister's office have input into it. Sources include the weekly comms [communications] meeting, the Minister's electronic diary, ministerial staff meetings, general background information circulating in the office and conversations with the minister, his advisers and senior public servants.

### **Mr Madden's media plan – 24 February 2010**

453. The first mention of The Hotel Windsor in Mr Madden's media plans was in October 2009. This entry specifically referred to the lodgement of an application for a planning permit. Throughout October and November 2009, several of Mr Madden's weekly media plans also mentioned that the Department had received a freedom of information request from The Age newspaper regarding The Hotel Windsor redevelopment.
454. For several weeks in the lead-up to Mr Madden's media plan dated 24 February 2010, Mr Madden's weekly media plans included the heading, 'Windsor Ad C'tee – report due first week of Feb', without any other comments.



455. Ms Duke said that on 23 February 2010 she had a brief discussion with Mr Madden at Parliament House in relation to The Hotel Windsor redevelopment. According to Ms Duke, the purpose of this discussion was to obtain an update from the Minister in relation to current issues, including The Hotel Windsor redevelopment, in order to reflect these updates in the media plan. The other person present during this discussion was one of Mr Madden's ministerial advisers, Ms Amanda Oglethorpe.
456. At interview, Ms Duke described her discussion with Mr Madden on 23 February 2010 as follows:

... I had a brief – no more than five minute – conversation with Minister Madden in his office in Parliament House. The conversation included the Windsor Hotel application. It was about mid-morning. We had just finished filming a piece for the Urban Development Institute of Australia in the Minister's office for a conference in Sydney. The only other person present was Ms Amanda Oglethorpe, a ministerial adviser. We discussed a number of current issues. One particular issue took up most of the time. The discussion concerning the Windsor Hotel application lasted only about one minute, or possibly less.

I cannot recall who raised the Windsor Hotel application or in what context. Minister Madden indicated that we were expecting the Advisory Committee report and that when we received it, we would put it out for public consultation. The Minister had not seen the report at the time or any departmental briefing in relation to it. He thought the report could recommend approving the redevelopment application. We talked a bit about the likely public reaction if it did and if the report went out for public consultation. We thought public reaction could be negative. I indicated that if the application was eventually rejected, our media response would say that the Government had listened to the community as part of the decision making process. This was to indicate to the Minister how media issues could be handled if that particular response occurred.

457. At interview on 3 September 2010, Ms Oglethorpe said that she could not recall the discussion that took place on 23 February 2010 involving Mr Madden and Ms Duke regarding The Hotel Windsor.
458. Mr Madden recalled that Ms Duke had approached him for direction in relation to The Hotel Windsor redevelopment on 23 February 2010. Mr Madden said that Ms Duke had put to him:

A remark which I sensed was an unusual remark to the sort of effect of what are we doing with the Windsor, it was something like that, I think it might have been the Windsor report, something like that what are we doing with the Windsor report.

... and my response I believe to the effect of there's a possibility of more consultation but I am not keen on it, it was something like that I don't think I said that but it was to that gist ...

Ms Duke responded, with a throw away line, to the effect of and I thought she was trying to be humorous ... she made a sort of throw away remark ... the gist of it was so it [The Hotel Windsor] can be knocked off, or you can knock it off or something like that ... I didn't laugh although I took it as a cheeky line or throw away line.

459. Mr Madden also said that it was not his practice as Minister for Planning to release advisory committee reports for further consultation as Mr Madden's practice was to release the report for comment with his final decision.

460. In addition, Mr Madden said that he found it unusual that Ms Duke had asked policy questions about the proposed redevelopment, more akin to the role of a ministerial adviser.

461. Ms Duke has since responded:

I do not recall using any 'throw away lines' as suggested by the then Minister in relation to the Windsor redevelopment.

462. On Wednesday 24 February 2010, Ms Duke prepared Mr Madden's media plan. Under the heading – Planned Media Events, Ms Duke wrote<sup>12</sup>:

Windsor Ad C'tee – report due first week of Feb report is expected to recommend that development go ahead. Strategy at this stage is to release it for public comment as this affects the entire community and then use those responses as reason to halt it as we have listened to community views.

This is one of three proposed developments in this end of town that people want to re-develop [*sic*] plan is to work with Melbourne City Council to establish new planning guidelines for this area.

463. At 3.07pm on 24 February 2010, Ms Duke sent an email titled, 'Media Plan For Review', which included the above comments regarding The Hotel Windsor redevelopment. This email was sent to: Mr Madden's ministerial advisers, Ms Jacqui Wilson, Ms Justine McCormick, Ms Lucy Kozlowski, Ms Amanda Oglethorpe; his Chief of Staff, Mr Jarvis; and his Executive Assistant, Mrs Taylor, asking for comments on the media plan.

464. Ms Duke's email stated:

Please take a look and let me know of any changes.

Val [Taylor] – some of these [media events] are not in the diary as they are not confirmed at this stage – when I know you will.

### Responses to Ms Duke's email

465. At interview on 31 August 2010, Mrs Taylor was asked about her involvement with media plans. She said that she was not aware of the purpose of a media plan and did not consider media plans to be relevant to her role. Mrs Taylor also said that she had little day-to-day involvement with Ms Duke.

466. At interview, Mrs Taylor was shown Ms Duke's email dated 24 February 2010 titled 'Media Plan For Review'. She said:

I never opened it because it is not relevant to me, it has got nothing to do with the work I do so I have not opened it ...

I do not do anything until I am given a definite confirmation from whoever it is ... before that I pay no attention to it ... I would have seen that and gone not relevant to me, gone.

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<sup>12</sup> Minister for Planning Justin Madden Media Plan 24 February 2010 – Appendix 1.

467. Mrs Taylor has since clarified each of the following responses she gave at interview:

This is my belief about whether I would have opened the Ms Duke's email sent 24 February 2010.

...

I am describing when I would put an entry into Mr Madden's diary, that I do not put an entry into Mr Madden's diary unless it has been definitely confirmed as going ahead by whoever is asking him to do something.

...

Here I am saying that before a commitment is definitely confirmed I do not pay attention to it because prior to that, it would only be flagged with me.

...

This is my belief about what I would have done with Ms Duke's email of 24 February 2010.

468. My investigators identified computer records which confirm that Mrs Taylor responded to Ms Duke's email dated 24 February 2010. Mrs Taylor was provided with the computer records at a further interview on 29 September 2010. Mrs Taylor said she could not recall responding to Ms Duke or what she had said in her email to Ms Duke. She said she may have responded to Ms Duke if there had been mention of a specific meeting for Mr Madden.

469. Mrs Taylor has since stated:

The computer record I was shown [at interview] had only the name of the sender on it, with an arrow next to it. This did not jog my memory about whether I had responded to Ms Duke's email or what my response may have been.

470. During my investigation, I identified several other examples where Mrs Taylor had responded to Ms Duke's emails in which Ms Duke had requested feedback on her draft media plans. For example, she responded to Ms Duke's emails on 18 November 2009 and 28 January 2010. On both occasions, Mrs Taylor responded to Ms Duke with significant changes to the Minister's upcoming media events. These changes were then incorporated into Ms Duke's final media plan.

471. When shown her emails dated 18 November 2009 and 28 January 2010 responding to Ms Duke's request for feedback on the draft media plans, Mrs Taylor said:

I don't have any input into the media plan ... this would be me telling her [Ms Duke] what's in the Minister's diary at the specific time. To me that's not input into the media plan, that's me just telling her what's happening.

472. Mrs Taylor also said:

I am telling the truth, I don't have an involvement [with media plans].

473. Mrs Taylor has since added:

I did not provide this information for inclusion in any media plans.

...

If changes were made to media plans because of this information, it was without my knowledge.

...

I never saw a final media plan.

474. Mr Jarvis was asked at interview on 3 September 2010 whether he could recall receiving Ms Duke's email. He said:

I don't recall receiving this email. I would have received it obviously because my name's on here [the email]. I have received these before, as I said in my statement. And my – my inclination with something like this is to just not open it because I think – well, I don't really care.

475. He was also asked whose responsibility it was to check the content of media plans to ensure their accuracy. He said:

Well, it's her [Ms Duke's] responsibility really. This is a document that's primarily informing her Media Unit about what's going on around government. And it's not – you know I wouldn't be in a position to tell her – well, I mean in some cases I'd be in a position to tell her that that stuff was right or not. But I don't see it as part of my responsibility to manage her workplan.

476. When asked about his involvement with media plans, Mr Jarvis said:

It would be – well, minimal. I think over the time I've worked in this business I've seen Media Plans come around. They're really – well, to some degree they're a work program for Media Advisers to some degree, you know.

477. Mr Jarvis said that ministerial advisers may review the content of the media plan depending on the nature of the information and their specific areas of responsibility.

478. I established that Ms Amanda Oglethorpe, Mr Madden's former ministerial adviser, raised concerns with Ms Duke about the accuracy of other information contained in the media plan dated 24 February 2010. Ms Oglethorpe said that:

I remember that she had the South Gippsland story [planning amendment] all wrong and I had to email her back, going no that's not right, this is what it's about. I can't remember how she worded it but it wasn't right and I had to correct that.

479. Ms Duke has since responded:

Occasionally advisors would correct the media plan and I don't disagree that Amanda Oglethorpe had corrected information on occasions – that is why the media plans are sent to the advisors. As to Ms Oglethorpe's comments about me concerning the Windsor redevelopment, my personal view about any project that is subject to planning approval by the then Minister is irrelevant and would not influence how I drafted anything in the Media Plan. The words I used in the Media Plan were not expressing my personal view in any way just as they were not expressing any preconceived plan or strategy to circumvent the planning process.

480. In relation to The Hotel Windsor, Ms Oglethorpe said that she did not review the entry in the media plan as it was not relevant to her. When asked about Ms Duke's views on The Hotel Windsor redevelopment, Ms Oglethorpe said:

I ... recall having a feeling of frustration towards Peta Duke's views on the Windsor Hotel redevelopment on one occasion shortly prior to the reporting of the media plan in the media. I cannot recall what prompted this feeling of frustration but I remember thinking at the time that Ms Duke was not listening to what people were telling her about various matters. This feeling was not limited to the Windsor Hotel redevelopment ...

I did not personally have any direct conversations with Peta Duke about the Windsor Hotel redevelopment process. I was, however, aware that Peta Duke was opposed to the redevelopment.

### Disclosure of the media plan

481. At 6.07pm on 24 February 2010, Ms Duke sent an email titled 'Media plan' containing comments on The Hotel Windsor redevelopment to Mr Svigos and media advisers, Ms Fiona Macrae and Ms Jessica Harris, in the Media Unit of Mr Brumby's Private Office. Ms Duke said she had intended to send the media plan to her then manager in the Media Unit, Ms Sarah Dolan. However, she inadvertently selected the email address of Ms Sarah Farnsworth, a journalist at the ABC, and sent her the email containing Mr Madden's media plan.
482. It was not until an ABC journalist contacted Ms Duke on 25 February 2010 and requested to discuss comments contained within Mr Madden's media plan that Ms Duke became aware of her mistake.
483. At interview, Ms Duke said that the reference to the 'strategy' in the media plan was entirely of her own making based on the short conversation with Mr Madden in his office in Parliament House on 23 February 2010. She explained:

I updated the media plan in the afternoon of Wednesday 24 February 2010. The update was meant to be based on my brief conversation with Minister Madden concerning the Windsor Hotel application the day before. As far as I can recall, this was the first occasion that I had updated the Windsor Hotel application item in the media plan – as can be seen by the language, the initial entry in regards to the advisory report was written earlier. As usual, I circulated a draft to the advisers in the office and gave them about an hour to make any changes. I remember being in a hurry as I wanted to get away from the office.

With the benefit of hindsight, the Windsor Hotel application entry in the media plan could have been expressed better. The second sentence in the first paragraph should have read "Strategy at this stage is to release it for public comment as this affects the entire community and then consider the responses as part of the process of making a final decision", or words to that effect.

484. Ms Duke also said:

I mean it was a mistake, I made a massive mistake. And I take full responsibility for that. It was my mistake. And even if they did say anything [ministerial advisers], I had the option of whether changing it or not. It was my error. I shouldn't have done it, I know I shouldn't have done it, and I take full responsibility for that. It was laziness.

485. Ms Duke said that once she informed Mr Svigos of her mistake she approached Mr Madden on Thursday, 25 February 2010. She explained:

I spoke to George Svigos ... after that, like I spoke to the Minister about it because it was my confession to make. And after that I didn't have much to do with the process because clearly I'd stuffed up.

486. Mr Svigos has since stated:

... I had not actually opened the email or the attached document until after it had been brought to my attention that it had been inadvertently distributed to the media.

487. According to Mr Madden, the media plan is a document which he is not familiar with. At interview, Mr Madden said:

I was surprised at its existence when it was brought to my attention and it was only brought to my attention on the Thursday afternoon [the day after the email was sent to Ms Farnsworth] ... its not a document that I would ever see nor had I seen. My understanding of it is predominantly an organisational tool for Ms Duke or the media unit but it certainly was not an organisational tool for me in anyway.

...

I was astounded that there was so much speculation about what I would or wouldn't do, or even the events I would or wouldn't attend and why I would or wouldn't attend events, or what might happen at those events. And speculation on what I may or may not do in relation to anything else as well. So I was quite flabbergasted at it.

### **Inappropriate and speculative language**

488. Aside from the nature of information contained in the media plan, the document itself contains inappropriate language and speculative comments on future activities of Mr Madden.

489. For example, under the 'date' Friday 26 February 2010 and the heading 'event' it states:

IF ESSENDON FALLS THROUGH Minister will go to an oldies home with a young person as part of the Respect Agenda i.e: respecting and building relationships with communities.<sup>13</sup>

490. Mr Madden indicated that the language and speculative nature of comments contained in the document also concerned him. He said:

One of things that also horrified me here was one of the terms oldies I think...like I was just horrified at that too because the language and the tone of the whole document is something that I was ... as well as the specific technical issue was the patronising tone of it.

491. Ms Duke's manager in the Media Unit, Ms Sarah Dolan, confirmed that the reference to an 'oldies home' was inappropriate. She said at interview on 2 September 2010:

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<sup>13</sup> *ibid.*

When I read in the media the next day that there had been a referral to an oldies home I had a little shudder of embarrassment on behalf of our unit.

492. The media plan also included a heading 'Kite Flyers' referring to speculative ideas for Mr Madden to generate media attention.
493. Ms Duke has since stated:

I accept in addition to my mistake in relation to the Windsor redevelopment, I also used inappropriate language in relation to other issues included in the plan.

### Reference to a 'strategy' in the media plan

494. The word 'strategy' is defined as 'a plan or policy to achieve something'.<sup>14</sup> At interview, Ms Duke was asked about her choice of words used in the media plan, particularly the reference to 'strategy' in the context of The Hotel Windsor redevelopment. Ms Duke said:

It was a word that was common in our [media advisers] language. And until this day didn't have any sinister implications. It was just about – you know you'd say, 'Plan,' there was nothing meant sinister by the use of that term'.

...

I'm not sure whether "Strategy" was the right choice of words. But the inference that has come from that is not possibly the correct inference.

495. However, Ms Dolan when shown the media plan at interview said:

... this is highly unusual language for a media plan.

... all I can say is she wrote it and she has a quite a vernacular style, conversational style about her writing and also the way she operates.

496. Ms Dolan also explained that her interpretation of the word 'strategy' which is used in this context means:

What they intended to do [media advisers] ... what they planned to do.

497. Ms Duke said that with the exception of her brief conversation with Mr Madden on 23 February 2010, there were no other formal meetings she attended with ministerial advisers, Mr Jarvis, or media advisers, where The Hotel Windsor redevelopment was discussed.

498. Ms Duke also said that she was not suggesting that there was a deliberate plan to halt The Hotel Windsor redevelopment. She explained:

Part of our job is to anticipate public reaction and think three steps ahead, and that's what I was doing. I might not have been correct. But if we got public consultation back that said everyone supported it, then why would we stop it? And regardless, that's not the process that the planning process took, so it's completely irrelevant now.

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14 Oxford, 'Australian Essential Dictionary & Thesaurus' second edition page 414.

499. Ms Duke has since added:

I maintain that the use of the word 'strategy' had no sinister connotations. A response to a major planning decision like the Hotel Windsor would require a media 'plan' or 'strategy' and that is all I was referring to.

## Conclusions

500. I am concerned with the lack of controls within Mr Madden's office and Mr Brumby's Private Office which allowed such a highly speculative and factually inaccurate document to go unchecked. Mr Madden claims to have had no knowledge of the existence of media plans before The Hotel Windsor publicly became an issue. He said he was concerned about the speculative nature of the information contained within the media plan when brought to his attention.

501. Several witnesses said that it was not their role to review the accuracy of information contained within media plans. This is despite Ms Duke emailing her draft media plans to Mr Madden's ministerial advisers, Mr Jarvis and Mrs Taylor, and asking for comments.

502. Although Mrs Taylor claims to have not had any involvement in the preparation of media plans, I identified several examples where she responded to Ms Duke's request for comment on her draft media plans, with detailed information for inclusion in the media plans. This is inconsistent with her evidence that she did not 'have input into the media plan'.

503. In response, Mrs Taylor has stated:

It was not my role to review the accuracy of information in media plans.

...

I would like to be clear that I am not a ministerial advisor ...

504. Responsibility for checking the accuracy of information contained in media plans should rest with the relevant ministerial adviser and ultimately the Minister's Chief of Staff. Media advisers should not be placed in a situation where they are required to interpret policy advice unaided.

505. In response, Mr Jarvis has since stated:

Whilst I understand the comments in relation to the chain of responsibility for the Media Plan I do not accept that ultimately the responsibility should have rested with me. At the time it [responsibility] did not, either in truth or in fact.

## Recommendations

I recommend that:

### Recommendation 15

The Victorian Government review the controls which apply to the creation and distribution of media plans. This should include:



- developing appropriate checks and balances to ensure the accuracy of information contained within media plans
- clarification of the roles and responsibilities of staff in the preparation and distribution of media plans
- providing guidance to staff on the professional standards which apply to media plans.

### **Recommendation 16**

Ministerial advisers and the Minister's Chief of Staff are made accountable for checking the accuracy of information contained within media plans.

### **Recommendation 17**

The Victorian Government ensures that ministerial officers, including media advisers, receive training in ministerial portfolio responsibilities.

## Impact of the media plan

506. The events which took place following the public release of Mr Madden's media plan by Ms Duke, were significant. I find it surprising that no attempt was made by Mr Madden, Mr Jarvis or Mr Svigos to ascertain how Ms Duke arrived at the wording in the media plan or where she sourced the information.
507. In response to the widespread media attention regarding the release of the media plan, on 25 February 2010 Mr Madden issued a media release stating that 'no decision whatsoever has been taken regarding this planning proposal'. Mr Madden also stated:

In order to address any perception issues created by this poorly worded sentence [referred to in the media plan], I have instructed my Department to appoint an independent probity auditor to oversee the application.

I am doing this so that the companies involved can be assured there is an appropriate and impartial process in place.

508. At interview, Mr Madden denied any knowledge of the media plan or the strategy referred to in the media plan. Mr Madden said that 'Ms Duke used inappropriate language and poetic licence in a speculative document' and that the document was from 'a media staffer who does not provide policy advice, who does not provide any advice in relation to decision making'.
509. At interview, Mr Madden was asked whether he had sought to distance himself and his office from the actions of Ms Duke. He said:

... I had to defend – not defend Ms Duke or her mistake but I had to answer and be accountable for her mistake. And I believe I was, and I was answering in a way in which I believe was true, correct and responsive to the media's lines of inquiry given that the media were pretty strong in their persistence around these matters. That was the language I felt appropriate. And it wasn't – it wasn't a strategy, it was the response that was appropriate.

## Redeployment of Ms Duke

510. After attending work on 25 February 2010 and informing Mr Svigos and Mr Madden about the release of the media plan to a journalist, Ms Duke did not return to work at the Media Unit until Monday 1 March 2010.
511. In light of the media attention, a decision was made by Mr Svigos immediately to replace Ms Duke as Mr Madden's media adviser and redeploy her in the Media Unit of Mr Brumby's Private Office.
512. Ms Duke said that she was feeling traumatised, upset and ashamed of herself for the mistake that she made. At interview, Mr Svigos said that:

Peta was very upset that an internal working document of the Media Unit had been inadvertently distributed by her to the media.

513. In the days following the release of the media plan, Ms Duke's immediate welfare was of concern to her colleagues, as both Mr Svigos and a fellow media adviser at the time, Ms Sofia Dedes, visited Ms Duke at her private residence to check on her wellbeing.

514. Mr Svigos was asked at interview about the conditions which applied to Ms Duke's redeployment. He said:

I, in consultation with the Premier's Chief of Staff [Mr Dan O'Brien], was able to be able to make a commitment that she [Ms Duke] would remain on the same salary and conditions that she was currently on.

515. On returning to work in the Media Unit on 1 March 2010, Ms Duke was assigned new duties. Ms Duke said that her new duties included:

Googling. Doing research into comments that have been made public around issues. The background on issues and things like that.

516. Ms Duke also said that because of the media attention, she decided to keep contact with Mr Madden and his office to a minimum. She explained this at interview:

I don't want to put them [Minister Madden's office] in a position where they're vulnerable and nor do I want to put myself in a position where I'm vulnerable.

### **Counselling of Ms Duke**

517. In relation to Ms Duke's conduct, Mr Madden in his media release dated 25 February 2010 stated that:

The staff member [Ms Duke] has been counselled on this matter.

518. Ms Duke not only assisted in drafting this media release, she was also listed as the contact person for any media enquiries regarding its release.

519. When this was pointed out to Mr Madden, he said:

... it is a bit sort of contradictory, isn't it.

520. While the inclusion of Ms Duke as the media contact in Mr Madden's media release appears to have been an oversight by the Media Unit, it raises a concern as to whether Ms Duke received adequate counselling.

521. At interview, Mr Svigos was asked what counselling had been provided to Ms Duke. He said:

That's the extremely gentle counselling with someone who was very distressed at that time, and very brief at that time in terms of my involvement.

... But there wasn't anything I could tell Peta about that, that she wouldn't have already felt herself, to be honest.

522. Mr Svigos has since added:

... I feel I need to add that professional and confidential counselling was available for staff through a specialist external provider. It is my understanding that Ms Duke was referred to this service.

523. Mr Madden also said:

... the gist of it was that basically she [Ms Duke] was being counselled on this matter and to be counselled, in a sense, through the Media Unit's personnel.

### Changes to Mr Madden's office practice

524. Following the release of the media plan, Mr Jarvis sent an email on 25 February 2010 to all staff in Mr Madden's office addressing the release of the media plan and issuing a reminder to staff regarding 'Office Practice'. The email stated:

In light of the current media attention that our office is receiving, I thought it timely to reiterate the longstanding practices of this office when it comes to communicating about planning matters.

Firstly, members of staff should always be clear in any written communication about the purpose of the advice they are providing and not speculate on the outcome of decisions for which the Minister is the responsible authority.

Secondly, gratuitous comment and personal opinion in relation to planning matters should not be included in any advice or communication that is provided by staff members to anyone in any form, as it is irrelevant and has the potential to undermine confidence in the decision making process.

525. At interview, Mr Jarvis explained the purpose of this email:

When this happened and I became aware of the Media Plan, I suppose I felt it my responsibility to reiterate to staff just how important it is that they recognise that their words, in a planning environment and a planning context, can mean a lot more than they might think.

... I just feel like when people go through these experiences as Ministerial staff they need to have these things brought home to them and remember.

### Ms Duke's email – 27 February 2010

526. On Saturday 27 February 2010 at 7.26am, Ms Duke sent an email to Mr Svigos at his ministerial email address. The email describes what she has experienced following the release of the media plan and the resulting media attention.
527. In the email, Ms Duke states:

I am writing this down as I know if I try to talk to you about this again I won't be able to say it I will just get upset again and just agree with what everyone else is saying.

...

I also understand why the decision to do what was done has occurred it was a Political decision on the basis of a mistake I had made.

...

I have taken the hit and it will keep coming. Things will get better, but to know what has been said and done to me is never going away.

...

I appreciate your commitments but I also need your assurance that I am [not] going to move into some minimal importance policy position.

...

Sorry I had to write this down but as with most of us I think better in writing and I don't have the energy to fight or prosecute my case.

...

I know you guys are doing what you need to to [sic] cover you legally as well as what I hope is make an effort for me but please don't try to spin the former spinner,

528. I considered this email significant, as it refers to Ms Duke having 'taken the hit' for what has occurred with the media plan and the resulting media attention. The implication is that she is alone bearing responsibility for the email. She also refers to this being a 'political decision' and to 'commitments' made by Mr Svigos.

529. I considered it important that Ms Duke was provided with the opportunity to explain the comments she wrote in the email to Mr Svigos.

530. Ms Duke was further interviewed on 27 August 2010. She said that the email was written in the context of concerns for her future employment situation. At the time of her email, Ms Duke said that she was looking to buy a house and security of employment was important to her.

531. Ms Duke was asked what she meant in her email when she wrote about 'agreeing with what everyone else was saying'. Ms Duke said:

... being emotional obviously it's hard to at times to get your point across or to be clear on what is going on and what you're thinking. And I'm a journalist. It's easier for me to write things down a lot of the time than verbalise ... it was a way for me to ask questions and put my view across.

532. In relation to the reference to a 'political decision' she said:

... I understand why the public response was made and I understand why I couldn't continue in my position ... the political decision to say you know it was an error you know to cut me loose basically.

533. With regard to having 'taken the hit', Ms Duke explained:

I was referring to the media, basically saying, you know 'I've taken the hit' I've taken the full front of my actions and the consequences of that being cast aside.

...

What I was referring to is if this happened in a private firm about something, you know, small, you know it would be counselled and move on, or whatever. But because it's government, the whole of government's affected, so you know I made the mistake I'll take the hit.

I understand what's happened and I understand why it happened I take full responsibility for what I did has been blown out of proportion.

534. When asked what type of 'commitments' had been made to her and by whom, Ms Duke said:

That I was still going to be employed.

...

When I started back at work I had a meeting with Dan O'Brien and George [Svigos] where they said that I'd still be employed.

...

You know they talked about – they gave me – presented me with two options of where I could go employment wise. And other than that – I mean you can't make any promises, there's an election in November [2010].

535. In relation to her comments about not having 'the energy to fight or prosecute her case', Ms Duke explained:

I guess I meant to have the argument continuously with people that what I meant in writing the strategy and that I didn't intend it for it to be – to look like anything has been corrupted or anything along those lines.

536. Ms Duke was asked what she meant by the statement 'I understand you have to cover yourselves legally' and 'please don't try to spin the former spinner':

I was referring to my future employment. You know in these cases there are certainly legalities that need to be followed. And they were following them, which was fine and I understood that. But I also wanted to know – you know, in plain language, what was going to happen to me.

537. Ms Duke has since stated:

I maintain that the answers I gave were true and correct. I had lost my job as a media advisor because of a mistake I had made, I had 'taken a hit' for my mistake because I had been redeployed. The only 'commitment' that I understood I was being offered was simply to keep a job.

538. Mr Svigos responded to Ms Duke's email on 27 February 2010 at 10.52am. In the email he stated:

Peta, as discussed, as of Monday, 1 March 2010, you are being redeployed within the State Government of Victoria Ministerial staff on the same salary and terms that you currently hold.

539. Mr Svigos was asked at interview about his email to Ms Duke and the arrangements for Ms Duke's redeployment. He said:

I did not have a job for her to go to, like a definite job but we were working through that, and we were in a position to make that commitment ...

540. Mr Svigos has since stated:

I endorse Ms Duke's comment that the email was written out of concern for her future employment.

... I utterly rejected any inference that my actions in relation to the redeployment of Ms Duke were for any other reasons than I believed she deserved to have ongoing employment and she was an employee whom I had significant regard.

## **Email to Ms Duke – 19 May 2010**

541. In May 2010, Ms Duke discussed her employment options with a colleague, Ms Sofia Dedes, who had previously worked as a media adviser for Mr Madden. The email from Ms Dedes, dated 19 May 2010, to Ms Duke, makes reference to Mr Svigos keeping Ms Duke quiet until November 2010, which coincides with the state election. The email from Ms Dedes states:

... I can't help feeling you are going to wake up after all of this is over and be furious at yourself for being taken advantage of. I know George [Svigos] wants to do the right thing, and I don't doubt he is trying to look out for you, but it may not ultimately be up to him. Plus, in amongst the caring is the fact that he needs to keep you quiet till November.

542. At interview on 1 September 2010, Ms Dedes was shown her email dated 19 May 2010 and asked to explain the reference to Ms Duke remaining 'quiet' until November 2010. Ms Dedes said:

Well obviously if she [Ms Duke] went and spoke to the media about what happened it wouldn't matter what she said it would be an explosive story and ... it's just politics...

Let's face it the media are constantly have been calling her over the months and if it happened that she actually went and spoke to the media I don't think it would matter what she said it would be a huge story and it would open it up all over again for the government and be politically difficult in the lead up to the election.

543. At interview, Ms Duke was asked what reason Mr Svigos would have to keep her quiet. She responded:

I guess from what I wrote in the media plan coming ultimately from a conversation that I had with the Minister and the inference that can be taken from that even though there was no intention in anyway anyone to corrupt anything people will take what they want from a conversation.

544. Ms Duke also said that Mr Svigos had not instructed her to remain quiet until the state election in November 2010.

545. Mr Svigos has since stated:

I also endorse Ms Duke's comment that she had not been instructed to remain quiet until the State election in November 2010.

## Responsibility for media plans

546. In a working environment that relies on articulating, expressing and interpreting words, there was a lack of oversight for media plans in general. Specifically, verifying where information had been sourced and validating its accuracy.

547. At no stage did Mr Madden, Mr Jarvis, or Mr Svigos, ever question Ms Duke to establish where the information included in the media plan regarding The Hotel Windsor had been sourced from, or how she had arrived at the wording in the media plan.

548. Mr Jarvis said that he never asked Ms Duke about this matter as:

I didn't think that would be a good thing to do. I just knew once – because remember the parliamentary committee was set up very quickly. And I just thought, you know, I don't want to get involved in discussions around this.

549. Mr Madden said that his primary role was to address the issue at hand and respond to the media enquiries, not to manage or enquire into where Ms Duke had received the information included in the media plan. Mr Madden explained:

Well, in my mind there are a number of issues in that she'd obviously made a significant error, or an error of judgment. Me chastising her was – or interrogating her was not going to change what she had done. There would be others who would manage that. And that's what the role of other people in the office is for. My role was to – was to speak to the media about the issue, and I needed to have an understanding of those matters and what had happened. So, my head is in a space where I have to deal with what's ahead of me, not lament over what may or may not have happened. And I knew that that would be managed and dealt with accordingly. But it wasn't for me to be managing that, or certainly I didn't believe at that point in time, because I would have to deal with publicly the matters that had occurred.

550. Ms Duke's then line manager, Ms Sarah Dolan, also said:

... this is a highly unusual situation not only has it been played out in the public eye it became very evident right from the 25th [February 2010] that there was going to be very serious probity issues, the Opposition had a say and it became very political very quickly...and I have just made the decision that given ... and of course this inquiry was then announced and so it has always been my view that I was not going to talk to her about it.

## Conclusions

551. While Mr Madden, Mr Jarvis and Mr Svigos maintain that Ms Duke acted alone with regard to the media plan and its reference to The Hotel Windsor, I find it surprising that no attempt was made by any of them to ascertain how Ms Duke arrived at the wording in the media plan or where she sourced the information. I consider this poor management.

552. In response to my concerns Mr Jarvis stated:

I accept that I did not make enquiries of Ms Duke as to how she arrived at the wording in the Media Plan regarding The Hotel Windsor redevelopment project. This was not because it was not my responsibility to review the Media Plan alone but rather it was in recognition that there would be an inquiry which I did not want to interfere with by my own interrogation. Further, I was conscious not to conduct myself in a manner from which adverse inferences could later be drawn at the stage of any later inquiry.

553. Mr Svigos also stated:

... I sought information in order to draft a media statement and answer media inquiries at that time in relation to the Madden Media Plan.

The media statement I worked on with Ms Duke, combined with the public statements of the Minister for Planning that the wording in the media plan was factually inaccurate and speculative and did not reflect the process of considering the redevelopment proposal – formed my understanding of how the various elements of the media plan were arrived at.

Within days of the media plan being transmitted to media, a Parliamentary Inquiry was established into the matter (the resolution of the Standing Committee on Finance and Public Administration on 3 March). I considered it would be inappropriate to pursue the matter in case it led to allegations that I was interfering with a potential witness to the Standing Committee's Inquiry.



554. I identified several examples of poor management in the Media Unit in relation to the controls over media plans and the management of Ms Duke. My investigation highlights an area of ambiguity with regard to accountability for media advisers and media plans. For example, Mr Madden expected that other officers would have discussed the appropriateness of the contents of the media plan with Ms Duke. This did not happen.
555. In response to my concerns, Mr Svigos has since stated:

Ministerial media plans were rolling internal working documents, intended for distribution only within the media unit to 'sign post' media issues and initiatives, not to provide comprehensive information. They are used as inputs into a broader Whole of Government media plan. I did not consider it necessary – nor would I have had the time – to check the accuracy of all input data contained in Ministerial Media Plans until or unless specific items were to be included in the Whole of Government Media Plan.

## Summary of recommendations

I recommend that:

### Recommendation 1

The Department and Heritage Victoria review its file management practices to ensure that standards meet the requirements of the Public Records Act and the Public Records Standard.

### Recommendation 2

The Department and Heritage Victoria provide training to its staff on record-keeping and file management practices.

### Recommendation 3

The City of Melbourne review its file management practices to ensure its standards meet the requirements of the Public Records Act and the Public Records Standard.

### Recommendation 4

The City of Melbourne provide training to its staff on record-keeping and file management practices.

### Recommendation 5

Planning Panels Victoria implements mandatory audio recording of all planning panel and advisory committee hearings.

### Recommendation 6

The Department develop policies and procedures to guide the provision of future probity advice and probity audits in relation to planning and heritage applications. This should include:

- amending the terms of engagement for future probity advice so as to ensure that a probity adviser is able to consider matters which occurred prior to their appointment
- amending the terms of engagement for future internal audits so as to ensure that a probity auditor is able to consider the involvement of ministers and their offices.

### Recommendation 7

Planning Panels Victoria review its conflict of interest policies and procedures for members of planning panels and advisory committees, including:

- requiring all members of planning panels and advisory committees to sign a conflict of interest declaration for each panel or advisory committee for which they are nominated
- reviewing conflict of interest declarations prior to the appointment of members to planning panels and advisory committees

- ensuring that a record detailing the Chief Panel Members decision-making regarding a conflict of interest situation is made and kept on file
- maintaining a register of conflicts of interest that contains clear and accurate records of all declared or identified conflicts of interest and the management of them.

### **Recommendation 8**

Planning Panels Victoria provide initial and refresher training on conflicts of interest to all members of planning panels and advisory committees.

### **Recommendation 9**

The Victorian Government establish a comprehensive gifts policy for ministerial staff in accordance with the State Services Authority's Gifts, Benefits, and Hospitality Policy Framework.

### **Recommendation 10**

Heritage Victoria develop guidelines and provide training to its staff to assist in the assessment of matters where an applicant is claiming 'reasonable economic use' or 'financial hardship' under section 73 (1)(b) of the Heritage Act.

### **Recommendation 11**

Heritage Victoria develop procedures to ensure that a summary of economic reports are made publicly available to assist with the transparency of decision-making in matters where 'reasonable economic use' or 'financial hardship' has been claimed.

### **Recommendation 12**

Heritage Victoria ensure that heritage officers sign and date heritage reports to the Executive Director and maintain a copy on file.

### **Recommendation 13**

The Victorian Government conduct a review of the Ministerial Staff Code of Conduct. This review should:

- acknowledge that ministerial staff do not have the power to direct public officers in their own right and that public officers are not subject to their direction
- recognise that executive decisions are the preserve of Ministers and public officers and not ministerial staff acting in their own right.

### **Recommendation 14**

The Victorian Government provide initial and refresher training programs for ministerial staff on the revised Ministerial Staff Code of Conduct.

### **Recommendation 15**

The Victorian Government review the controls which apply to the creation and distribution of media plans. This should include:

- developing appropriate checks and balances to ensure the accuracy of information contained within media plans
- clarification of the roles and responsibilities of staff in the preparation and distribution of media plans
- providing guidance to staff on the professional standards which to apply media plans.

### **Recommendation 16**

Ministerial advisers and the Minister's Chief of Staff are made accountable for checking the accuracy of information contained within media plans.

### **Recommendation 17**

The Victorian Government ensures that ministerial officers, including media advisers, receive training in ministerial portfolio responsibilities.

## Appendix 1 – Media plan 24 February 2010

### MINISTER FOR PLANNING JUSTIN MADDEN MEDIA PLAN

Date	Event	Media
UPDATED FEBRUARY 24		
Tuesday, 23 February – Thursday, February 25, 2010	<p>PARLIAMENT SITTING GAIC and UGB GAIC debate scheduled to resume on Thursday.</p> <p>Amendment to expand UGB has expired and cannot debate it until GAIC completed. It will return after GAIC approved</p>	
Thursday, February 27, 2010	<p>Renewable Energy Report to be released.</p> <p>Recommendations urging us to cut red tape in the planning process and have the state government take over the administration and enforcement of permit conditions. (From a planning perspective)</p> <p>REPORT RELEASED AT 10AM</p>	<p>Regionals will grab it given recent controversy.</p> <p>Tyner and I working together I think Batch's office have a strategy involving a whack at the Feds.</p> <p>Only was notified of this this arvo and am looking at recommendations.</p>
Thursday for Friday	<p>Sea level package for Age DROP. Minister to stop proposed development at Port Fairy due to rising sea levels.</p> <ul style="list-style-type: none"> <li>- Release of draft advisory committee report on coastal climate change for public comment;</li> </ul> <p>\$1 million to local councils to assist them in geographical studies and other research in relation to rising sea levels</p>	
Friday, February, 26, 2010	<p>10 30am meet with local Leader Journo in a get to know you session discussing local issues and background journo on the upcoming launch of the Maribyrnong River Design Guidelines</p>	Local media
Friday, February, 26, 2010	<p>TBC EVENT with Essendon. Representatives going to India this weekend to secure sponsorship deals but will give them opportunity to promote Vic interests.</p> <p>Story to be developed into yarn about spreading the message of Respect Minister to meet with players and speak to them about it and have players spread the message to their peers.</p> <p>I AM TALKING TO ESSENDON TO WORK UP SOMETHING NOT SURE WHAT FORM IT WILL TAKE YET FOR FRIDAY</p>	<p>Possible long term r'ship with Essendon and a proposed multi-cultural game in round 10 when they play the Bulldogs.</p> <p>Works as JM new electorate and footy – would be along the lines of the Dreamtime game and Essendon can come on board as Respect Ambassadors.</p>
Friday, February, 26, 2010	<p>IF ESSENDON FALLS THROUGH Minister will go to an oldies home with a young person as part of the Respect Agenda ie: respecting and building relationships with communities.</p>	Local media and senior media
Sunday, 28 February, 2010	<p>10am LAUNCH. Kananook Creek Boulevard \$8m Kananook project was funded by DPCD and is being delivered by Frankston City Council as a CAD project - launch to be done during the Kananook Creek Association's annual festival.</p>	<p>All media – to promote Alistar Harkness.</p> <p>Night before Liberals will announce pre-selection candidate for Frankston.</p>

## Appendix 1 – continued

### MINISTER FOR PLANNING JUSTIN MADDEN MEDIA PLAN

Date	Event	Media
		Ted will be at event. Minister will need strong attack lines on Opposition.
Monday, 1 March, 2010	<p><b>PROJECT 15 SERIES STARTS</b> Age online and in print series focusing on the fist 15km of Melbourne.</p> <p><b>NEW THINGS</b></p> <ul style="list-style-type: none"> <li>- Possibility of incentives for developers to keep housing affordable.</li> <li>- Lot sizes will be smaller; and</li> <li>- Needs are getting smaller.</li> </ul>	Age
THIS WEEK	<p>Approval of planning amendment to hand local planning laws back to Mildura Council.</p> <p>Council were subdividing prime farming land with no plan or regard for the local or state planning schemes so Minister came over the top to pass an amendment to stop any subdivisions.</p> <p>Taskforce was appointed and this has now concluded with recommendations to the Minister. Minister will this week special gazette an amendment to give planning power back and clearly define new zones</p>	<p>Will be local interest as well as interest in South Gippsland as they are subject to a similar planning provision.</p> <p>Will be some criticism of landholders who want to subdivide or have brought subdivisions. Hardship provisions have been included in the amendment and council is working with residents on an ongoing basis to resolve issues.</p> <p>Will be some who crack it however as they are not deemed to be in genuine hardship by council criteria.</p>
Tuesday, 2 March, 2010	5 30pm – 6 15pm VPELA Seminar – Minister to open 2010 seminar. Treasury theatre	
Tuesday, 2 March, 2010	<p>7 30pm INSIGHT PROGRAM</p> <p>As part of a wider discussion, we'll be looking at the current project in Geelong - an area that's been identified as a growth area by the State Government in the Melbourne @ 5 Million.</p> <p>We're primarily interested in the project because it is a development that has been cited by VicUrban as one that exemplifies what needs to be done to meet Victoria's growing population as set out in the government's Melbourne @ Five Million.</p> <p>The social housing issue will feature in the discussion, but we're primarily interested in the topic of changing neighbourhoods as low/medium-density areas change to make way for more people.</p> <p>We've invited VicUrban on the program as they'd be best placed to talk to the issue from the development's point of view. However, I wanted to put the invite to the Minister in the event VicUrban declines as it's important that either they or the Minister come on the program to talk about the issue.</p> <p>Also joining us on the program will Brendan Gleeson from:</p>	<p>No decision on this as yet – awaiting advice</p> <p>Dept gave program background brief on this and they were focused on Geelong rather than overall policy.</p> <p>Program also attended public meeting in Geelong that went feral about the development last Wednesday.</p>

## Appendix 1 – continued

### MINISTER FOR PLANNING JUSTIN MADDEN MEDIA PLAN

Date	Event	Media
	Griffith University. Bill Randolph, an expert on housing affordability at UNSW, and Aaron Gadiel of the developer group Urban Taskforce Australia. We've also invited Treasurer Wayne Swan and Anna Bligh.	
Wednesday, 3 March, 2010	1pm-2.15pm THE BOOKSELLER LUNCHEON – Minister to speak Post-Deng Restaurant 214-216 Little Bourke Street	
Wednesday, 3 March, 2010	5.30pm – 6.30pm Minister to launch UDIA Enviro Development with Jennings Melbourne Museum	
Thursday, 4 March, 2010	1pm MEDIA TRAINING	
Friday, 5 March, 2010	ESSENDON - International Women's Day Breakfast	Local media
Tuesday, 5 March, 2010 – Thursday, 11 March, 2010	PARLIAMENT SITTING	
Monday, 15 March, 2010	COMMUNITY CABINET: GEELONG	
Tuesday, 16 March, 2010	6.30pm – 9pm: Building Commission and Plumbing Industry Commission Continuing Professional Development Awards.	Embargoed release for industry and local papers.

### PLANNED MEDIA EVENTS

#### PROACTIVE

GAA to do an update on works at Trugunina industrial development (local paper) works have begun however no one other than KMart has brought in at this point give it a plug.

Dandenong Government Services Building: Later this month Sod turning to signify Grocon's commencement of construction on Dandenong's Government Services Building; one of the first new developments to be delivered on land acquired by VicUrban under the Revitalising Central Dandenong (RCD) initiative.

This project – to which the State Government has committed funding of up to \$19 million – has been assessed by Ernst & Young as potentially generating \$85 million and 400 jobs for the region during construction.

Building: New advertisement campaign to stop dodgy builders CAV to put out the campaign and Robinson has done story on it in the past will work with her around these Will work with Bec to beat into something.

March 11 World Plumbing Day – will be marked by release of new advertisements, awards and Kenny to speak at first one

Coburg social housing development in the same vein as Geelong VicUrban ready to announce and provide information to residents – waiting on VicUrban and Housing to brief Moreland councillors on 24<sup>th</sup> (as requested by Carlo Carli and then VicUrban info and approval can go on 2<sup>nd</sup> March.

Minister's Heritage Award – Feb

## Appendix 1 – continued

### MINISTER FOR PLANNING JUSTIN MADDEN MEDIA PLAN

Date	Event	Media
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Mildura – restrictions currently in place by Minister on subdivisions. Strategy has been devised by Council and is with Minister for consideration. If appropriate Minister will remove conditions.

New heritage provisions in planning

Advertising Signs review

Kingston Green Wedge announcement on detail

Car parking review

Future Farming Improving rural land use, Rural Planning Group - Report to Minister for Planning

South Gippsland Rural Strategy (Response after implementation of C48) as with Mildura

Windsor Ad C'tee – report due first week of Feb report is expected to recommend that development go ahead. Strategy at this stage is to release it for public comment as this affects the entire community and then use those responses as reason to halt it as we have listened to community views.

This is one of three proposed developments in this end of town that people want to re-develop plan is to work with Melbourne City Council to establish new planning guidelines for this area.

#### WEEKEND MEDIA EVENTS

Sunday, 28 February, 2010	10am LAUNCH: Kananook Creek Boulevard \$8m Kananook project was funded by DPCD and is being delivered by Frankston City Council as a CAD project - launch to be done during the Kananook Creek Association's annual festival.	All media – to promote Alistar Harkness.  Night before Liberals will announce pre-selection candidate for Frankston.  Ted will be at event. Minister will need strong attack lines on Opposition.
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Release of River Valley Vision Guidelines – covers a large area and fulfills a 2002 election promise to protect the Yarra and Manibryning valleys from inappropriate development. In doing this the plan is to maximise the open space around river with parkland, doing up the Footscray Wharf, looking at developing a new park, improving trails and pedestrian crossings etc as well as streetscape.

#### STATISTICS AND DATA

- Density of suburban blocks – maps and graphics JM spoke to Dowling is to run this as part of larger planning story.
- PULSE data – this is where building permit data comes from (Pulse lady back from leave next week so will discuss)
- Permit activity for bushfire areas.
- Residential advisory committee report
- Residential Zones – response to Ad C'tee recs
- Advertising Signs review

#### RESPECT

- Sport code of conduct



# Appendix 1 – continued

## MINISTER FOR PLANNING JUSTIN MADDEN MEDIA PLAN

Date	Event	Media
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- Respect Grants Program - \$10,000 to small groups
- Respect Awareness Campaign aimed a behavioural Change
- Respect Round Tables
- Respect Ambassadors
- Respect Awards
- Partnerships with Organisations – Fox trucking have a program where they work with employees on building healthy relationships in particularly in relation to domestic violence would be good to do something with them
- Website for feedback
- Online chat with herald sun or through our own site
- O Week at universities
- Collingwood Alternative School has also been in touch re Respect Agenda and the Program they are running in their school – sending info to the Minister.
- Possibility of multi-cultural football game with Essendon and Bulldogs
- Essendon ambassadors for Respect Agenda

### DAYS RESPECT EVENTS CAN BE TIED INTO

- Cultural Diversity Week VIVDA Victoria March 14
- National Youth Week 14- 20 June
- National Volunteers Week 10-17 May
- Refugee Week 14-20 June

### KITE FLYERS

- World Heritage Listing MCG – have now received info and am looking into it
- Providing incentives for developers to provide affordable housing – JM flagged this with Dowling
- Stopping car parking being built for inner city dwellings, free bikes and bike racks provided instead
- New centre of Melbourne – provided amended UGB approved.

### ISSUES

- March 16 and 17 Bastian Point decision in Supreme Court
- Documents tabled on Feb 16 – will need cover as allegations against Minister's actions.
- Bacchus Marsh Avenue of Honour - VicRoads want to put in a round-a-bout and it is currently under heritage consideration – there is a lot of emotion in the community about the proposal
- Box Hill Tower – under consideration by the dept.
- Port Bellarine Tourist Resort.
- x 3 development proposals in central Melbourne
  - o 350 William Street – 50 level mixed use
  - o 399 Little Lonsdale Street – 39 storey residential
  - o 70 Southbank Boulevard – 62 level mixed use
- Bushfire Bunkers – first bunker will hopefully be accredited however there are issues with it as it is not accredited for the highest risk areas as a test for that has not been written yet. Producer has been convinced to hold off announcing his bunker accreditation until issues can be resolved – it is thought this bunker will meet the highest standard but a test has not been established to ensure this.
- Social housing – ongoing issue in Geelong and surrounds. *Insight* are looking at doing a program on it next month. Researcher asked to meet with department around planning for future affordability in Melbourne. Dept met with researcher and he was not interests in planning provisions more the welfare side. Since then has gone to Vic Urban and has been directed to speak to OHH and Wynne.
- Domestic Building Insurance – Luke Enright handling
- Royal Commission Planning written submission due March 16, 2010 – this will be releases soon after so will be media interest

### OPPOSITION ATTACK

## Appendix 1 – continued

### MINISTER FOR PLANNING JUSTIN MADDEN MEDIA PLAN

Date	Event	Media
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Valley Lake – criticised VicUrban and Govt for charging up to \$1 million for houses in this area... The libs proposed to turn this area into a toxic waste dump

Inga – Accused Merlino, Madden and Govt in general of having no respect as she was not invited to an event...  
GAIC

#### FOIs

#### WoVG Requests

N/A

#### Planning/Minister specific

The Age: Documents relating to Hotel Windsor between 1/10/08 and 1/8/09 (including correspondence between DPCD and Denton Corker Marshall/Halim Group) - search underway

Matthew Guy: All e-mails sent & received by Minister and his staff between 29/5/09 and 3/6/09 - response being prepared with assistance of AG's office (Brimbank)

#### Statutory Entities

GAA: Matthew Guy: Reports, research and analysis undertaken by the GAA in relation to the U/GZ and the GAIC - clarification requested 16/7, awaiting applicant response

# Appendix 1 – continued

## MINISTER FOR PLANNING JUSTIN MADDEN MEDIA PLAN

Date	Event	Media
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- LEGISLATION**
- GAIC
  - UGB
  - Planning and Environment Act – out for consultation
  - Building Amendment Bill – in Parliament March

## Appendix 1 – continued

### MINISTER FOR PLANNING JUSTIN MADDEN MEDIA PLAN

Date	Event	Media
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#### RESPECT MEDIA REQUESTS

Herald Sun – Matt Johnston requested first interview with Minister for Respect  
Sunday Herald Sun – Peter Rolfe requested drops in this space  
Tripple J Hack Program – Irene Scott requested interview and talkback ph.03 916 1950  
Sunrise – producer Paul Richards ph: 02 87777885  
SEN – morning show Chris 0438 902 217  
- Afternoon Kerry (Sinclair has number)  
3AW – Ross and John (Nicole 9243 2065)  
- Mitchell  
- Hinch (Amy 0423 505 083)  
SBS – Greg Dyett 03 9949 2428  
ABC  
- National News morning program (Laura 02 83335091)  
- National News drive (Steve Chase 02 8333 5091)  
ABC Perth – host Geoff Hutchinson (Annie 0417 912 904)

Doug Pollard  
Exec Producer/Presenter, Freshly Doug  
Thursdays 9-noon, Joy 94.9fm  
www.joy.org.au  
www.rainbowreporter.com  
0408 122 831

## Appendix 2 – Mr Hulls' letter 1 July 2010



Attorney-General

1 Treasury Place  
Melbourne, Victoria 3002  
GPO Box 4356  
Melbourne, Victoria 3001  
Telephone: (03) 9651 1222  
Facsimile: (03) 9651 1188  
DX 210753

**Subject to Legal Professional Privilege**

1 JUL 2010

Mr George Brouwer  
Ombudsman  
Ombudsman Victoria  
Level 9, 458 Collins Street  
MELBOURNE VIC 3000

Dear Mr Brouwer,

I refer to your investigation into the Windsor Hotel redevelopment process, referred to you by the Legislative Council Standing Committee on Finance and Public Administration under section 16 of the *Ombudsman Act 1973*. I further refer to your office's invitation to Ms Peta Duke to give evidence on oath on 2 July 2010.

On 23 June 2010 the Secretary, DPC, wrote to you enclosing a copy of the Solicitor-General's advice dated 30 July 2009 which concluded, among other things, that your jurisdiction under the *Ombudsman Act 1973* does not extend to investigating the actions of Ministers. The Government has also obtained the Solicitor-General's advice about whether your jurisdiction extends to investigating the actions of Ministerial Advisers. A copy of this further advice is enclosed. The Solicitor-General has concluded that your jurisdiction under the *Ombudsman Act* does not extend to investigating the actions of Ministerial Advisers unless that investigation is incidental to the conduct of an investigation into a Government Department and does not extend to requiring evidence about Ministerial deliberations. I understand that you have questioned the Solicitor-General's view about these matters.

In 2007, following the Supreme Court proceeding brought by the Convenor of Medical Panels, you wrote to former Premier Bracks requesting that a process be developed to resolve disputes relating to your jurisdiction outside of recourse to the courts. You also suggested that an appropriate dispute resolution mechanism would be to seek the Solicitor-General's advice. In response to your suggestion, the Government developed *Guidelines for the conduct of disputes between different public sector bodies*. Under these guidelines, obtaining legal advice from the Solicitor-General is the final option available to avoid recourse to the Supreme Court. The Government's strong preference is that the jurisdictional question in respect of your power to investigate the actions of Ministers and Ministerial Advisers be resolved in accordance with this process.

Accordingly, until the issue of the extent of your jurisdiction has been resolved, you may consider it prudent not to take any further steps in relation to your investigation. In order to resolve this matter urgently I propose that you meet with the Solicitor-General at 9am on 2 July 2010 to discuss her advice. This would provide the Solicitor-General with an opportunity to explain her advice to you. I understand that she would welcome that opportunity and is happy to meet with you at your offices. I should be pleased if you would contact Ms Mary Polis, Principal Legal Adviser, on 9651 1124 to confirm whether you are available to attend this meeting.

Yours sincerely

**ROB HULLS MP**  
Attorney General

## Appendix 3 – Ombudsman’s response to Mr Hulls’ letter 1 July 2010



2 July 2010

The Hon Rob Hulls MP  
Attorney-General  
1 Treasury Place  
Melbourne 3002

Dear Attorney

Thank you for your letter of 1 July 2010 together with the Solicitor-General’s most recent advice.

I note that you have suggested that a meeting be held today between myself and the Solicitor-General to discuss the issues contained in her advice. However, as advised to Ms Penny Gleeson of the Department of Premier and Cabinet last night, I consider that such a meeting would be unnecessary and inappropriate.

I appreciate that the suggestion arose from the multi-faceted nature of the relationship between both the senior law officers with government bodies. But, in the current context, one particular relationship must take precedence. That is, I, as an independent officer of the Parliament, have been charged by a committee of the Legislative Council with the responsibility of investigating, among other things, matters directly relating to the government. As such, the only relationship that I can have with such persons, or their lawyers in relation to legal issues, is to receive and consider submissions and make a decision regarding such issues - not to engage in discussion or debate about my jurisdiction or the merits of the conclusions I may reach.

Having considered the Solicitor-General’s opinions, I consider that I have jurisdiction to conduct the investigation and the investigation will continue forthwith, as is required by the *Ombudsman Act 1973*.

## Appendix 3 – continued

Should any person affected by my decision wish to dispute my jurisdiction, the appropriate venue for such a challenge is in the courts. Any other course could only be seen as providing favourable treatment to particular parties who are potentially affected by the investigation, which, as I am sure you would agree, is a course that must be avoided.

Yours sincerely

G E Brouwer  
OMBUDSMAN

## Appendix 4 – Mr Hulls' letter 15 July 2010



Attorney General

1 Treasury Place  
GPO Box 4356  
Melbourne, Victoria 3001  
Telephone: (03) 9651 1222  
Facsimile: (03) 9651 1188  
DX 210753

15 JUL 2010

Mr George Brouwer  
Ombudsman  
Ombudsman Victoria  
Level 9, 458 Collins Street  
MELBOURNE VIC 3000

Our Ref:

Dear Mr Brouwer,

### INVESTIGATION INTO THE WINDSOR HOTEL REDEVELOPMENT PROCESS

I refer to my letter to you, dated 1 July 2010, in which it was suggested that the question of your jurisdiction be resolved in accordance with the *Guidelines for the Conduct of Disputes between Different Public Sector Bodies* (the Dispute Guidelines).

I also refer to your letter of response, dated 2 July 2010. In this letter you indicated that, notwithstanding the Solicitor-General's advice, you remain of the view that you have the jurisdiction to investigate the conduct of Ministers and Ministerial advisers.

In light of the unequivocal nature and status of the Solicitor-General's advice, the Government remains of the view that the opinions expressed by the Solicitor-General about the extent of the Ombudsman's jurisdiction are correct. That is your jurisdiction does not extend to the investigation of the conduct and decision of Ministers or Ministerial Advisers (unless, in relation to the latter, that investigation is incidental to the conduct of an investigation into a Government Department and does not extend to requiring evidence about Ministerial deliberations).

However, the Government considers that it would be an inappropriate use of public money to have this matter resolved through potentially lengthy and expensive litigation at this time.

Notwithstanding the Solicitor-General's advice that the questioning of certain witnesses about particular issues and the seeking of certain documents is beyond your jurisdiction, the Government does not want to, or be seen to, fetter your independence. Nonetheless, the Government reserves its right to take whatever steps it deems appropriate to uphold the Solicitor-General's unequivocal views in relation to jurisdictional issues.

The Government also considers that it would be in the public interest to have the question of the scope of your jurisdiction resolved ahead of any future referrals and outside the context of any particular documents or information you may seek. It is our view that an independent arbitrator should be appointed to resolve the issue of your jurisdiction as a question of law. In that regard we have identified a number of retired High Court and Supreme Court justices who would be able to undertake that role. In order to discuss and progress this process I suggest that you contact Mr John Cain, Victorian Government Solicitor.

Yours sincerely

ROB HULLS MP  
Attorney General





## Appendix 5 – Ombudsman’s response to Mr Hulls’ letter 15 July 2010



23 July 2010

The Hon Rob Hulls MP  
Attorney-General  
1 Treasury Place  
Melbourne VIC 3002

Dear Mr Hulls

Thank you for your letter of 15 July in which you propose an arbitration to resolve issues regarding section 16 of the *Ombudsman Act 1973*.

I note that you propose that these issues be resolved “ahead of any future referrals” and “outside the context of any particular documents or information” that I may seek” - from which I take it that your view is that the suggested arbitration would not in any way relate to or interfere with the current investigation.

Whether such confinement is possible seems doubtful as any arbitration regarding the scope of section 16, conducted while the current investigation is incomplete, must inevitably have relevance to that investigation, whether intended to have such an effect or not.

In any case, there is no unresolved issue regarding the scope of section 16. As I indicated in my previous letter, in exercise of my statutory powers I have closely considered the advices of the Solicitor-General regarding the scope of that section in the context of the current section 16 investigation and concluded that the investigation would continue. There is, therefore, no unresolved issue regarding my jurisdiction until such time as there is a legal challenge.

As I understand it, the Government has no plans to initiate such an action for the reason, as stated in your letter, that the Government does not want to, or be seen to, fetter my independence.

## Appendix 5 – continued

I should also add that, if the subject of arbitration is to be considered, after the conclusion of the current section 16 referral, there are other parties with direct interest and relevance to this issue that will need to be consulted and may need or desire to be parties to an arbitration. That is, the two Houses of Parliament and the committees of those Houses, as these are the bodies that can refer matters to me and will, for that reason, have views as to the scope of section 16, as this governs the matters that can be referred. I would, therefore, be unable to form any view as to the appropriateness of any possible arbitration without first having the benefit of their views and opinions.


Accordingly, I do not consider that it is appropriate for me to enter into an arbitration regarding this matter.

Yours sincerely



GE Brouwer  
OMBUDSMAN

## Appendix 6 – Email dated 25 February 2010

 [Redacted] To [Redacted]  
25/02/2010 01:01 PM cc [Redacted]  
bcc [Redacted]  
Subject RE: Hero ya go...

History: [Redacted] This message has been replied to.

really ??? I didn't htink [Redacted] had anything to with the grand prix ;) the reason I ask is robbo is a fanatic and he said "you can get me tickets to the grand prix for free can't you ???"

> Subject: RE: Here ya go...  
> To: [Redacted]  
> From: [Redacted]  
> Date: Thu, 25 Feb 2010 12:49:28 +1100  
>  
> hahahahahahahahaha! Really? You want to go?  
>  
> Lucky you... you are rooting the right person.  
>  
> I'll ask.  
>  
>  
>  
>  
> [Redacted]  
> Office of the Premier of Victoria  
> Level 1, 1 Treasury Place, East Melbourne, VIC, 3002  
> t [Redacted] f [Redacted]  
> e [Redacted]  
>  
> § Please consider the environment before printing this e-mail.  
>  
>  
> [Redacted]  
> < [Redacted]  
> > To [Redacted]  
> 25/02/2010 12:47 cc [Redacted]  
> PM [Redacted]  
> Subject [Redacted]  
> RE: Here ya go...  
>  
> who do i need to root to get free tix to the grand prix ????  
>  
> > Subject: RE: Here ya go...  
> > To: [Redacted]  
> > From: [Redacted]  
> > Date: Thu, 25 Feb 2010 11:38:28 +1100  
> >  
> > You are gorgeous...so shut up.  
> >  
> > Yep, they didn't pay attention and got screwed. Too bad, so so sad.  
> >  
> > Hey [Redacted] has invited us to the Sydney Rd festival on Sunday... I'm not  
> > dying to go... but if you feel like it we can.  
> >  
> >  
> >  
> > [Redacted]  
> > < [Redacted]  
> > > To [Redacted]  
> > 25/02/2010 10:50 cc [Redacted]  
> > AM [Redacted]  
> > Subject [Redacted]  
> > RE: Here ya go...  
> >  
> >  
> > if I'm the poster boy then we're both in big trouble !!!!!  
> >  
> > I'm glad that fragile mob got screwed over because of their own  
> > incompetence !!!!  
> > good on ya :)  
> >  
> > > Subject: RE: Here ya go...  
> > > To: [Redacted]  
> > > From: [Redacted]  
> > > Date: Thu, 25 Feb 2010 10:34:25 +1100  
> > >  
> > > No, I do... but that's ok. You get to be the good looking one in the

# Ombudsman's Reports 2004-11

## 2011

*Whistleblowers Protection Act 2001* Investigation into the failure of agencies to manage registered sex offenders  
*February 2011*

*Whistleblowers Protection Act 2001* Investigation into allegations of improper conduct by a councillor at the Hume City Council  
*February 2011*

## 2010

Investigation into the issuing of infringement notices to public transport users and related matters  
*December 2010*

Ombudsman's recommendations second report on their implementation  
*October 2010*

*Whistleblowers Protection Act 2001* Investigation into conditions at the Melbourne Youth Justice Precinct  
*October 2010*

*Whistleblowers Protection Act 2001* Investigation into an allegation of improper conduct within RMIT's School of Engineering (TAFE) – Aerospace  
*July 2010*

Ombudsman investigation into the probity of the Kew Residential Services and St Kilda Triangle developments  
*June 2010*

Own motion investigation into Child Protection – out of home care  
*May 2010*

Report of an investigation into Local Government Victoria's response to the Inspectors of Municipal Administration's report on the City of Ballarat  
*April 2010*

*Whistleblowers Protection Act 2001* Investigation into the disclosure of information by a councillor of the City of Casey  
*March 2010*

Ombudsman's recommendations – Report on their implementation  
*February 2010*

## 2009

Investigation into the handling of drug exhibits at the Victoria Police Forensic Services Centre  
*December 2009*

Own motion investigation into the Department of Human Services – Child Protection Program  
*November 2009*

Own motion investigation into the tendering and contracting of information and technology services within Victoria Police  
*November 2009*

Brookland Greens Estate – Investigation into methane gas leaks  
*October 2009*

A report of investigations into the City of Port Phillip  
*August 2009*

An investigation into the Transport Accident Commission's and the Victorian WorkCover Authority's administrative processes for medical practitioner billing  
*July 2009*

*Whistleblowers Protection Act 2001* Conflict of interest and abuse of power by a building inspector at Brimbank City Council  
*June 2009*

*Whistleblowers Protection Act 2001* Investigation into the alleged improper conduct of councillors at Brimbank City Council  
*May 2009*

Investigation into corporate governance at Moorabool Shire Council  
*April 2009*

Crime statistics and police numbers  
*March 2009*

## 2008

*Whistleblowers Protection Act 2001* Report of an investigation into issues at Bayside Health  
*October 2008*

Probity controls in public hospitals for the procurement of non-clinical goods and services  
*August 2008*

Investigation into contraband entering a prison and related issues  
*June 2008*

Conflict of interest in local government  
*March 2008*

Conflict of interest in the public sector  
*March 2008*

## 2007

Investigation into VicRoads' driver licensing arrangements  
*December 2007*

Investigation into the disclosure of electronic communications addressed to the Member for Evelyn and related matters  
*November 2007*

Investigation into the use of excessive force at the Melbourne Custody Centre  
*November 2007*

Investigation into the Office of Housing's tender process for the cleaning and gardening maintenance contract – CNG 2007  
*October 2007*

Investigation into a disclosure about WorkSafe's and Victoria Police's handling of a bullying and harassment complaint  
*April 2007*

Own motion investigation into the policies and procedures of the planning department at the City of Greater Geelong  
*February 2007*

#### **2006**

Conditions for persons in custody  
*July 2006*

Review of the Freedom of Information Act 1982  
*June 2006*

Investigation into parking infringement notices issued by Melbourne City Council  
*April 2006*

Improving responses to allegations involving sexual assault  
*March 2006*

#### **2005**

Investigation into the handling, storage and transfer of prisoner property in Victorian prisons  
*December 2005*

Whistleblowers Protection Act 2001 Ombudsman's guidelines  
*October 2005*

Own motion investigation into VicRoads registration practices  
*June 2005*

Complaint handling guide for the Victorian Public Sector 2005  
*May 2005*

Review of the Freedom of Information Act 1982  
Discussion paper  
*May 2005*

Review of complaint handling in Victorian universities  
*May 2005*

Investigation into the conduct of council officers in the administration of the Shire of Melton  
*March 2005*

Discussion paper on improving responses to sexual abuse allegations  
*February 2005*

#### **2004**

Essendon Rental Housing Co-operative (ERHC)  
*December 2004*

Complaint about the Medical Practitioners Board of Victoria  
*December 2004*

Ceja task force drug related corruption – second interim report of Ombudsman Victoria  
*June 2004*