



## Mick Gentleman MLA

Manager of Government Business  
Minister for Planning and Land Management  
Minister for Police and Emergency Services  
Minister for Corrections  
Minister for Industrial Relations and Workplace Safety

Member for Brindabella

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Mr Tom Duncan  
Clerk  
ACT Legislative Assembly  
London Circuit  
CANBERRA ACT 2601

Dear Mr Duncan *Tom*

Thank you for your letter of 29 August 2023 about petition E-PET-004-23, lodged by Ms Rebecca Vassarotti MLA, regarding a request to stop private car parks on protected public green open spaces. The car park in Lyneham referenced in the petition was subject to legal proceedings in the ACT Civil and Administrative Tribunal (ACAT). ACAT made orders to the effect that the car park cease to operate by the end of the school term of 2023. I note that the ACT is transitioning to a new outcomes based planning system, and that the matters raised in the petition were done so in the context of the old planning system.

With regard to the application by Canberra Grammar School for “approval to formalise a car park”, this Development Application (DA 202240826) was refused by the ACT Planning and Land Authority (the Authority) on 16 March 2023. Please see [here](#) for more information.

Please find below my response to the specific points raised in the petition, in the order in which they were raised:

1. The Authority exists as an independent statutory authority separate to government and is subject to the *Planning and Development Act 2007* (the Act) and its associated regulations and instruments, including the Territory Plan. Applications for development are thoroughly considered and assessed in accordance with this legislation. While the legislation does allow the Minister for Planning and Land Management to make directions regarding development applications under Division 7.3.5, this power is used only in exceptional circumstances.

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On this basis, the ACT Government executive does not support intervening, or otherwise, in the development application assessment process.

The Authority takes action in regard to breaches of the legislation. This power is delegated to Access Canberra as the regulatory agency. Access Canberra is guided by its [Accountability Commitment](#) which seeks to ensure that its resources are targeted to where the risks of harm, unsafe practices or misconduct are the greatest, thereby strengthening its capacity to take action where the community, workers and the environment are most at risk.

2. Applications for development of car parks ancillary to playing fields or recreational areas on public land are thoroughly considered under the current planning and development legislation.

However, certain developments are exempted from the requirement for development approval, provided the development meets the exemption criteria as outlined under the *Planning and Development Regulation 2008* (the Regulation) which was in force at the time of the petition. It is noted that exemption criteria are generally clear and/or quantifiable provisions to establish compliance without the need for subjective assessment. If a development is exempt from the requirement for development approval, then the works can progress to the building stage without a further assessment of the development. Car parks ancillary to playing fields on public land can be considered as an ancillary sporting structure pursuant to Section 1.90 Public works (2)(a) of the Regulation.

An ancillary sporting structure means a structure that is designed, or can be used, in relation to playing organised sport. Under the Territory Plan, a structure can include a driveway or car park. According to Section 1.90 Public works (2)(f) of the *Regulation*, installation, or maintenance of an ancillary sporting structure on or beside a playing field may be exempt from requiring a Development Approval.

3. If a car park is found to be in breach of the legislation (e.g. "unauthorised"), the Act provides for a range of enforcement options designed to bring the area back into compliance. This may include an order by the Authority that the entity responsible for the breach remediate the land in question.
4. Transport Impact Assessment (TIA) processes already exist in the ACT and the existing TCCS TIA Guidelines already provide the thresholds and criteria for when a TIA is required to be undertaken for a proposed development. The TIA Guidelines provide practitioners and stakeholders involved in land-use and transport planning a reference document for managing transport impact and development generated traffic demands, including parking requirements and guidance on the alignment of the TIA with other existing territory policies and planning.

The TIA guidelines assist development to identify sustainable transport strategies to meet any excess traffic demands that can not be met by onsite car parks, thus ensuring that development is well-connected to existing public transport networks and includes proper consideration of convenient access options to bus stops, or light rail stations. The guidelines

also seek to manage travel demand associated with development by examining opportunities for infrastructure improvements to promote active travel, such as pedestrian walkways, cycling connections, bike racks, and pedestrian-friendly crossings.

TCCS managed open spaces are vital components of the ACT's urban and natural landscapes. The distribution of parks and open spaces contribute to the recreational and social needs of the community and are essential for community wellbeing and recreational activities. These spaces integrate with and support the active travel network across Canberra allowing walking and cycling as a means of transport through a network of shared paths.

Many TCCS managed open spaces are protected by zoning that designate them for specific purposes. When a car park ancillary to an area zoned PRZ1 – Urban Open Space, and a development application is received, TCCS considers if the submitted documentation provide substantive evidence to support the car park as being an ancillary use and whether the proposed development application is supported or not and provides this advice to the Authority for consideration as part of the development assessment.

The ACT Government is committed to sustainable transport strategies including active travel. The government recently consulted with the community about a Draft Design Guide as part of its Active Travel Plan. The Active Travel Plan is designed to enable more people to take up active travel. That means making it safer, more accessible, convenient, and enjoyable to choose walking, cycling or micro mobility – whether for commuting, exercising, or socialising.

Key priorities outlined in the plan include providing safer infrastructure, a more connected network, better end of trip facilities and diverse enabling programs to encourage people to use active travel and public transport more often.

The plan also identifies practical actions to make active travel more visible and convenient, like delivering pop-up cycleways and walking improvements, protected bike lanes, an expansion of shared e-scooter and similar hire schemes, bike parking and repair stations.

5. The ACT Government is committed to the transparency and integrity of planning and development legislation and related decisions. Legislation is in place to ensure that administrative conduct is held to a high standard, and a number of organisations ensure the accountability of the ACT Government and the ACT Public Service. These include:
  - The ACT Ombudsman
  - The ACT Integrity Commission
  - The ACT Civil and Administrative Tribunal
  - The Legislative Assembly itself;
  - Legislative reporting requirements; and
  - Legislative Assembly committees and inquiries.
6. It is considered that the current regulatory requirements are appropriate in requiring a TIA and relevant considerations.

A TIA is required when a development is likely to generate significant additional traffic or place a significant demand on parking. A TIA will form part of the information submitted with a development application to the Authority.

Once lodged with the Authority, the Development Application and supporting documentation is then publicly notified for a minimum of 15 working days and referred to entities, such as TCCS as noted above. During the assessment process, the Authority will consider the application, any representations received and also advice from relevant entities in accordance with the legislative requirements. In making a decision on the Development Application, the Authority must consider, amongst other things, whether the proposal will cause an adverse impact on the surrounding area. The development application requirement for a TIA is considered on a case-by-case basis and this includes developments for school expansions. Development types vary and may be of a nature that does not contribute to matters such as traffic impacts. The Authority will consider the type of development on submission of the Development Application and whether the proposal is likely to increase traffic impacts.

Certain developments are exempted from the requirement for development approval, provided the development meets the exemption criteria as outlined above. A development that is exempt from the requirement for development approval is unlikely to have a significant traffic impact by itself. A TIA is therefore not required for developments that are exempt from the requirement for development approval.

A school expansion that generates significant additional traffic is unlikely to be exempt from the requirement for development approval but will require a development application and development approval that will involve submission and consideration of a TIA.

### New Planning System

The ACT Government has undertaken a comprehensive reform of planning and development legislation. The territory now has a new [Planning Act](#). The new Act is the legal foundation for the new planning system. It shifts the focus to good planning and development outcomes.

New developments will have to consider their surrounding communities. They will need to look at the impacts developments could have on matters like:

- Wellbeing;
- Health;
- Recreation; and
- the environment.

They must still also meet the set requirements in the [Territory Plan](#), new [design guides](#) and supporting materials. So, while the ACT is moving towards an outcome-based system, we will still maintain mandatory rules and criteria will still be maintained. This is to provide assurance to the community that rules and measures exist in the system.


Recent population projections show that Canberra needs 100,000 new homes by 2050. This once-in-a-generation reform will allow for this growth while leading to better outcomes for people. This will enable Canberrans to live close to shops, transport, parks, and services, and will also balance the protection of the natural environment and strengthening our local communities.

Canberra's urban open spaces are popular places to relax, exercise, play and connect with nature. The ACT Government is responsible for managing and maintaining over 6,800 hectares of public urban open space and adjoining facilities. This includes urban parks, sportsgrounds, public cemeteries, dog parks, play spaces, skateparks, outdoor exercise equipment, street and park furniture, paths, and green infrastructure such as trees, shrubs and grasses.

Community consultation was undertaken this year to seek feedback on the draft [Urban Open Space Land Management Plan](#) to help shape the future management and use of Canberra's public open spaces and ensure the plan reflects the needs of a growing and diverse community. The draft plan sets out the ACT Government's vision for sustainable urban open spaces that enrich the lives of our community, improve the amenity of our urban environment, and provide a range of social, cultural, environmental, and economic benefits. Community feedback will be used to finalise the Urban Open Space Land Management Plan, guiding the continuous improvement and shared management of our public open spaces for all Canberrans.

I trust that the information in this letter is helpful and provides advice on the issues raised in the petition.

Yours sincerely

  
Mick Gentleman MLA  
28/11/2023