

**IN THE AUSTRALIAN CAPITAL TERRITORY  
CIVIL AND ADMINISTRATIVE TRIBUNAL**

**AT 55/2023**

**Lyneham Community Association Inc  
Brindabella Christian Education Ltd ACN 100 299 669  
trading as Brindabella Christian College  
Australian Capital Territory (as represented by  
Transport Canberra & City Services)**

Applicant  
First Party Joined  
Second Party Joined

and

**ACT Planning and Land Authority**

Respondent

Tribunal: **Senior Member M Orlov  
Senior Member G Trickett**

Date of Order: **07 December 2023**

**ORDER**

**The Tribunal Orders:**

1. The deemed decision of the respondent to refuse to make a controlled activity order applied for by the applicant on 8 December 2022 is set aside and substituted by a decision to make a controlled activity order in accordance with the schedule.
2. Any party has liberty to apply on 21 days' notice in writing for an order varying the date on which the order for demolition and reinstatement in paragraph 4(c) of the controlled activity order comes into effect or varying the period within which the order must be complied with after it comes into effect.
3. The first party joined has liberty to apply on 21 days' notice in writing for an order:
  - (a) varying the terms of paragraph 8; or
  - (b) revoking the controlled activity order in the event the first party joined obtains development approval for a carpark or other approved use, or the development and use of the premises as a carpark ceases to be a controlled activity.

**Senior Member M Orlov**



## SCHEDULE

1. This controlled activity order is made pursuant to sections 68(3) of the *ACT Civil and Administrative Tribunal Act 2008* and section 351 of the *Planning and Development Act 2007 (PD Act)*.
2. The order is directed to Brindabella Christian Education Limited (ACN 100 299 669) trading as Brindabella Christian College (**the Lessee**).
3. The order applies to premises comprising the part of Block 23 Section 41 Lyneham identified as Area 1 in Subleasing Plan number 6664 (**the Premises**) in the sublease between the Australian Capital Territory (**the Lessor**) and the Lessee dated 23 July 2009 (**the Sublease**).
4. The Lessee:
  - (a) must not use or permit invitees of the Lessee to use the Premises as a carpark;
  - (b) must not use or permit invitees of the Lessee to use the Premises as a drive-through access point for dropping off or picking up school children (including children attending the early childhood learning centre) before, during or after school hours;
  - (c) must demolish the carpark and restore the Premises to their condition as at 30 June 2009 within 12 months from the date this paragraph 4(c) takes effect.
5. The grounds on which this order is made are that the Lessee has undertaken a development for which development approval is required without obtaining development approval, specifically -
  - (a) the Lessee and invitees of the Lessee (including members of staff, students, parents and visitors) have used the Premises since 30 June 2009 as a carpark with driveway access from Brigalow Street without development approval having been granted for such use and in breach of clause 8.1 of the Sublease;
  - (b) the Lessee constructed, or caused to be constructed an approximately 130 vehicle capacity sealed carpark on the Premises with driveway access from Brigalow Street without development approval and in breach of clauses 8.1 and 9.1 of the Sublease;
  - (c) since then, the Lessee and invitees of the Lessee (including members of staff, students, parents and visitors) have continued to use the Premises as a carpark with driveway access from Brigalow Street without development approval having been granted for such use and in breach of clause 8.1 of the Sublease; and
  - (d) the Lessee and invitees of the Lessee have continue to use the Premises as a drive-through access point from Brigalow Street for dropping off and picking up school children (including children attending the early childhood learning centre) before, during and after school hours without development approval having been granted for such use and in breach of clauses 8.1 and 9.1 of the Sublease.
6. Paragraphs 4(a) and (b) take effect on 8 December 2023 and end when demolition of the carpark and restoration of the Premises is completed in accordance with paragraph 4(c) or the order is revoked, whichever happens first.



7. Subject to paragraph 8, paragraph 4(c) takes effect on 15 December 2023 and ends when demolition of the carpark and restoration of the Premises is completed or the order is revoked, whichever happens first.
8. Conditional upon the Lessee, within 7 days of the date of this order, installing and maintaining temporary construction fencing at the entrance to the Premises (which may include a locked gate) that restricts vehicular access to the carpark from Brigalow Street, the date on which paragraph 4(c) takes effect is deferred for a period of 12 months unless the order is revoked.
9. This controlled activity order operates until it is revoked or ends in accordance with the order.



**Senior Member M Orlov**