

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:

Local Government Act 1934, Section 667(1), paragraphs 3.LIV, 4.1 and 9.XVI and Section 791;

Local Government Act 1999, Section 238(1), 238(2), 240, 246(1) and 243(3);

Harbors and Navigation Act 1993, Section 18A(1);

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 18th day of September 2013



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Felice D'Agostino, Legal Practitioner

THE BERRI BARMERA COUNCIL

By-law made under the Local Government Act 1999

By-Law No. 3 – Local Government Land

For the management and regulation of the use of and access to all land vested in or under the control of Council, including the prohibition and regulation of particular activities on local government land.

1. Definitions

In this by-law:

- 1.1 **animal** includes birds and insects but does not include a dog;
- 1.2 **authorised person** has the same meaning as in the *Local Government Act 1999*;
- 1.3 **camp** includes setting up a camp, causing a tent, caravan or motorhome to remain on the land for the purpose of staying overnight, whether or not any person is in attendance or sleeps on the land;
- 1.4 **electoral matter** has the same meaning as in the *Electoral Act 1985* provided that such electoral matter is not capable of causing physical damage or injury to any person **within** its immediate vicinity;
- 1.5 **emergency worker** has the same meaning as in the *Australian Road Rules and the Road Traffic (Road Rules – Ancillary and Miscellaneous Provisions) Regulations 1999*;
- 1.6 **liquor** has the same meaning as in the *Liquor Licensing Act 1997*;

- 1.7 **local government land** means land vested in or owned by the Council or under the Council's care, control and management (except roads);
- 1.8 **open container** means a container which:
- 1.8.1 after the contents thereof have been sealed at the time of manufacture and:
 - 1.8.1.1 being a bottle, has had its cap, cork or top removed (whether or not it has since been replaced);
 - 1.8.1.2 being a can, it has been opened or punctured;
 - 1.8.1.3 being a cask, has had its tap placed in a position to allow it to be used;
 - 1.8.1.4 being any form of container, it has been opened, broken, punctured or manipulated in such a way as to allow access to the contents thereof; or
 - 1.8.2 is a flask, glass or mug or other container used for drinking purposes;
- 1.9 **public place** means a place (including a place on private land) to which the public has access (except a street or road) but does not include any part of a community parcel divided by a plan of community division under the *Community Titles Act 1996*;
- 1.10 **park** has the same meaning as in the *Local Government Act 1999*;
- 1.11 **reserve** has the same meaning as in the *Local Government Act 1999*;
- 1.12 **road** has the same meaning as in the *Local Government Act 1999*;
- 1.13 **vehicle** has the same meaning as in the *Road Traffic Act 1961*;
- 1.14 **waters** includes a body of water, including a pond, lake, river, creek or wetlands under the Council's care, control and management.

2. **Activities Requiring Permission**

A person must not without permission on any local government land:

2.1 **Advertising**

display, paint or erect any sign or hoarding for the purpose of commercial advertising or any other purpose;

2.2 **Aircraft**

subject to the *Civil Aviation Act 1988*, land any aircraft on, or take off any aircraft from the land;

2.3 **Amplification**

use an amplifier or other device whether mechanical or electrical for the purpose of amplifying sound or broadcasting announcements;

2.4 **Animals**

- 2.4.1 cause or allow any animal to stray into or de-pasture therein;
- 2.4.2 cause or allow an animal to enter, swim, bathe or remain in any waters located on the land;
- 2.4.3 allow any animal to damage any flower bed, garden plot, tree, lawn or other item or place;

2.5 Athletic and ball sports

to which this sub-paragraph applies:

- 2.5.1 promote, organise or take part in any organised athletic sport;
- 2.5.2 play any organised competition sport, as distinct from organised social play;
- 2.5.3 play or practice the game of golf;

2.6 Attachments to trees

attach, hang or fix any rug, blanket, sheet, rope or other material to any tree, shrub, plant, tree guard, notice board, seat, fence, post or other item or structure which is the property of the Council;

2.7 Bees

place a hive of bees on such land, or allow it to remain thereon;

2.8 Burials and Memorials

- 2.8.1 bury, inter or spread the ashes of any human or animal remains;
- 2.8.2 erect any memorial;

2.9 Camping and tents

camp or remain overnight provided that this clause does not apply to a person where the person camps:

- 2.9.1 in a caravan or motor home; and
- 2.9.2 within 200m of a sign displayed by the Council indicating that camping in a caravan or motorhome is permitted on that land;

2.10 Closed lands

enter or remain on any part of local government land:

- 2.10.1 at any time during which the Council has declared that the part shall be closed to the public, and which is indicated by a sign adjacent to the entrance to that part;
- 2.10.2 where land is enclosed with fences and/or walls, and gates, at any time when the gates have been closed and locked; or
- 2.10.3 where admission charges are payable, to enter without paying those charges;

2.11 Depositing soil

deposit any soil, clay, gravel, sand, timber, stones, pebbles or any other matter on the land;

2.12 Donations

ask for or receive or indicate that he or she desires a donation of money or any other valuable item or thing;

2.13 Encroachment

erect or place any fencing, posts or other structures or any other items or substance such as to encroach onto the land;

2.14 Entertaining

2.14.1 sing, busk or play a musical instrument for the purpose of, or so as to appear to be for the purpose of entertaining others whether or not receiving money;

2.14.2 conduct or hold a concert, festival, show, circus, performance or similar activity;

2.15 Fauna

2.15.1 take, interfere with or disturb any animal or bird or the eggs or young of any animal or bird;

2.15.2 disturb, interfere with or damage any burrow, nest or habitat of any animal or bird; or

2.15.3 use, possess or have control of any device for the purpose of killing or capturing any animal or bird;

2.16 Fires

light any fire except:

2.16.1 in a place provided by the Council for that purpose; or

2.16.2 in a portable barbeque, as long as the barbeque is used in an area that is clear of flammable material for a distance of four (4) metres;

2.17 Fireworks

ignite, discharge or use any fireworks;

2.18 Flora

2.18.1 take, uproot or damage any plant;

2.18.2 remove, take or disturb any soil, stone, wood, tender or bark;

2.18.3 collect or take any dead wood or timber for the purpose of using the same to make or maintain a fire; or

2.18.4 ride or drive any vehicle or allow an animal to run, stand or walk on any flowerbed or garden plot;

2.19 Games

2.19.1 participate in any game recreation or amusement which involves the use of a ball, missile or other object which by the use thereof may cause or be likely to cause injury or discomfort to any person being on or in the vicinity of that land or detract from or be likely to detract from another person's lawful use and enjoyment of that land;

2.19.2 fly any model aircraft or operate any power model boat from or on any local government land;

2.20 Horses, cattle etc

ride, lead or drive any horse, cattle, sheep and other like animal except where the Council has set aside a track or other area for use by or in connection with the animal of that kind;

2.21 Mooring

2.21.1 moor any boat, house boat, raft or other water craft on or to local government land or in any area that the Council has not set aside for the mooring of any boat, raft or other water craft; or

2.21.2 obstruct any boat, raft or other water craft or any mooring place, or any access to any boat, raft, object (either floating or sunk);

2.22 No liquor

to which this sub-paragraph applies:

2.22.1 consume, carry or be in possession or charge of any liquor (provided the land constitutes a park or reserve) save and except on premises in respect of which a licence is in force pursuant to the *Liquor Licensing Act 1997*;

2.22.2 excepting sealed containers, consume, carry, be in possession or charge of any liquor in an open container (provided the land constitutes a park or reserve) save and except on premises in respect of which a licence is in force pursuant to the *Liquor Licensing Act 1997*;

2.23 Overhanging articles

suspend or hang any article or thing from any building, verandah, pergola, post or other structure where it might present a nuisance or danger to any person using local government land;

2.24 Picking fruit

pick fruit, nuts or berries from any trees or bushes;

2.25 Playing area

use or occupy a playing area:

2.25.1 in such a manner as to damage or be likely to damage the surface of the playing area or infrastructure (above and under ground level);

2.25.2 in a manner contrary to the purpose for which the playing area was intended to be used or occupied; or

2.25.3 contrary to directions of the Council made by resolution and indicated on a sign displayed adjacent to the playing area;

2.26 Posting of bills

post or allow or cause to be posted any bills, advertisements or other papers or items on a building or structure on local government land or in a public place;

2.27 Removing soil

carry away or remove any soil, sand, timber, stones, pebbles, other organic or inorganic materials or any part of the land;

2.28 Rubbish and rubbish dumps

- 2.28.1 interfere with, remove or take away any rubbish that has been discarded at any rubbish dump on local government land;
- 2.28.2 remove, disperse or interfere with any rubbish (including bottles, newspapers, cans, containers or packaging) that has been discarded in a Council rubbish bin on local government land;

2.29 Skateboards and small wheeled vehicles

to which this sub-paragraph applies ride on a skateboard or use roller skates or blades or any other small wheeled vehicle;

2.30 Smoking

to which this subparagraph applies smoke tobacco or any other substance;

2.31 Swimming and aquatic activity

to which this sub-paragraph applies, enter, swim or engage in any aquatic activity in or on any body of water except:

- 2.31.1 a body of water that the Council has set aside for that purpose; or
- 2.31.2 in an area where a nearby sign states that such activity is allowed and, in accordance with any conditions stated in the sign;

2.32 Trading

- 2.32.1 carry on the business of buying, selling, offering or exposing for sale or the hiring or leasing of any goods, merchandise, commodity, article, service or thing; or
- 2.32.2 set up a van or other vehicle or stall or other structure, tray, carpet, or device for the purpose of buying, selling, offering or exposing for sale or the hiring or leasing of any goods, merchandise, commodity, article, service or thing;

2.33 Use of boats and boat ramps

- 2.33.1 use or launch a boat or other object in any body of water except:
 - (a) a body of water that the Council has set aside for that purpose; or
 - (b) in an area where a nearby sign states that such activity is allowed and, in accordance with any conditions stated in the sign;
- 2.33.2 launch or retrieve a boat other than from a boat ramp constructed for that purpose;
- 2.33.3 hire out a boat from any part of a body of water;

2.34 Vehicles

- 2.34.1 drive or propel a vehicle except on an area or road constructed and identified by the Council for that purpose, by means of signs, devices or fencing and the like;
- 2.34.2 promote, organise or take part in a race, test or trial of any kind in which vehicles take part, except on an area properly constructed for that purpose;

2.35 Weddings

conduct or participate in a marriage ceremony;

2.36 Working on vehicles

perform the work of repairing, washing, painting, panel beating or other work of any nature on or to any vehicle, except for running repairs in the case of breakdown;

3. Prohibited Activities

A person must not on local government land:

3.1 Animals

3.1.1 send, drive, lead, ride or take any animal or permit any animal to be sent, driven, led, ridden or taken on any land which the Council has, by resolution, declared to be prohibited for such purpose;

3.1.2 allow any animal to be let loose or left unattended on any land which the council has, by resolution, declared to be prohibited for such purpose;

3.2 Annoyances

3.2.1 annoy, commit any nuisance or unreasonably interfere with any other person's use of local government land by making a noise or by creating a disturbance that has not been authorised by the Council;

3.2.2 spit, urinate or defecate other than in toilets provided on any local government land;

3.3 Camping

fail to keep the area on which he or she is camped in the surrounds in a clean, tidy and sanitary condition;

3.4 Defacing property

deface, paint, write, cut names or make marks on any tree, rock, gate, fence, building, sign or other property of the Council therein;

3.5 Directions

fail to comply with any reasonable direction or request from an authorised person relating to:

3.5.1 that person's use of the land;

3.5.2 that person's conduct and behaviour on the land;

3.5.3 that person's safety on the land; or

3.5.4 the safety and enjoyment of the land by other persons;

3.6 Fishing

3.6.1 fish in any waters to which the Council has resolved this subparagraph shall apply;

3.6.2 fish from any bridge or other structure to which the Council has resolved this subparagraph shall apply;

3.7 Flora

collect or take any dead wood or timber for the purpose of using the same to make or maintain a fire;

3.8 Glass

wilfully break any glass, china or other brittle material;

3.9 Interference with land

3.9.1 interfere with the land such as levelling or flattening sand hills, planting grass, lawn or other vegetation, paving the land, or otherwise use the land in a manner contrary to the purpose for which the land was designed to be used; or

3.9.2 destroy, damage or deface or cause or permit to be destroyed, damaged or defaced any article, structure, building or thing fixed to local government land;

3.10 Interference with permitted use

interrupt or disrupt or interfere with any person's use of parks or reserves for which permission has been granted;

3.11 Missiles

throw, roll or discharge any stone, substance or missile to the danger of any person or animal therein;

3.12 Obstruction

obstruct:

3.12.1 any path in or on any local government land;

3.12.2 any door entrance stairway or aisle in any building in or on any local government land; or

3.12.3 any gate or entrance to, in or on local government land;

3.13 Toilets

in any public convenience:

3.13.1 urinate other than in a urinal or pan or defecate other than in a pan set apart for that purpose:

3.13.2 smoke tobacco or any other substance;

3.13.3 deposit anything in a pan, urinal or drain which is likely to cause a blockage;

3.13.4 use it for a purpose for which it was not designed or constructed;

3.13.5 enter any toilet that is set aside for use of the opposite sex except where:

(a) a child under the age of five years accompanied by an adult person of that other sex; and/or

(b) to provide assistance to a disabled person;

3.14 Use of equipment

use any item of equipment and/or facilities or other council property:

3.14.1 other than in the manner and for the purpose for which it was designed or set aside; and

3.14.2 where any nearby sign states the conditions of use, except in accordance with such conditions.

4. Removal of Encroachment or Interference

Any person who encroaches onto or interferes with local government land contrary to this by-law must, at the request in writing of an authorised person, cease the encroachment or interference and remove the source of the encroachment or interference, and reinstate the land to the same standard as the state of the land prior to the encroachment or interference.

5. Council May Do Work

If a person fails to remove an encroachment or interference on local government land in accordance with a request of an authorised officer pursuant to Clause 4 of this by-law, then the Council may:

- 5.1 undertake the work itself; and
- 5.2 recover the cost of doing so from that person.

6. Removal of Animals and Directions to Persons

Animals

- 6.1 If any animal is found on part of local government land in breach of a by-law any person in charge of the animal shall forthwith remove it from that part on the request of any authorised person.
- 6.2 An authorised person may remove the animal if a person fails to comply with the request, or if no person is in charge of the animal.

Directions

- 6.3 A person on local government land must comply with a reasonable direction from an authorised person relating to:
 - 6.3.1 that persons use of the land;
 - 6.3.2 that persons conduct and behaviour on the land;
 - 6.3.3 that persons safety on the land; or
 - 6.3.4 the safety and enjoyment of other persons on the land.
- 6.4 a person who, in the opinion of an authorised person, is likely to commit or has committed, a breach of this by-law must immediately comply with a direction of an authorised person to leave that part of local government land.

Recovery

- 6.5 If a person fails to comply with an order of an authorised person made pursuant to section 262 of the *Local Government Act 1999* in respect of a breach of this by-law, the Council may recover its costs and expenses of any action taken under Section 262(3) of the *Local Government Act 1999* from the person to whom the order was directed.

7. Exemptions

- 7.1 The restrictions in this by-law do not apply to any Police Officer, Council Officer or employee acting in the course and within the scope of that person's normal duties, or to a contractor while performing work for the Council and while acting under the supervision of a Council Officer, or an emergency worker when driving an emergency vehicle while driving that vehicle in relation to an emergency situation as defined in the *Road Traffic (Road Rules – Ancillary and Miscellaneous Provisions) Regulations 1999* and the *Australian Road Rules*.

7.2 The restrictions in clause 2.1 and 2.26 of this by-law do not apply to electoral matter authorised by a candidate and which is:

7.2.1 related to a Commonwealth or State election and occurs during the period commencing on the issue of the writ or writs for the election and ending at the close of polls on polling day; or

7.2.2 related to an election under the Act or the *Local Government (Elections) Act 1999* and occurs during the period commencing four weeks immediately before the date that has been set (either by or under either Act) for polling day and ending at the close of voting on polling day; or

7.2.3 related to, and occurs during the course of and for the purpose of a referendum.

8. Application

Paragraphs of this by-law shall apply only in such portion or portions of the area as the Council may by resolution direct in accordance with Section 246(3)(e) of the *Local Government Act 1999*.

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.



Mr David Beaton
Chief Executive Officer

THE BERRI BARMERA COUNCIL

REPORT TO COUNCIL - NATIONAL COMPETITION POLICY

LOCAL GOVERNMENT LAND BY-LAW 2013

Status

This by-law has been identified as one in which parts of the by-law have the potential to restrict competition

Potential Restrictions

This by-law contains certain provisions which may be regarded as having the potential to restrict competition as follows:

- (1) That activities relating to advertising, aircraft, amplification, animals, athletic and ball sports, attachments to trees, bees, burials and memorials, camping and tents, closed lands, depositing soil, donations, encroachments, entertaining, fauna, fires, fireworks, flora, games, horses, cattle etc, mooring, liquor, overhanging articles, picking fruit, playing areas, posting of bills, removing soil, rubbish and rubbish dumps, skateboards and small wheeled vehicles, smoking, swimming and aquatic activity, trading, the use of boats and boat ramps, vehicles, weddings and working on vehicles require the permission of the Council.
- (2) 'Permission' means the permission of the Council given in writing as prescribed in the *Permits and Penalties By-law 2013*.
- (3) The Council may attach conditions to a grant of permission as it thinks fit and may vary or revoke such conditions or impose new conditions by notice in writing to the permit holder.
- (4) Any permit holder shall comply with every such condition.
- (5) The Council may revoke such grant of permission at any time by notice in writing to the permit holder.

Objectives of the by-law

To provide for the management and regulation of the use of and access to local government land (other than streets and roads) vested in or under the control of the Council, including the prohibition and regulation of particular activities on local government land.

The objectives of the by-law include:

- the prevention of damage to local government land;
- the prevention and suppression of nuisances;
- protecting the convenience, comfort and safety of the residents in the Council's area;
- protecting the amenity of the Council area.

Does the by-law restrict competition?

The requirement to obtain a permit has the potential to restrict competition by limiting the number of providers of goods or services and/or by restricting the space or area the permit holder may occupy.

Additionally, it contains an administrative discretion in favour of the Council that can be used selectively without any objective criteria.

Alternative means of achieving the same result

There are no directly relevant alternative means of regulating these activities when carried out on local government land.

Is the by-law an appropriate method of control? Do the benefits outweigh costs to the community?

1. The cost to the person requiring the permit will include:
 - the administrative costs in making the application;
 - any permit fee;
 - the costs of compliance with the conditions, for example, finding another site on which to carry out the particular activity.
2. The cost to the Council will include:
 - the administrative costs in making the by-law;
 - the administrative costs in considering the application;
 - staffing costs of supervision and enforcement of the by-law.
3. The benefits to the community will include:
 - the proper management of local government land on behalf of the community;
 - the approval of suitable applicants who will comply with safety, health and hygiene standards;
 - a reduction in the level of inconvenience which could be caused to members of the public by unregulated conduct.
4. There appear to be no substantial costs to the community by the enactment of this by-law.

Summary

The potential restrictions on competition within the provisions of the *Local Government Land By-law 2013* favour the community by proper control of activities on local government land over which the Council has a responsibility to manage properly as trustees for the community at large.

The cost to the applicant and the community (if any) are outweighed by the benefits for the community to be achieved from the by-law.

It should also be noted that in any event very few of the costs and benefits are likely to be measurable in financial terms.

Recommendation

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