



ACT
Government

Transport Canberra and
City Services

FREEDOM OF INFORMATION COVERSHEET

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

FOI reference: 22-146

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Schedule	Not Applicable
4. Documents	Not Applicable
5. Additional information identified	Not applicable
6. Fees	Not Applicable
7. Processing time (in working days)	30 days
8. Decision made by Ombudsman	Not applicable
9. Additional information identified by Ombudsman	Not applicable
10. Decision made by ACAT	Not applicable

11. Additional information identified by ACAT	Not applicable
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From: [REDACTED]
To: [TCCS FreedomOfInformation](#); [CMTEDD FOI](#)
Cc: [sportsgrounds](#)
Subject: FOI - an agreement between Sports & Rec and BCC to allow car parking on the Lyneham Neighbourhood Oval
Date: Friday, 28 October 2022 10:04:39 PM
Attachments: [FOI - 28th October 2022 re BCC & Sports and Rec agreement - Google Docs.pdf](#)

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Good evening,

I would like to submit a more refined FOI request seeking information on any agreement between Sports and Recreation and the Brindabella Christain College (BCC) that allows the BCC to park on the Lyneham Neighbourhood Oval (block 23, section 41, Lyneham).

Please find the request attached.

Pages 1 to 6 provide context and background information.

Page 7 provides the specific FOI request.

Could CMTEDD and TCCS please work together to fulfill this request as it appears historical records may sit across both directorates.

Thank you (and thank you for your patience and help sorting all of this out).

[REDACTED]

[REDACTED]

Good evening TCCC and CMTEDD FOI teams.

I am seeking information about any agreement(s) that The Brindabella Christian College (BCC) have with 'Sports and Recreation', the custodian 'owners' of Lyneham Neighbourhood Oval, that allows the BCC to use b23, S41 for car parking to service the college.

This 'agreement' appears to have been made between 2009-2016 and it is unclear which portfolio and executive branch would now manage this agreement, and made by 'Sport and Recreation Services' when they were formerly part of TAMS or CMTEDD.

Background:

Brindabella Christian College sublease a part of the Lyneham Neighbourhood Oval (LNO) from the crown.

Brindabella Christian College sublease a part of the Lyneham Neighbourhood Oval (LNO) from the crown. The sub-lease commenced on the 1st of May 2009, and the lease goes for 20 years, until 30 April 2029. The purpose of the sub-lease is for: **"outdoor sports facility and ancillary thereto car parking"** (refer to Item 9, Schedule 1, Sublease).

The sublease states that "any other purpose needs to be consented to by the Lessor in writing".

The lease is managed by Sports and Recreation Facilities (within Transport Canberra and City Services), who are the Custodians.

This sub-lease is available via the ACTPLA Public Register. Please see images 1, 2 and 3 below.

Images 1, 2 and 3: Photographs of the 2009 sub-lease that BCC have on a part of block 23, section 41, Lyneham, available via the public register: [ACTLIS](#)

Development Application: 201426427 by BCC for block 23, section 41, Lyneham

In October 2014, Brindabella Christian College (BCC) lodged a Development Application (DA number [201426427](#)) to construct a sports pavilion and associated parking. Sport and Recreation Services (SRS), as custodian of the Executive Crown Lease over Lyneham Neighbourhood Oval (LNO), authorised the lodgement. This DA was withdrawn by BCC after the custodians of the public land withdrew support.

The BCC were likely justifying car parking on the Lyneham Neighbourhood Oval as 'temporary', until this future anticipated DA was approved, which they had hoped would include a 'new sealed 4,220m² car park' (DA: [201426427](#)).

There is evidence that BCC have an 'agreement' with 'the authorities' to use this Protected Urban Open Space (Pe) for the purpose of a carpark.

In 2016, the BCC lodged DA: 201629628 on block 4, section 41, Lyneham. **Project Description:** Community Facility-Education: Construction of new junior school building including 15 classrooms and large assembly space.

As part of DA201629628, the BCC submitted a 'Parking Assessment' by Northrop Consulting Engineers in which they stated that the car park on the Lyneham Neighbourhood Oval (b23, s41) was the schools 'existing offsite parking'.

The BCC indicated they have exclusive rights to use the land, to service the BCC school parking needs. The developer indicated that the 'gravel' car park on Block 23, Section 41, Lyneham, is subleased for the purposes of a car park to service the school and is to be 'considered as onsite parking for the BCC'.

Image 4: Parking Assessment from Northrop Consulting Engineers as part of the Development Application: 201629628 from [Freedom of Information 19/28355](#), part 10- EPSDD, pg 5 and 6

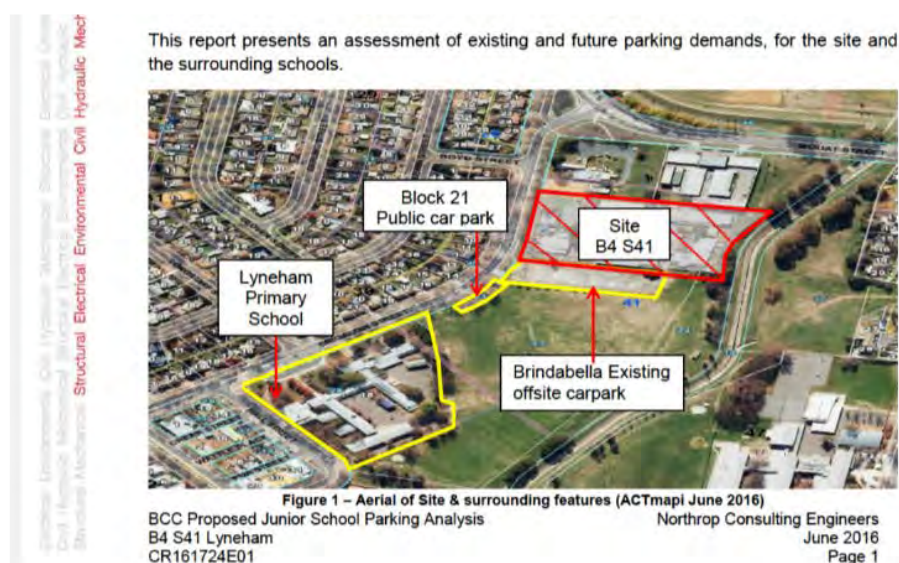
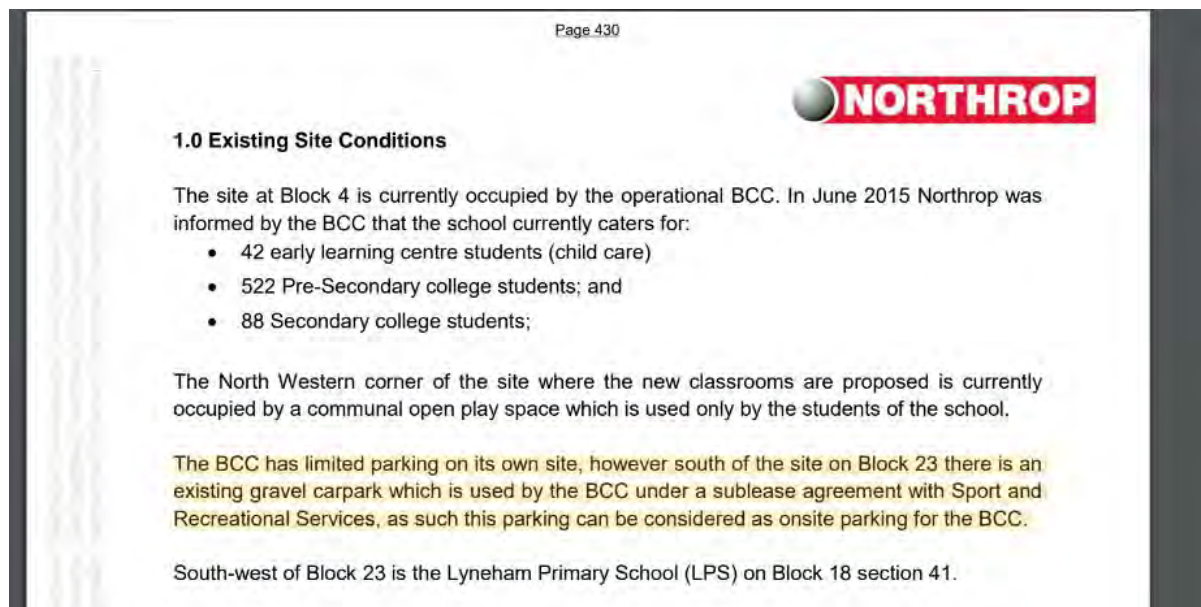


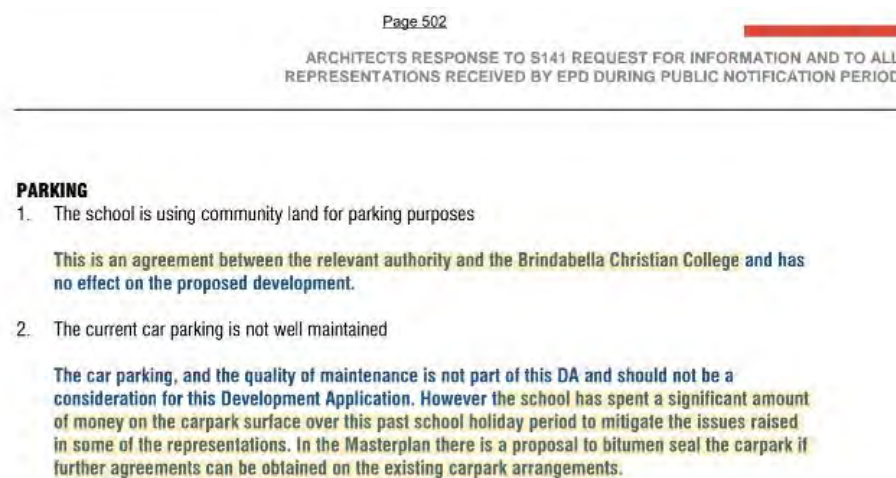
Image 5: Parking Assessment for 201629628 from [Freedom of Information 19/28355](#), part 10- EPSDD, pg 5 and 6



As part of DA: 201629628, the community and other Government entities raised concerns about the BCC parking on public land and the Transport impacts of the expansion.

In response to these representations, the BCC stated that they have an agreement to use Block 23, Section 41 for the purposes of a car park. The BCC developer explained that they expected to obtain 'further agreements on the existing carpark arrangements' with the ACT Government, to allow them to bitumen seal the car park. The BCC indicated they have exclusive rights to use the land, to service the BCC school parking needs.

Image 6: The BCC architects response to representations received during Public Notification Period for DA201629628, from [Freedom of Information 19/28355](#), part 10- EPSDD, pg 5 and 78.



The ACT Government also appears to reference a car park agreement between Government and BCC, outside of the original 2009 sublease. See image 7 and 8 below.

Image 7: Excerpt from [Freedom of Information 19/28355](#), part 01- EPSDD, pg 50

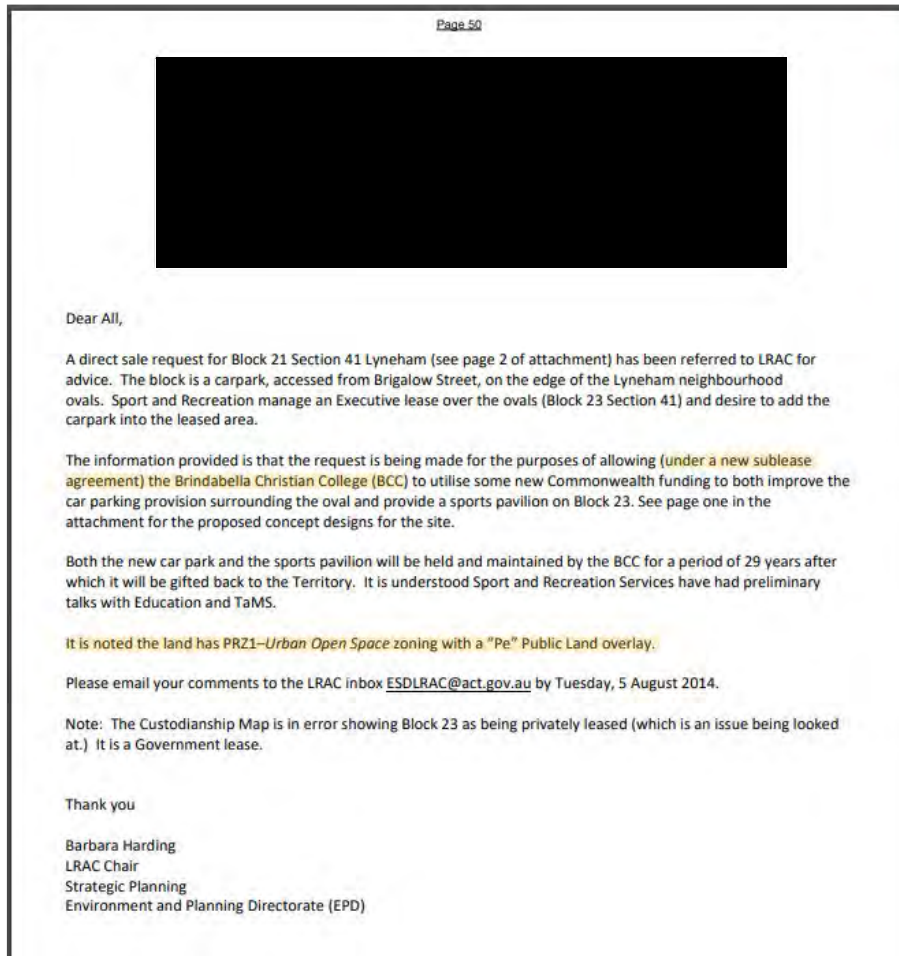


Image 8: Excerpt from [Freedom of Information 19/28355](#), part 01- EPSDD, pg 65

From: Harding, Barbara (ACTPLA)
Sent: Thursday, 17 March 2016 2:21 PM
To: ESD, LRAC
Subject: FW: Brindabella Christian College - Lyneham - New Direct Sale Application

From: [REDACTED]
Sent: Friday, 26 February 2016 9:34 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: Brindabella Christian College - Lyneham - New Direct Sale Application

Hi [REDACTED]

Rather than going through a full LRAC circulation we are seeking your area's initial comments about the attached proposal by the BCC. Can you also advise/confirm where EPD (Territory Planning area) stands on this proposal.

The application states that due to student numbers growth and the general need for car parking on the site (the school has somehow been developed without any car parking facilities on its own land), it proposes to purchase this land from the Territory to upgrade the existing parking area and put in two new tennis/basketball/netball courts at the rear of the car park. Whilst I agree with the general necessity for the school to have parking facilities, my concern is that since there was a fairly public discussion about the previous development proposal for this site (and the apparent subsequent Government back down from the proposal), this may be asking too much at this time. From memory the main issue was that we were looking at selling/sub-leasing land zoned Open Urban Space to a private school, and although the proposed development is significantly less this time around the same issue may arise.

Despite the land being currently used under a sublease agreement as a car park the land is technically zoned as Open Urban Space, our question is whether there would be a need for a TPV or not?, and additionally whether the lease for this land would be required to be consolidated with the School's existing lease over its main site. We have also written to Sport and Rec seeking its advice and an understanding as to whether or not it (as the Custodian of the land) supports the proposed direct sale.

It is most likely that the BCC **had** an outdated agreement to use the site 'temporarily' while they processed and lodged DA:201426427 for the site. However, it is well established that the ACT Government withdrew support for any future development of the site in 2015, when it was revealed that the BCC intentions were not aligned with the best interests of the Lyneham or wider ACT community, nor the Territory Plan and Act. Not long after this decision, a new Minister was appointed as custodian.

This raises some alarming questions:

- Does the BCC really have an informal or formal agreement with the 'authorities' to use the site for car parking?
- Was a new sub lease created, or a lease variation? If so, why isn't this publicly registered as per the Planning and Development act 2007?
- Was the bitumen sealing of the car park in late 2016 - early 2017 agreed upon by TCCS and Sports and Recreations Services (SRS)? Against the advice of the Environment Planning Directorate (EPD), or the Land Requests Advisory Committee (LRAC)? (as evidenced in the [Freedom of Information 19/28355](#), part 01- EPSDD).

To answer these questions, I am seeking information about any agreement(s) that The Brindabella Christian College (BCC) have with 'Sports and Recreation', the custodians of the site, which allows BCC to use b23, S41 for car parking to service the college.

Specifically, I am seeking:

- Information, records or correspondence regarding any agreement that Sports and Recreation (either under TAMS, CMTEDD or TCCS) have with BCC, to allow BCC to park on the Lyneham Neighbourhood Oval site.
 - Including, an agreement allowing BCC to park on the site **without** a sporting facility, and any 'further agreements' to allow the BCC to bitumen seal the car park in late 2016 early 2017.

- Any records or correspondence to indicate if the BCC have been granted a 'new' sublease of the car park site (b23, s41) other than the original sublease granted in 2009.
 - If so, please provide a copy of any subsequent sub-leases post the original 2009 sublease for an 'outdoor Sports facility and ancillary thereto car parking'.
 - Is there any correspondence to indicate why the 'new' lease(s) or lease variations were omitted from the register, and why they are not publicly available via [ACTLIS](#) as per the Planning and Development Act, 2007.

Who: I am seeking any records that the current or previous Minister of Sports and Recreation may hold, or that the Sports and Recreation Facilities Executive Branch may hold, or that the wider Transport Canberra and City Services (TCCS) or Chief Minister, Treasury and Economic Development Directorate (CMTEDD) may hold.

This 'agreement' appears to have been made between 2009-2016 and it is unclear which portfolio and executive branch would now manage or hold the historic records of this agreement. The agreement may have been made by 'Sport and Recreation Services' when they were formerly part of TAMS or CMTEDD.

Could TCCS and CMTEDD please work together, or separately, to both source records of this agreement.

Dates: 2009 until today

Why: I am seeking this information to protect public open green spaces in our community, ensure transparency of government decision making, and uphold the ACT Planning and Development Legislation.

Remain anonymous: I would like to please remain anonymous outside of the CMTEDD and TCCS FOI teams, as I have been provided advice to be careful in pursuing information regarding the car park development.



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Dear 

Freedom of information request: Reference 22-146

I refer to your application made under section 30 of the *Freedom of Information Act 2016* (the FOI Act) that was received by Transport Canberra and City Services (TCCS) on 31 October 2022. It is my understanding that you are seeking access to the following information:

- A. Information, records or correspondence regarding any agreement that Sports and Recreation (either under TAMS, CMTEDD or TCCS) have with BCC (Brindabella Christian College), to allow BCC to park on the Lyneham Neighbourhood Oval site. Including, an agreement allowing BCC to park on the site without a sporting facility, and any 'further agreements' to allow the BCC to bitumen seal the car park in late 2016 early 2017.
- B. Any records or correspondence to indicate if the BCC have been granted a 'new' sublease of the car park site (b23, s41) other than the original sublease granted in 2009;
 - a. If so, please provide a copy of any subsequent sub-leases post the original 2009 sublease for an 'outdoor Sports facility and ancillary thereto car parking'.
 - b. Is there any correspondence to indicate why the 'new' lease(s) or lease variations were omitted from the register, and why they are not publicly available via ACTLIS as per the Planning and Development Act, 2007''.

Authority

I am an Information Officer appointed by the Director-General under section 18 of the FOI Act to deal with access applications made under Part 5 of the Act.

Timeframes

In accordance with section 40 of the Act TCCS was required to provide you with a decision on your application by November 2022. I thank you for agreeing to an extension until 12 December 2022.

Decision on access

A search of TCCS records to has been completed.

One record relevant to part A of your application has been identified. This record is the sublease referred to in your application, which is publicly available for purchase on the [Access Canberra website](#).

No other records have been identified to be held by TCCS in relation to agreeing to the sealing of the carpark. In accordance with section 45 of the FOI Act, I am refusing to deal with this part of your application, as the only relevant information held by TCCS is already available to you.

In relation to part B of your application, no relevant records have been identified to be held by TCCS. I note that in the background within your application, you have referred to a record which suggests an additional sublease has been issued. I have been advised that the reference was regarding a hypothetical process that would be necessary if the relevant development application or direct sale of land had proceeded. As neither process went ahead, an amended or new sublease was not pursued. I am confident that the search of records is reasonable and exhaustive, and no relevant records are held.

I note that on 27 October 2022 you raised other questions of TCCS, and I'm pleased to also provide answers to those questions.

Question 1: *Are 'Sports and Recreation Facilities' the custodian of the site?*

Answer: TCCS are the land custodian, as specified in the Crown Lease.

Question 2: *Which directorate 'Sports and Recreation Facilities' falls under?*

Answer: Sports and Recreation Facilities sit within the City Services Division of TCCS.

Question 3: *Is Minister Berry the Minister responsible for the custodianship of the Lyneham Neighbourhood Oval (block 23, section 41 Lyneham)? Or is she NOT the Minister responsible for Custodianship of the site?*

Answer: The Lyneham Neighbourhood Oval is Urban Open Space (PRZ1). The custodianship of Urban Open Space land is generally attended to by City Services, for which Minister Steel is the responsible Minister.

Charges

Pursuant to *Freedom of Information (Fees) Determination 2018* fees are applicable where a release of information exceeds 50 pages. No fee is applicable to this application, as no information is to be disclosed.

Disclosure log

Under section 28 of the Act, TCCS maintains an online record of access applications called a disclosure log. Your original access application and my decision will be published on the TCCS disclosure from 3 days after the date of this decision.

Your personal contact details will not be published. You may view the TCCS' disclosure log at http://www.tccs.act.gov.au/about-us/freedom_of_information.

Ombudsman review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in TCCS' disclosure log or a longer period allowed by the Ombudsman.

If you wish to request a review of my decision, you may write to the Ombudsman at:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601
Via email: actfoi@ombudsman.gov.au

ACT Civil and Administrative Tribunal (ACAT) review

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from ACAT at:

ACT Civil and Administrative Tribunal
Level 4, 1 Moore Street
GPO Box 370
CANBERRA CITY ACT 2601
Telephone: (02) 6207 1740
<http://www.act.act.gov.au/>

If you have any queries concerning the directorate's processing of your request, or would like further information, please contact the TCCS FOI team on (02) 6207 2987 or email to tccs.foi@act.gov.au.

Yours sincerely



Cherie Hughes
Information Officer

12 December 2022