

## 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 239(1)(b), 239(1)(c), 239(1)(d), 239(1)(e), 239(1)(f), 240, 246(1) and 246(3);

Local Government (General) Regulations 1999, Regulation 18A;

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



Felice D'Agostino, Legal Practitioner

### THE BERRI BARMERA COUNCIL

*By-law made under the Local Government Act 1999*

#### By-Law No. 4 – Roads

*For the management, control and regulation of activities on roads vested in or under the control of the Council.*

#### 1. Definitions

In this by-law:

- 1.1 **animal** includes birds, insects and poultry but does not include a dog or cat;
- 1.2 **authorised person** has the same meaning as in the *Local Government Act 1999*;
- 1.3 **camp** includes setting up a camp, or 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 **emergency vehicle** has the same meaning as in the *Australian Road Rules 1999* and the *Road Traffic (Road Rules – Ancillary and Miscellaneous Provisions) Regulations 1999*;
- 1.5 **electoral matter** has the same meaning as in the *Electoral Act 1995* provided that such electoral matter is not capable of causing physical damage or injury to any person within its immediate vicinity;
- 1.6 **road** has the same meaning as in the *Local Government Act 1999*.

## **2. Activities Requiring Permission**

A person must not without permission on any road:

### **2.1 Amplification**

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

### **2.2 Animals**

2.2.1 cause or allow an animal to stray onto, move over, or graze on a road except where the Council has set aside a track or other area for use by or in connection with an animal of that kind, and provided the animal or animals are under effective control;

2.2.2 lead, herd or exercise an animal in such a manner as to cause a nuisance or endanger the safety of a person;

### **2.3 Camping and tents**

2.3.1 erect a tent or other structure of calico, canvas, plastic or other similar material as a place of habitation;

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

2.3.2.1 in a caravan or motorhome; and

2.3.2.2 within 200m of a sign displayed by the Council indicating that camping in a caravan or motorhome is permitted on that road;

### **2.4 Canvassing**

convey any advertising, religious or other message to any bystander, passer by or other person provided that this restriction shall not apply to any handbill or leaflet given out or distributed by or with the authority of a candidate during the course of a Federal, State or Local Government Election or to a handbill or leaflet given out or distributed during the course and for the purpose of a Referendum;

### **2.5 Donations**

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

### **2.6 Horses, cattle etc**

2.6.1 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;

2.6.2 stand, draw up or allow to remain stationary any horse, cattle, sheep and other like animal whether attached to a vehicle;

### **2.7 Obstructions**

erect, install or place or cause to be erected, installed or placed any structure, object or material of any kind so as to obstruct a road or footway, water-channel, or watercourse in a road;

### **2.8 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 a road;

**2.9 Public exhibitions and displays**

- 2.9.1 sing, busk, play a recording or use a music instrument, or perform similar activities;
- 2.9.2 conduct or hold a concert, festival, show, circus, performance or a similar activity;
- 2.9.3 erect a stage or structure for the purpose of conducting or holding a concert, festival, show, circus, performance or a similar activity;
- 2.9.4 cause any public exhibitions or displays;

**2.10 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. Removal of Animals and Directions to Persons**

- 3.1 If any animal is found on part of a road 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.
- 3.2 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.
- 3.3 An authorised person may direct any person who is considered to be committing or has committed a breach of this by-law to leave that part of the road. Failure to comply with that direction forthwith is a breach of this by-law.
- 3.4 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.

**4. Exemptions**

- 4.1 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*.
- 4.2 The restrictions in clauses 2.4 and 2.8 of this by-law do not apply to electoral matter authorised by a candidate and which is:
  - 4.2.1 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
  - 4.2.2 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
  - 4.2.3 related to, and occurs during the course of and for the purpose of a referendum.

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**

#### **ROADS 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**

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

- (1) That activities relating to amplification, animals, camping and tents, canvassing, donations, horses, cattle etc, obstructions, posting of bills, public exhibitions and displays and working 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, control and regulation of activities on streets and roads vested in or under the control of the Council.

The objectives of the by-law include:

- the prevention of damage to streets and roads in the Council area;
- the prevention and suppression of nuisances;
- protecting the convenience, comfort and safety of the residents in 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 and services and 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 is no directly relevant alternative means of regulating the activities when carried out on streets and roads.

**Is the by-law an appropriate method of control?  
Do the benefits outweigh the 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 streets and roads 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 that 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 *Roads By-law 2013* favour the community by proper control of activities on streets and roads 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 *Roads By-law 2013* as drafted.**