



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

SELECT COMMITTEE ON ESTIMATES 2009-2010

(Reference: Appropriation Bill 2009-2010)

Members:

MR Z SESELJA (The Chair)
MS C LE COUTEUR (The Deputy Chair)
MS A BRESNAN
MR B SMYTH
MS J BURCH

TRANSCRIPT OF EVIDENCE

CANBERRA

TUESDAY, 9 JUNE 2009

Secretary to the committee:
Ms G Concannon (Ph: 6205 0129)

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Committee Office of the Legislative Assembly (Ph: 6205 0127).

APPEARANCES

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Amended 21 January 2009

The committee met at 9.04 am.

Appearances:

Gallagher, Ms Katy, Treasurer, Minister for Health, Minister for Community Services and Minister for Women

ACT Health

Cormack, Mr Mark, Chief Executive

Cahill, Ms Megan, Executive Director, Government Relations, Planning and Development

THE CHAIR: Thank you, members. Welcome back, Minister for Health and departmental officials, to the select committee on estimates. The particular purpose of the hearing today is to discuss the issues surrounding the call-in or the proposed call-in of the car park facility at Canberra Hospital. Minister, are there any opening comments you would like to make?

Ms Gallagher: No, thanks.

THE CHAIR: Minister, when did you write to the planning minister seeking a call-in on the Canberra Hospital car park?

Ms Gallagher: On the afternoon of 21 May.

THE CHAIR: And what was the rationale for writing to the minister?

Ms Gallagher: I had been provided with advice from my department that there was the possibility of an appeal on DA approval of the car park; that if an appeal was lodged, that would delay the car park by anywhere between three and six months; and that if that delay occurred, the rest of the redevelopment would be delayed by at least that much as well. I have sought additional advice from my department on the planning processes and what was required.

Not having ever been the planning minister, I questioned the need to request the Minister for Planning to consider calling in this project, on the basis that an appeal might be lodged. But the advice to me was that if the DA is approved and then an appeal is lodged there is no capacity to use the call-in powers.

On the basis of the information to me, the fact that there were only three community submissions with concerns about the car park, the fact that we had done extensive pre-DA consultation with the community, the fact that we had not received large amounts of feedback through that and the fact that many of the issues contained in the three community submissions on the DA could be addressed and could be responded to by ACT Health—on the basis of all that information provided to me—I felt that I should write to the minister and certainly urge him to consider using his call-ins on this project.

THE CHAIR: Is that the second hearing we had for the department of health?

Ms Gallagher: Yes.

THE CHAIR: So you wrote after that hearing, did you?

Ms Gallagher: It was on the afternoon of that. It may have been in the break, afternoon tea time; I cannot recall. The letter was received in Minister Barr's office on the Friday, the 22nd. There were some issues on timetabling. Advice to me was that the minister had to consider using his call-in by the end of May. I wrote to him, I think, seven days prior to that so that he could consider the issues I raised in my letter.

THE CHAIR: The timing is interesting. Why, after you—

Ms Gallagher: The timing is not interesting, if you are trying to draw a link between my appearance at estimates and the letter. The timing is on the basis of the DA application. That is all there is to it. I needed to write to Andrew by the end of May on concerns that I had that this project could be delayed, and I did that. The time—

THE CHAIR: What was particular about the end of May?

Ms Gallagher: Because that was the timetable for ACTPLA to make a decision on the DA.

THE CHAIR: Did not the public process finish on 11 June?

Ms Gallagher: This is in relation to the southern car park. There are temporary car parks related to this which are the subject of a separate DA.

THE CHAIR: This was the drop-dead date. When did you receive the advice from the department about the possible appeals?

Ms Gallagher: I think I received advice through briefings. It had certainly been a topic of discussion for two weeks prior to my signing the letter.

MR SMYTH: So it was actually discussed before you came to estimates for the first sitting day?

Ms Gallagher: Yes—shock, horror—it was. I discussed a range of issues with my department, some of which did not come to the attention of the estimates committee.

MR SMYTH: Given that there was extensive discussion about the car park on the first day that you sat as the Minister for Health, you did not think to mention that you were considering asking that it be called in?

Ms Gallagher: No, and if I had been asked that question I would have answered, "I am currently considering that and I have received information from my department but I have not formed a view on it," which I had not at that point. I come to estimates to answer questions. It was news to me that I should write them and then answer them and then ask them as well. If the estimates committee did not extrapolate further from the 15 pages of questions we had on the car park, that is not my problem. It did not

relate to the appropriation bill. It was an issue I was considering when I—

MR SMYTH: It does relate to the appropriation bill. There is \$45 million related to the appropriation bill.

Ms Gallagher: Not of the 2009-10 appropriation bill, it does not. It was in the previous appropriation bill. I am here to help, happy to help, but it is not my fault nobody asked the question.

MR HANSON: I refer back to the *Hansard* of 19 May. We actually asked specific questions about the development application relating to the hospital car park.

Ms Gallagher: Yes, you did, Mr Hanson.

MR HANSON: You then talked about that development application and said, “Yes, it is currently in.”

Ms Gallagher: It is.

MR HANSON: But you failed to make any mention of the fact that you were considering calling it in or writing to the Minister for Planning. Do you not think that it would have been appropriate to have done so, if that was your decision that you had made the very next day?

Ms Gallagher: It was two days later and I was in quite close discussions with my department on advice on that matter at the time. Yes, you touched on the DA. You did not take it any further. That is not my problem. I do not sit here and develop your questioning strategy for you. If nobody asked on the planning process of the DA and whether there was a potential for me to want Andrew to call this in, it is not my problem.

THE CHAIR: Do you not think, though—we have got a process of scrutiny and we have the health minister for two days. Funnily enough, at the end of those two days you write; and then we have the planning minister come back six days later and, funnily enough, after we had the planning minister we have a press release? You do not find that the ordinary person would look at that and think the timing is somewhat suspicious?

Ms Gallagher: The ordinary person has not. A political process being chaired by you has. I have not—

THE CHAIR: A majority of this committee—

Ms Gallagher: I have not had one person, one ordinary person—

THE CHAIR: I do not control the committee. You assign far too much power to me.

Ms Gallagher: I have not had one ordinary person come up to me and say, “This is very interesting, the timing on this issue.” I have not had one objection to me writing to Andrew on this.

THE CHAIR: But can you explain the timing? You wait until—

Ms Gallagher: I have explained.

THE CHAIR: You wait until after you have finished with your hearings and then Andrew waits until after he is finished with—

Ms Gallagher: No. I know you like drawing a conspiracy theory. There is none.

THE CHAIR: They are pretty stark facts, though.

Ms Gallagher: This DA was lodged in, I think—February or March? March. We delayed lodging the DA to undergo extensive pre-DA community consultation. It has not been a secret that we have been doing this work. We have been advertising. We have been running our own process. The timing is dictated by the planning laws and the fact that there was going to be a decision made at the end of May. That is the timing. It was not in any way related to the estimates process.

This whole writing a letter after I had appeared had nothing to do with estimates. I had not even linked it to estimates because it was not subject to the appropriation bill. Neither are the planning laws. I wrote to Andrew a week prior—a week—so that he had a week to consider what he would like to do.

MS BRESNAN: Can I ask this: there were three submissions of concern received. I do not know whether this is an appropriate case but were any of the objectors in those submissions already known to ACT Health?

Ms Gallagher: I do not know how to answer that question.

THE CHAIR: What was the nature of their concerns?

MS LE COUTEUR: What is the nature of the objection?

Ms Gallagher: Without identifying people, I just do not know how to answer that.

MS LE COUTEUR: What is the nature of the objections?

Ms Gallagher: Do you want to go through it, Megan?

Ms Cahill: The nature of the objections that we received was in relation to the traffic flow in the surrounding area, in particular Palmer Street. Another objection was relating to the car park and where it was being located. Another option was suggested in terms of where it could be located. And the other concern was in relation to the temporary car parks that are mentioned in the development application.

THE CHAIR: What was it particularly about these objections? They seem like fairly run-of-the-mill objections. What was it about these that led to the claims publicly that we wanted to avoid politically motivated or frivolous objections?

Ms Gallagher: I do not know. I just do not know about identifying individuals through answering this question. What I can say is that advice to me was that on the nature of the objections there was a high probability that this project would be appealed.

THE CHAIR: And what was that based on? What was that advice based on?

Ms Gallagher: Previous knowledge, I think, and the objectors.

MS LE COUTEUR: Was that advice from ACTPLA or from your department?

Mr Cormack: That advice was provided to the minister by me, by my department. To add to the minister's earlier answer, the advice to the minister in relation to the consideration of a potential call-in was based on an overall assessment of the risk associated with the project being delayed. That was the predominant basis for the advice to the minister that the development on, particularly, the Canberra Hospital campus has a number of interconnected features.

There is a women's and children's hospital; there is a mental health development; there are a range of other developments that are programmed. We identified a potential risk to significant delay not only to the car park but to the development as a whole. It was on that basis that we provided advice to the minister that she should consider this as a possibility.

THE CHAIR: Was the departmental advice to the minister in the letter that went from you, minister, to the planning minister? Did that use the terms used by the planning minister in his public statements that he is concerned about the politically motivated or frivolous objections? Was that part of your concern or is that something that only the planning minister has?

Ms Gallagher: I do not believe that was in my letter to Minister Barr.

THE CHAIR: Sorry, it was?

Ms Gallagher: I do not believe it was. I am happy to table a copy of the letter.

THE CHAIR: If you could table the letter that would be good, because we are trying to get to the bottom of this. Did you have a concern or did the department have a concern that there was a political campaign being waged or a potential political campaign being waged by someone in the community to try to hold up, delay, end this development?

Ms Gallagher: I was concerned about the potential for delay of the project through an appeal on the car park, and my letter outlines that. I am happy to provide that to the committee.

MS LE COUTEUR: You at no stage got advice from ACTPLA about the likelihood of appeals actually happening? Your concern was simply on the basis of if an appeal happened—it would be problematical—not on the basis of a likelihood of an appeal happening? Is that correct?

Mr Cormack: No, I did not say that. I added to what the minister had already said. The minister had indicated in her response that there was a likelihood, as I understand. And my second response was to highlight the risk associated with an objection, leading to an appeal and leading to a protracted impact on the program as a whole.

MS LE COUTEUR: I guess what I am trying to get to is this: how did you make the decision? There is always the likelihood of a meteor hitting us today. How did you evaluate the likelihood of an appeal?

Ms Gallagher: It was enough for me that in advice on the nature of the comments through the DA there was a risk of an appeal. I did not really go to how risky it was, other than that I did seek further information from my department about the nature of how these decisions are made. I did find it odd that I was required to consider this prior to a DA being approved, in the sense that it has to be on the basis there might be an appeal that I am asking Andrew to consider using his call-in but he can only use his call-in prior to a DA being approved.

For me, when I weighed up the hospital redevelopment and the fact that this is the largest infrastructure project that the territory has ever undertaken and the fact that at this first hurdle the car park could be delayed and the flow-on impact of that into other developments of the hospital—these are judgement calls—I had to make a judgement call. I made that judgement call. I signed the letter to Andrew where I asked him to consider using his call-in, and that is all there is to it. It really is one of those judgements that ministers have to make from time to time. They are hard. You work through the detail but at the end of the day you have to do what you think is right.

MS BURCH: And that is based on the critical nature of this commencement part of the project and the ripple effect across the further campus redevelopment?

Ms Gallagher: That is exactly right, and the fact that we had already taken ACTPLA's advice. This was the first major DA and the first project that we should undertake pre-DA community consultation, which Health put a lot of effort into. We had done all that work so that we could hopefully ameliorate the risks of objections through the DA that would be then subject to lengthy appeals.

We have done the right thing in terms of engaging with the local community, publishing pictures of the car park, consulting very extensively before lodging a DA. We then lodged the DA. I think what it shows is that the pre-DA process actually worked, because a lot of the issues were ironed out early on and resulted in the fact that for a large car park like this—and we know how controversial car parking is in Canberra—for a car park this size we did receive only three community submissions with views on the car park through the formal DA process. I just had to make one of those judgement calls. If I had made the other decision and let it go through, there is the fact that, on advice to me that it was likely that an appeal would be or could be lodged, that would delay everything by up to half a year.

MR HANSON: If I can follow on from the line of questioning that the chair had—and I have not seen the letter that you have submitted—it does seem that there is some broken logic then between what you are explaining here and Minister Barr's press

release which talks about politically motivated or frivolous objections. I am struggling to understand how he has leapt to that conclusion. Is it in a conversation you have had with him or has he drawn that deduction himself that these concerns are about frivolous objections or politically motivated objections? Where has that come from?

Ms Gallagher: I cannot answer for Minister Barr. You will see in my correspondence the concerns that I had, and they are clearly outlined in that letter.

MR HANSON: So you have had no correspondence with him or you have not spoken with him and mentioned—

Ms Gallagher: Of course I have spoken—

MR HANSON: In those conversations, though, did you discuss that you think that there is going to be a politically motivated objection or a frivolous objection? Is that—

Ms Gallagher: If you have a look at the letter I wrote, you can see what my concerns were. And yes, I have discussed it, but only in the sense of trying to understand the process from where we are now to when a decision is made.

MS BURCH: Earlier was it you who described the comments as run of the mill? Was it—

Ms Gallagher: They were all issues that either could be addressed or were never going to be addressed. One of the submissions was to locate the car park on the other side. A view was expressed that the car park should not go where the DA proposes that it goes, that it be located on the other side of Yamba Drive where the temporary car park is. And that is just a different opinion about where a car park should go.

Extensive studies have been done about the most appropriate location for this car park, how it is interconnected with the rest of the development and how it meets staff and patient convenience. And that objection to the car park was never going to be reconciled. It was a difference of opinion and I am sure the good people of Phillip would have very strong views about a car park of that size going up on Yamba Drive quite close to their residential development.

MR HANSON: Would you consider those objections to be politically motivated or frivolous?

Ms Gallagher: I think, on the information to me, the concerns that were raised were of a minor nature or fundamentally disagreed with the proposal that was put. And you will see that in my letter to Minister Barr I outline the concerns I have about this project being delayed.

THE CHAIR: You are saying that these are fairly run-of-the-mill type objections. The message to people appears to be that, for major projects, run-of-the-mill objections will be responded to with a call-in. There seems to be nothing to back up the planning minister's claim that this is about avoiding politically motivated or frivolous objections. What we are talking about is objections, whether we agree with

them or not, which are fairly standard and do not appear in any way to be, certainly, politically motivated; and you are saying no evidence has been presented to you that would back up what the minister has said.

Ms Gallagher: Again, I cannot answer for Minister Barr. He is—

THE CHAIR: If he came, he could answer for himself, but he is not coming.

Ms Gallagher: He has a matter currently before him which he is considering. While you can say there is a rather small, fragile link between the use of the planning laws and the appropriation bill, as Minister for Health, I think you are stretching it a bit far to try to say that the use or non use of ministerial call-in is subject to estimates committee scrutiny.

THE CHAIR: It is about being up-front with the committee, though, isn't it? Isn't that what the issue is?

Ms Gallagher: So an estimates committee now requires government to go into caretaker and to virtually consult on every decision it makes—

THE CHAIR: No. We just do not expect them to make their announcements to deliberately avoid scrutiny.

Ms Gallagher: For fear of offending the estimates—

THE CHAIR: That is—

Ms Gallagher: There is no—

THE CHAIR: Both cases happened to be the day after.

Ms Gallagher: You have a range of ways in which you can seek information from ministers. Ministers never avoid scrutiny, and that is a good thing about this place. There are committees—

THE CHAIR: One has not shown up and one made a—

Ms Gallagher: There are committees; there are questions on notice—

MR SMYTH: You ducked out at morning tea to sign it off.

Ms Gallagher: There are questions without notice; there are media releases. For God's sake, saying that ministers can avoid scrutiny in this place, jeez, is just ridiculous. We—

MR HANSON: Where is Mr Barr?

Ms Gallagher: I am here to assist the committee in relation to my responsibilities with the capital asset development plan which is subject to the appropriation bill. And when I considered the recall request—I do not agree with the estimates committee's

decision to recall me. I do not think you should have a view on matters which are not subject to the appropriation bill but I accept that you have got a view on this particular issue and I have come to assist you. But I am quite comfortable with Andrew's view that the use or non use of ministerial call-in is not subject to scrutiny by the estimates committee.

MS LE COUTEUR: Can I clarify what you just said? You said that this development was not relevant to the appropriation bill, but I thought it was. I thought the whole idea was that, if the car park did not proceed, then the rest of the development could not proceed.

Ms Gallagher: That is the tenuous link and I am saying that is how I have reconciled myself with reappearing. The car park was subject to the previous appropriation bill and I went through lengthy scrutiny—

MR SMYTH: How much cash was covered in that? What was the quantum of funds covered in the previous approp bill?

Ms Gallagher: In terms of the allocation for the car park, it was \$29 million.

MR SMYTH: And the cost of the car park now is?

Ms Gallagher: It is \$45 million.

MR SMYTH: Where is the other \$16 million coming from?

Ms Gallagher: From the clinical services review which, if you have read the transcript, was actually subject to the previous appropriation bill as well.

MR SMYTH: I have got it here, yes, "Provision for phase 1 CSR."

Ms Gallagher: Yes.

MR SMYTH: Yes, I see that—

Ms Gallagher: That was subject to the previous appropriation bill as well.

MR SMYTH: It is in this year's budget. It is in the budget papers.

Ms Gallagher: Then everything that has been funded that has not been fully expended now is subject to this committee.

MR SMYTH: It is disingenuous to say the expenditure of \$45 million is not covered by the budget—

Ms Gallagher: Anyway, we are here; we are happy to help.

MR SMYTH: Apparently you are not happy to help because you—

Ms Gallagher: We are. I have answered a number of questions—

MR SMYTH: You ducked out at afternoon tea to sign a letter off to the Minister for Planning so that you could get this in. The whole premise of this budget seems to be consultation and working with and listening to the community. Do you think asking for a call-in is in the spirit of listening to the community and working with the community?

Ms Gallagher: So do you think that a six-month delay on the hospital redevelopment is—

MR SMYTH: No, I am asking you a question.

Ms Gallagher: Well, this is the thing with—

MR SMYTH: With your whole budget, you can't make decisions regarding the—

Ms Gallagher: what we expect from the Liberals: you actually have no view on anything. This is a major project—

MR SMYTH: You can't make decisions—

Ms Gallagher: and we have done extensive pre-DA consultation—

MR SMYTH: You can't make decisions for 12 months—

Ms Gallagher: Extensive pre-consultation—

MR SMYTH: but you can on this. You can't make decisions as Treasurer for 12 months because you are going to go out and consult, but as health minister you are—

Ms Gallagher: You know they are two absolutely, completely different things—

MR SMYTH: No, it is the premise of your budget.

Ms Gallagher: and we have consulted, Mr Smyth.

MR SMYTH: "We've heard, we've learned"—

Ms Gallagher: We have consulted extensively on this.

MR SMYTH: So they are just pat lines?

Ms Gallagher: We have consulted extensively on this. We are nearing the end of two periods of extensive community consultation, and I had to make a judgement call about whether I was prepared to let the hospital redevelopment be delayed by six months. It is a judgement call that I had to make within a certain time frame, and I have made it.

MR SMYTH: So what are the politically motivated objections?

Ms Gallagher: I think I have answered those questions as far as I can. They are not words that I used in my correspondence—

MR SMYTH: All right. In your opinion—

MR HANSON: Do you agree with them or not?

MR SMYTH: are there politically motivated objections to the hospital?

Ms Gallagher: I think there are genuine concerns that the objections to the car park would have resulted in delays.

MR SMYTH: So they are not politically motivated?

Ms Gallagher: Well, that is my answer to the question.

MR SMYTH: The minister is saying, the other minister, who refuses to attend, is saying—

Ms Gallagher: I can't answer on behalf—

MR SMYTH: No, I am asking you: do you believe that these objections—

Ms Gallagher: Well, I have answered the question.

MR SMYTH: were politically motivated?

Ms Gallagher: I have answered the question.

MR SMYTH: You actually have not. Do you believe that these objections were politically motivated?

Ms Gallagher: I have answered the question, Mr Smyth.

MR SMYTH: So we have not learned anything from the government's previous debacle in planning with the data centre? After the data centre you said, "We're going to listen, we're going to be more consultative, we're going to get the process right." But here is the committee—

Ms Gallagher: So you are against my letter, are you?

MR SMYTH: No.

Ms Gallagher: You are against my letter?

MR SMYTH: I am asking you; I am trying to get an understanding—

Ms Gallagher: You are having a go each way, aren't you?

MR SMYTH: We are just trying to get an understanding—

Ms Gallagher: Well, what a surprise from Mr Smyth!

MR HANSON: You won't answer the question, minister.

Ms Gallagher: “Don't know; we'll just get the process right.”

MR SMYTH: Could you answer the question?

MR HANSON: It is a yes or no: do you agree with the statement by Mr Barr that it is politically motivated and frivolous? Do you agree with that statement? Yes or no?

Ms Gallagher: I think there are genuine concerns—and I accept the concerns that the nature of the objections was going to result in lengthy delays, and that could be from an understanding of the planning system, Mr Hanson. I have accepted that advice and that is why I wrote to Minister Barr on this and urged him to consider using his call-in, which he is currently doing.

MS BRESNAN: You might have already answered this; I am sorry if I missed it. Did ACT Health get advice from ACTPLA to inform the decision that was made?

Ms Gallagher: From my understanding, with DAs there are ongoing discussions with the planning authority.

MS BRESNAN: So there were ongoing discussions as part of the capital asset development project and they then provided advice that these objections could cause potential delays?

Mr Cormack: No, they did not. They did not actually put it that way. Throughout the DA process, we kept the communication channels open with the planning authority and we received the specific objections that had been raised. We went through the process of addressing those. We did seek advice from ACTPLA—I sought advice from ACTPLA—on how the call-in process worked. I was provided with that advice as to under what circumstances and under what conditions a call-in can be requested. So that is the extent of the advice that we got from ACTPLA.

THE CHAIR: Minister, just going back then, when did you receive the written advice from the department suggesting that you needed to consider asking for a call-in?

Ms Gallagher: I think the issue was first raised with me in a verbal briefing on 7 May. I received a brief. I do not know whether I received two briefs or one. I received one between the 7th and the 21st. We can get back to you with the—

THE CHAIR: What date was that?

Ms Gallagher: I can give you the date. I do not know; I do not have the date with me, I do not think. It was 18 May.

THE CHAIR: So on 18 May you received the advice saying—

Ms Gallagher: Just before you build your conspiracy theory again, because that was on the eve of my first appearance—

THE CHAIR: You are building it well for us.

Ms Gallagher: I am going where you are going, Mr Seselja.

THE CHAIR: I think you are building it very well for us, but you keep going.

Ms Gallagher: There were two briefs, actually; that was around extending the car park. There is only one brief on this, on 18 May, and I did send it back to the department seeking further information and amendments to the letter which was attached to that brief.

THE CHAIR: Are you able to table that correspondence for us—that brief?

Ms Gallagher: I will have a quick look at it to make sure there is nothing—I will take some advice. It has some of the DA matters with it as attachments. I am happy to provide the brief itself but I will take some further advice because I do not know what is meant to be public and what is not public at this point in time.

THE CHAIR: So you received that on the 18th and you sent it back for the letter for you to sign to the minister to be amended; is that correct?

Ms Gallagher: That is right. The letter was shorter than the one that you have got. It did not have some of the information that was in the brief that I felt would benefit the letter for his consideration, and I asked that some additions be made.

THE CHAIR: But you had already made the decision that you were going to write to the minister on that—

Ms Gallagher: It was during that time—and this was because we were in estimates—that I remember it was done through my office. It was a matter of getting into my head the fact that—look, I did not want to request a call-in, at the end of the day. I was—

MR SMYTH: But you did.

Ms Gallagher: If you let me finish, Mr Smyth. I did not want to do this if there was any other alternative. So in between some of the discussions that I had with Health, I double-checked around issues of timing and process. It seemed unusual to me, and unusual to put the planning minister in that position, on the basis that there might be an appeal. That was what I was uncomfortable with. But the advice back to me was that we could not wait for the planning authority to approve the DA. If we waited until that point and there was an appeal, then we would go through the appeals process, and that is what would cause the delay. So that is the judgement call that I am referring to, that I had to make that decision on. And, yes, I was considering it over those three days during which I spent the majority of time in this room.

THE CHAIR: But you had made the decision on the 18th, from what you have told us, because you had sent it back simply for the letter to be amended rather than—

Ms Gallagher: No, I had not made the decision. I was formulating—there were a number of things that happened. I received the formal brief. I sought further information, just to confirm in my own head that there was no other pathway to follow than these two decisions: either let the process go, and potentially have lengthy delays, or write to Andrew and ask him to consider using his call-in. They were the two choices that I was really having to consider. I wanted to make sure that there was not another option that did not require me to ask Andrew to use his call-in. So I sought further advice on that. When it became clear to me that there was no other alternative, it was either allowing potentially the delays or writing the letter, I then asked that the letter be amended to include some more information. And that all happened between 18 and 21 May.

MR SMYTH: Minister, in your letter, which I have just read, it mentions the issues, but it also says that a summary of the comments received and ACT Health's response to these issues is attached. It is certainly not attached to the copy that I have been provided with. Can that attachment be provided to the committee?

Ms Gallagher: I am sure that it can. Again, I just have to take advice. I do not understand whether submissions—I do not understand the nature of their confidentiality or whether they are confidential or otherwise. Just let me take some further advice.

MR SMYTH: All right, you say—

Ms Gallagher: And particularly as this is currently subject to the planning minister's consideration.

MR SMYTH: You say in that paragraph on page 2:

I believe the issues raised by the committee in relation to both the multi-storey car park and the temporary car park relate to traffic safety, building design, the siting of the parking structure and temporary car parking.

Which of those do you consider to be political or frivolous?

Ms Gallagher: Mr Smyth, as I have said a number of times, if this is the big scandal you are going to hang your hat on, the issues were relatively minor in terms of the submissions from the community. They could either be addressed through responses from Health or they were things that we were never going to reach agreement on. That formed the nature of my correspondence to Minister Barr, and I stand by those views and those comments that I have made. I can't answer in relation to the quote that you keep asking me to respond to. It is not a quote that I have used in my paperwork.

MR SMYTH: It is reasonable to ask whether you think traffic safety is political or frivolous. It is reasonable to ask whether you think building design is political or frivolous.

Ms Gallagher: I think the issues that have been raised in relation to that have been responded to by ACT Health.

MR SMYTH: Was this discussed by cabinet at large or was it just at your initiation?

Ms Gallagher: It has not been discussed by cabinet—this specific letter.

MR SMYTH: Not specifically, but it was raised in cabinet?

Ms Gallagher: I am hardly going to sit here and tell you all the conversations that cabinet has. But this issue has not been subject to cabinet processes.

MR SMYTH: I am not talking about formal cabinet processes. Did you have a discussion with the Chief Minister about calling it in?

Ms Gallagher: Not that I recall.

MR SMYTH: Okay.

MS LE COUTEUR: Are there other relevant DAs expected soon or in process for all this—

Ms Gallagher: You will see in the letter—

MS LE COUTEUR: I see you say that the temporary car park has not yet been done, and I have looked at the website and have not seen anything. Is it going to come soon? And what else is in the pipeline?

Ms Gallagher: This is where it is all interlinked. We cannot move. In fact, you will see in my penultimate paragraph I actually indicated—it might be the third-last paragraph—

MS LE COUTEUR: The last paragraph says that you will soon be submitting further applications.

Ms Gallagher: Yes, the second last. There are really three development applications that we are asking to be considered here, because we cannot go and demolish the current multistorey car park at the Canberra Hospital if we do not have adequate temporary parking in place. We cannot have one without the other.

MS LE COUTEUR: And there are not any other DAs soon to be put in that are relevant to the Canberra Hospital? What I am coming at is: is this situation likely to be repeated again reasonably soon?

Ms Gallagher: It is not a situation that I would like to repeat at all.

MS LE COUTEUR: No, I appreciate that.

Ms Gallagher: It is not my preference.

MS LE COUTEUR: But is it possible that in the next few months this will be—

Ms Gallagher: It is possible that there would be—on every project. We are doing what we can to address any concerns prior to a formal lodgement of a DA, in order to address that, but it is a bit hard to see into the future and see what might cause community concern or might not.

MS LE COUTEUR: Do you expect, though, that, if there is community concern, you will react in the same way—that is, go to a call-in? Is that how you anticipate the development will happen at the hospital?

Ms Gallagher: Again, it is not my preference. If we can avoid it at all costs, we will. That is why we are doing the pre-DA consultations—to avoid it. But I also have a job to deliver this project, and deliver it on time. That is what I am working hard to do. At times I imagine that those competing issues will come into conflict—(1), to respond to everybody's satisfaction on concerns around redevelopment and, (2), to build the TCH campus as it needs to be built in a particular time frame.

If the car park goes ahead, that will unlock and allow other developments to occur. The car park is the critical linchpin here, which is why, on that judgement call that I made, I formed the view that a delay of six months for the car park, which would then flow on and delay everything else quite a bit longer than that, was something that I did not want to see happen.

MS BRESNAN: I apologise again if this has already been answered, but is there a specific time by which the capital asset development project has to be completed?

Ms Gallagher: Well, 2016.

Mr Cormack: For the whole lot it will be 2016.

Ms Gallagher: It will be an ongoing—

Mr Cormack: There is a series of milestones over the next three to four years that are largely the outcome of appropriations in the 2008-09 budget and the 2009-10 budget. So there are quite a few.

THE CHAIR: We appear to be done on this issue.

MR SMYTH: Just before we go on, I want to go to another issue, minister. I believe you were given some correspondence this morning before this meeting. When did you become aware that Mr Cormack had written to Mr Hanson?

Ms Gallagher: I thought I was being recalled for the car park, but I guess when you come to estimates you do allow a wide-ranging debate. When did I become aware? I think Mark sent me through a copy when he had written the letter. We had certainly discussed the media release, because Mr Cormack was concerned about the comments in the media release and so was I.

MR SMYTH: Why didn't you write to Mr Hanson?

Ms Gallagher: I am writing to Mr Hanson.

MR SMYTH: You will.

Ms Gallagher: I am currently formulating my letter.

MR SMYTH: The normal practice in this place is that, if we want to be briefed or speak to a public servant, we go through the minister's office. Why doesn't that process work in reverse?

Ms Gallagher: I think there have been occasions where public servants have felt the need to address comments made in this place from time to time. I supported Mr Cormack's view that he should protect his reputation and that of his officers—in the material that was put out by Mr Hanson.

MR SMYTH: Could we just get the chronology straight. Did you have a discussion before the letter was sent or after the letter was drafted?

Ms Gallagher: I think we discussed it as soon as that media release went out, from memory—Mr Cormack and I.

MR SMYTH: So why didn't you respond?

Ms Gallagher: Which I think was prior to the letter going. I shared Mr Cormack's concerns around particularly, I think, the final sentence in that media release, which indicated, if I can just read it: "This shows yet another case of a shameful attempt to cover up the minister's embarrassment by misuse of process." I felt that, on a matter like FOI—which, all of you would be very aware, is at arm's length from ministers, and very appropriately so—a comment like that first brought into question my reputation that I had been involved in the FOI to begin with, which I had not, and by—

MR SMYTH: But did you have the written—

Ms Gallagher: If I could just finish, Mr Smyth—by using the comments "by misuse of process", that was indicating that Mr Hanson did not believe that ACT Health had followed the requirements of the Freedom of Information Act and that decision makers who made decisions around that had not followed the law. We are here with pretty thick skins, we politicians; we get defamed pretty constantly. But when it is a matter of a public servant's reputation, they have a right to defend that from time to time. They do not do so very often, but when they are accused in a public statement of misuse of process, I think it is entirely fair that they respond.

THE CHAIR: But were the words that were covered up—they claimed a personal exemption. They were not of a personal nature. Do you agree that that was a reasonable thing to cover up?

Ms Gallagher: Again, this is from my understanding, and Mr Cormack can go to the

requirements of the act—that they related to third-party information, that permission had been sought to release that information, that permission was not granted or feedback was not provided, so Health erred on the side of caution by not releasing that information in time to get the FOI into whoever’s office it was at that time on the timetable that was required. Health and the decision maker in that had made those decisions. Mr Hanson has then chosen to try to lay blame at my feet—that I was involved in the FOI. If I was involved in the decision making about the FOI then Health have breached the FOI laws. That is the allegation in this—that I was sitting there looking through an FOI that Health had been handling and deciding what got covered up in black.

THE CHAIR: But it was politically embarrassing for you—what was covered up.

Ms Gallagher: No, it was not embarrassing for me. I could not care less about what was covered up. We went through this. There are probably 50 pages of transcript on this. I am not embarrassed that ACT Health followed the requirements of the FOI Act. I think you should be embarrassed about the quality of media releases that go out and slander the reputation of public servants—

MR HANSON: I utterly and—

Ms Gallagher: and they should be able to defend their reputations when that happens.

MR HANSON: absolutely—Mr Chair.

Ms Gallagher: And that is exactly what has occurred in this instance.

MR HANSON: Mr Chair, I refer you to my press release. It is a very long bow to draw to suggest that, because I have criticised the minister, therefore this is in any way an attack on a public servant. That is absolutely not the case. I refute it. To suggest that that is the case is absolutely outrageous. Let me be—

Ms Gallagher: We need to go to the ABC school of FOI, Mr Hanson.

MR HANSON: Let me be very clear that, since being a shadow minister, I have released over 50 press releases in which I have made it very clear that there are elements of ministers’ performance, be it this minister or others, which are, in my view, poor and where process has not been followed appropriately. Now that is a direct—

Ms Gallagher: What process has not been followed in this instance, Jeremy?

MR HANSON: That is a direct statement from me about the minister. For her to suggest—or for a public servant or a department member to say—“Well, that is an attack on me” is quite inappropriate. What that does is go directly to my ability to criticise the minister for the performance of her department.

Ms Gallagher: We are just asking you to tell the truth, Jeremy—that somebody—

MR HANSON: That is outrageous.

THE CHAIR: Well, why didn't you ask the question then? Ultimately, you are responsible. We have heard the Chief Minister in this place saying that the departments do not have any sort of separate personality. They are part of the government headed by the Chief Minister, and in this case by you, as minister. What responsibility do you take and why don't you fight your political battles instead of having it done through public servants?

Ms Gallagher: I do fight my political battles, Mr Seselja, but I think I have answered the question. When the reputation of a public servant, and indeed an entire department, is handled in the way that Mr Hanson handled that, I think it is only fair that they defend their reputation. Based on Mr Hanson's subsequent letter, which then goes even further to really indicate how he does not understand FOI processes, when he has written back, he has involved the Speaker and he has involved the estimates committee. It is certainly elevated to a point where I will be responding to Mr Hanson on a number of issues that he has raised. Do I stand by Mr Cormack's decision to respond to that media release, and particularly in relation to allegations that I was involved in the FOI, and also that ACT Health misused the process of FOI? Yes, I do. I do not know whether Mark would like to add anything to this.

Mr Cormack: I would, Mr Chairman. I think this is a somewhat different matter from an opposition MLA putting out the sorts of media releases that are put out from time to time—quite rightly and appropriately, for an opposition to criticise the government's activities. This media release actually criticised the activities of my department. As to the reason why I took the approach that I did, I will quote from it:

This document was censored by the government to avoid this embarrassing fact becoming public.

This is a statement that makes no reference to the privileged process of this committee. This is a statement that has actually appeared on a public website. The second statement is:

The only rational explanation to remove these words was to cover up the government's embarrassment and there is no legitimate excuse for their removal.

Then there is the other quote that the minister gave before about cover-up and misuse of process. The purpose of my letter was to advise Mr Hanson, first of all, how FOI is handled. It is completely at arm's length from government. It is one of my responsibilities under the Public Sector Management Act, as a chief executive, to discharge the law, and that is what I did.

The second point is that once that is actually clarified—and I clarified that the minister had nothing to do with the handling of the FOI, that I had responsibility, via my department, for the handling of the FOI—having clarified for Mr Hanson's benefit that the actions he is referring to publicly in his media statement are actually the actions of myself and my department were incorrect and are ascribing motives to me as a public servant that I am engaging in cover-up and a misuse of process, that is an allegation that is most serious. I have a professional reputation to protect, and there is a matter on the public record that has been repeated through radio interviews that

somehow ACT Health has covered up the minister's embarrassment and misused process.

That is a matter that I must defend. I am sorry if that has caused awkwardness for Mr Hanson and for this committee. I must defend the reputation of my department and myself when we are accused of cover-up and no legitimate excuse and a misuse of process. They go to the heart of my responsibilities as a public servant of the territory. I must have the opportunity to challenge them. I did that privately. I dealt with Mr Hanson by way of letter and I suggested that, in doing so, now that I have clarified the truth—and this is what this is about—then I believe the only appropriate thing to do is to withdraw the untrue statement that is on the public record about the actions of myself and my department. Mr Hanson, to date, as I understand it, has chosen not to do that, and that is a matter for him and his own judgement.

MS BRESNAN: Can I ask a question. This is probably to the minister, and Mr Cormack can answer if he chooses. I understand what you are saying and that you felt you needed to do it because you felt that what came out in that press release was somehow affecting what the department did. Minister, you said this has occurred on other occasions when a public servant has written to a member. But where do you draw the line about when a minister acts or a public servant acts and directly approaches a member? This is not a usual process which is undertaken. Typically, it would be the minister that would be approaching a member about something which they have done. Where do you draw the line then? It does somewhat blur the lines between the separation of the powers between the executive and the department. I understand that, yes, you are the minister for the department, but these are actions which another member has taken. So where do you draw that line and has that been discussed at all?

Ms Gallagher: No, I can only speak for myself and views that I hold on this. I accept that this is not something that is done without thought. There were statements in that media release on me that I personally could have followed up with Mr Hanson, and indeed I will, now that the letter writing is continuing. But I felt that, on FOI, and particularly the amount of FOIs that we deal with from the opposition, on allegations of abuse of process and shameful cover-ups by the department, it was fair enough that the department respond to that. The FOI has nothing to do with me. An FOI does not come to me. I do not look at it. I do not even necessarily know that one has been lodged, unless somebody else is talking about it. I do not see it until after the opposition or crossbench actually get that FOI. It has nothing to do with me. So on this issue, when complaints—

THE CHAIR: How can you say it has nothing to do with you, though? You are responsible for what your department does. If you, as minister—

Ms Gallagher: Do you want me to have something to do with FOIs?

THE CHAIR: No. That does not mean that you are involved in ticking off on it, but you as minister are responsible for what your department does.

Ms Gallagher: But I don't approve it.

THE CHAIR: This attempt to try to separate you from your department when it suits—

Ms Gallagher: Well, it is not when it suits me.

THE CHAIR: Well, it is when it suits.

Ms Gallagher: I would love to have an approval role for FOI, Mr Seselja. I would love it.

THE CHAIR: It is not about an approval role. It is about responsibility for what goes on in your department—

MR SMYTH: What? To be less accountable, minister?

THE CHAIR: You have no problem—

MR SMYTH: You would like to be less accountable?

THE CHAIR: You had no problem getting on the phone to Mr Cormack and asking for an ALP ad to be shot in the hospital.

Ms Gallagher: Oh!

THE CHAIR: Well, you talk about separation—

Ms Gallagher: Thank you.

MS BRESNAN: Can I—

THE CHAIR: It was very close there and now you are claiming that you do not have responsibility.

Ms Gallagher: As much as I have enjoyed this morning, I understand it is nearly time to—

MS BRESNAN: Chair, Ms Gallagher did not actually finish answering my question.

Ms Gallagher: My view is that, on a matter that does not relate to me in terms of ministerial oversight, which the FOI does not, and when the claims were being made by Mr Hanson that there had been a shameful cover-up and that there was an abuse of process, that directly and adversely affected the reputation of ACT officials. And when that happens, they have a right to defend their reputation. These officials go and work in other places. To have a slight like this left unanswered on the record, that that FOI processor, decision maker, had, in some way, changed their decision based on what was politically convenient—

THE CHAIR: He attacked you. Jeremy Hanson attacked you.

MR HANSON: This is not an attack on the department. You are making this bold

assumption.

THE CHAIR: He attacked you and you have changed it.

Ms Gallagher: What you do not understand, Mr Hanson—

MR HANSON: This is—

Ms Gallagher: is that FOI does not come to me for approval.

MR HANSON: You need to read the press release.

Ms Gallagher: So when you are saying FOI was censored for the government's—

MR HANSON: You need to read the press release.

Ms Gallagher: convenience, you are saying that a public servant censored that information.

MR HANSON: No, I am not.

THE CHAIR: We are saying you are responsible for your department.

MR HANSON: You are responsible—

Ms Gallagher: That is what he is saying and—

MR HANSON: for the actions of your department.

Ms Gallagher: those public servants have a right to defend themselves.

MR HANSON: You saw what had been done in that FOI because it was discussed at estimates. This is clearly an attack on you, not on your department. To suggest otherwise—

Ms Gallagher: Well, I can't help you with getting an intellectual grasp on this, Mr Hanson.

MR SMYTH: Can I ask Mr Cormack a question?

MS BRESNAN: I think in this instance—this is me making a statement, I guess—some of the allegations in the press release are slightly inappropriate, but I also do think that there is an issue, and I can understand Mr Cormack wanting to defend the reputation of the department, and that is understandable, but I think we do cross a line somewhat when a public official starts approaching a member directly about something and giving them directives about what they should be doing. I think for both parties there is some fault—

MS BURCH: Can I make a comment?

THE CHAIR: Mr Smyth had a question and then we will come to your comment.

MR SMYTH: Mr Cormack, when an FOI is done—in this case it is a private email—the things that are removed are to protect the identity of the individual?

Mr Cormack: That is correct.

MR SMYTH: So words like “vineyard”, “bed and breakfast” and “cellar door” were removed, but the cellar door does not exist and the bed and breakfast does not exist. In fact, you have removed references to things that do not exist so that you cannot identify the person by those two references. But in the first sentence it says:

I am writing to voice concerns over Miowera, which adjoins our property located...

Surely, that should have been removed. There is a clear indication of where this property exists. He goes on to say:

We are on one of the main tourist routes in the territory...

which is the road past Tidbinbilla. Indeed, the final sentence reads:

We have spent significant sums of money and time to establish the first of what we hope would be several plantings of vines.

So the two things that do not exist, the B&B and the cellar door, are removed, and yet the things that do exist and clearly identify the property, which are its location on that road in the Tidbinbilla Valley, the fact that it is next to Miowera and that it has got a planting of vines on it, are left in the email. Why would they be left in and yet the two things that do not exist are removed?

Mr Cormack: My response to that is that, subsequent to my letter back to Mr Hanson, an applicant has sought clarification of the decision taken by the decision maker in this case, and that matter is currently under review, consistent with the FOI Act, and I will address it within that context.

MR SMYTH: Is the decision maker in this case the same person who spoke here in the estimates and briefed Mr Hanson on the entire matter?

Mr Cormack: I am sorry?

MR SMYTH: Who made the decision on the FOI?

Mr Cormack: An officer of the department.

MR SMYTH: And is that the same person that spoke about—

Mr Cormack: I am not going to go—

MR SMYTH: Is that the same person that spoke in this place on this matter and is it the same person that briefed Mr Hanson?

MS BRESNAN: You can't ask that question.

MS LE COUTEUR: That is not—

THE CHAIR: No, he can ask that question.

MS BRESNAN: He can't ask that question.

THE CHAIR: Why can't he ask that question?

MS BRESNAN: Because he can't name someone—

MS LE COUTEUR: I think it is quite reasonable not to answer the question.

THE CHAIR: Well, he has asked the question, and we will allow Mr Cormack to—

MS BRESNAN: There are legal issues involved here.

Mr Cormack: I am not going to answer the question.

THE CHAIR: He is refusing to answer the question.

Mr Cormack: Yes.

MS BURCH: It is not an appropriate question, so I support—

THE CHAIR: Well, you might not think it is appropriate.

MR SMYTH: It is entirely appropriate if the person who did the briefing is the person who—

MS LE COUTEUR: I think leave it.

Mr Cormack: There is a process—

MS BURCH: Three of us do not think it is appropriate, so we want that on the record as well.

Mr Cormack: of management review going on consistent with the act and—

MS BRESNAN: There are legal issues here—

MR HANSON: We do not actually need—the process of review—

Ms Gallagher: Anyway, we came to talk about the car park. I have got another meeting at 10 o'clock so—

THE CHAIR: Hang on. Ms Burch had a statement. We will finish up, minister.

Ms Gallagher: I have got another meeting at 10 o'clock. I said I would be here for one hour.

MS BURCH: Just to finish, to follow on from Ms Bresnan's comment, because this is indeed a public document and many public servants, friends of mine, who deal with FOI read this, and they did take it personally. So whilst you may think that this is interference from the public service in your activity, you may be impacting on their activity as well.

THE CHAIR: Okay, while we are making statements, I will finish up and say I share Ms Bresnan's concerns about the attack on a member doing their job.

Ms Gallagher: Can I just say it is very easy from where you guys sit to form that view.

THE CHAIR: Perhaps you should fight these battles.

Ms Gallagher: Thank you very much.

The committee adjourned at 10.02 am.