

SECTION 249 LOCAL GOVERNMENT ACT 1999

CERTIFICATE OF VALIDITY

I, FELICE D'AGOSTINO of 45 Pirie Street, Adelaide SA 5000, being a legal practitioner within the meaning of the *Legal Practitioners Act 1981*, declare that I have examined the following by-law which The Berri Barmera Council intends to make, and do certify that in my opinion:

- (a) the said Council has power to make the by-law by virtue of the following statutory provisions:

Dog and Cat Management Act 1995, Sections 90(1), 90(3);

Local Government Act 1934, Section 667(1) paragraph 9.XVI;

Local Government Act 1999, Section 246(1)(a) and 246(3);

Acts Interpretation Act 1915, Section 39;

- (b) the by-law is not in conflict with the *Local Government Act 1999* or any other Act.

DATED the 18 day of September 2013



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Felice D'Agostino, Legal Practitioner

THE BERRI BARMERA COUNCIL

*By-law made under the Dog and Cat Management Act 1995
and the Local Government Act 1999*

By-Law No. 5 – Dogs

For the control of dogs within the area, to limit the number of dogs kept in premises and for the management of dogs in the Council's area.

1. Definitions

In this by-law:

- 1.1 **Act** means the *Dog and Cat Management Act 1995*;
- 1.2 **approved kennel establishment** means a building, structure or area approved by the relevant authority, pursuant to the *Development Act 1993*, for the keeping of dogs on a temporary or permanent basis;
- 1.3 **authorised person** means a person appointed as a dog management officer under Section 27 of the Act and an authorised person under Section 260 of the *Local Government Act 1999*;
- 1.4 **council land** means all parklands, reserves, ornamental grounds, streets, roads, bridges, public places and other land owned or under the care, conduct and management of the Council;
- 1.5 **dog** has the same meaning as the Act;
- 1.6 **effective control** means a person exercising effective control of a dog either:
- 1.6.1 by means of physical restraint; or

1.6.2 by command, the dog being in close proximity to the person and the person being able to see the dog at all times;

1.7 **premises** means any domestic and non-domestic premises, except an approved kennel establishment;

1.8 **small dwelling** means a flat, a service flat, home unit, or a suite of rooms which is wholly occupied, or designed or intended or adapted to be occupied, as a separate dwelling, but does not include a detached, semi-detached or row dwelling house;

1.9 **working dog** means a dog used principally for the droving or tendering of stock.

2. **Limit on Dog Numbers**

2.1 The limit on the number of dogs shall be:

2.1.1 in a small dwelling, one dog; and

2.1.2 in premises other than a small dwelling, two dogs.

2.2 No person shall, without obtaining written permission of the Council, keep any dog on any premises where the number of dogs exceeds the limit:

2.2.1 unless the premises is an approved kennel establishment; or

2.2.2 the council has exempted any premises from compliance with Clause 2 of this by-law by the granting of an exemption; or

2.2.3 other than working dogs kept in rural areas.

3. **Dog Free Areas**

A person must not on any Council land to which this paragraph applies cause, suffer or permit any dog under that person's control, charge or authority to be in, or remain in that place.

4. **Dogs on Leashes**

A person must not on any Council land to which this paragraph applies cause, suffer or permit any dog (except guide dogs guiding a person who is wholly or partially blind; or wholly or partially deaf), under that person's control, charge or authority to be or remain in that place unless such dog is restrained by a strong leash not exceeding 2 metres in length and either tethered securely to a fixed object or held by a person capable of controlling the dog and preventing it from being a nuisance or danger to other persons.

5. **Dog Exercise Areas**

5.1 Any person may enter upon any part of Council land to which this paragraph applies for the purpose of exercising a dog under his or her effective control;

5.2 Where a person enters upon such part of Council land for that purpose, he or she shall ensure that the dog or dogs under his or her control remain under effective control while on the land;

5.3 Signs shall be erected to denote land to which this paragraph applies.

6. **Orders**

6.1 If a person engages in conduct that is in contravention of this by-law, an authorised person may order that person:

6.1.1 if the conduct is still continuing – to stop the conduct; and

6.1.2 whether or not the conduct is still continuing – to take specified action to remedy the contravention.

6.2 A person must comply with an order under this clause.

6.3 If a person does not comply with an order, the authorised person may take action reasonably required to have the order carried out, and the Council may recover its costs of any action so taken from the person to whom the order was directed.

6.4 However, an authorised person may not use force against a person under this clause.

7. Application of Paragraphs

7.1 Any of paragraphs 3, 4 and subparagraph 5.1 of this by-law shall apply only in such portion or portions of Council land as the Council may by resolution direct in accordance with Section 246(3)(e) of the *Local Government Act, 1999*.

7.2 The limits prescribed in paragraph 5 of this by-law do not include any dog that is under three (3) months of age.

The foregoing by-law was duly made and passed at a meeting of the Berri Barmera Council held on the *26th* day of *November* 2013 by an absolute majority of the members for the time being constituting the Council, there being at least two thirds of the members present.


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Mr David Beaton
Chief Executive Officer

THE BERRI BARMERA COUNCIL
REPORT TO COUNCIL - NATIONAL COMPETITION POLICY
DOGS BY-LAW 2013

Status

This by-law has been identified as one which will not have the potential to restrict competition

Report

This by-law has been reviewed in light of the National Competition Policy.

Objectives of the By-law

To provide for the control of dogs within the Council area to limit the number of dogs kept in premises and for the management of dogs in the Council area.

The objectives of the by-law include:

- protecting the comfort and safety of residents in the Council area,
- establishing areas within the Council area that are dog free or in which dogs must be on leashes and restrained or in which dogs are permitted to exercise under effective control of their owners;
- establishing a limitation on the number of dogs kept on premises within the Council area.

There is no potential to restrict competition within the provisions of the *Dogs By-law 2013*, taking into account any likely benefit or detriment to the community.

Recommendation:

That the Council, following consideration of this report with respect to National Competition Policy, adopt the Dogs By-law 2013 as drafted.