SECTION 249 LOCAL GOVERNMENT ACT 1999

CERTIFICATE OF VALIDITY

I, CIMON ANGELA BURKE care of Level 6, 19 Gilles Street, Adelaide in the State of South Australia, being a legal practitioner within the meaning of the *Legal Practitioners Act 1981*, declare that I have examined the following By-law:

BERRI BARMERA COUNCIL

By-law No 1 – Permits and Penalties By-law 2025

This By-law is to create a permit system for Council By-laws, to fix maximum and continuing penalties for offences, and to clarify the construction of Council By-laws.

and do certify that in my opinion:

BERRI BARMERA COUNCIL

has the power to make the By-law by virtue of the following statutory provisions:

Local Government Act 1999: sections 246(1), 246(2), 246(3)(a), 246(3)(c), 246(3)(f) and 246(3)(g);

and the By-law is not in conflict with the *Local Government Act 1999*.

DATED the 11 day of July 2025

.....

Cimon Burke, Legal Practitioner

BERRI BARMERA COUNCIL

PERMITS AND PENALTIES BY-LAW 2025

By-law No. 1 of 2025

A By-law to create a permit system for Council By-laws, to fix maximum and continuing penalties for offences, and to clarify the construction of Council By-laws.

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PART 1 – PRELIMINARY

1. Title

This By-law may be cited as the *Permits and Penalties By-law 2025* and is By-law No. 1 of the Council.

2. Authorising Law

This By-law is made under section 246 of the Act.

3. Purpose

The objectives of this By-law are to provide for the good rule and government of the Council area, and for the convenience, comfort and safety of its inhabitants by:

3.1 creating a permit system for Council By-laws;

3.2 providing for the enforcement of breaches of Council By-laws and fixing penalties; and

3.3 clarifying the construction of Council By-laws.

4. Commencement, Revocation and Expiry

4.1 The following By-laws previously made by the Council are revoked from the day on which this By-law comes into operation[1]:

By-law No. 1 – Permits and Penalties 2020.[2]

4.2 This By-law will expire on 1 January 2033.[3]

Note-

1. Generally, a By-law comes into operation 4 months after the day on which it is gazetted pursuant to section249(5) of the Act.
2. Section 253 of the Act provides that the revocation of a By-law by another By-law that contains substantially the same provisions, does not affect certain resolutions such as those applying a By-law to a part or parts of the Council area.
3. Pursuant to section 251 of the Act, a By-law will expire on 1 January following the seventh anniversary of the gazettal of the By-law.

5. Application

This By-law applies throughout the Council's area.

6. Interpretation

In this By-law, unless the contrary intention appears:

6.1 ***Act*** means the *Local Government Act 1999*;

6.2 ***Council*** means the Berri Barmera Council; and

6.3 ***person*** includes a natural person or a body corporate.

6.4 ***prescribed offence*** means an offence against a by-law of the Council relating to the driving, parking or standing of vehicles;

6.5 ***road*** has the same meaning as in the Act, being a public or private street, road or thoroughfare to which public access is available on a continuous or substantially continuous basis to vehicles or pedestrians or both and includes:

6.5.1 a bridge, viaduct or subway; or

6.5.2 an alley, laneway or walkway; and

6.6 ***vehicle*** has the same meaning as in the *Road Traffic Act 1961* and includes:

6.6.1 a motor vehicle trailer and a tram;

6.6.2 a bicycle;

6.6.3 an animal-drawn vehicle, and an animal that is being ridden or drawing a vehicle;

6.6.4 a combination; and

6.6.5 a motorised wheelchair that can travel at over 10 kilometres per hour (on level ground), but does not include another kind of wheelchair, a train, or a wheeled recreational device or wheeled toy.

Note-

Section 12 of the *Legislation Interpretation Act 2021* provides that an expression used in this By-law has, unless the contrary intention appears, the same meaning as in the Act.

7. Construction of By-laws generally

7.1 Every By-law of the Council is subject to any Act of Parliament and Regulations made thereunder.

7.2 In any By-law of the Council and unless the contrary intention appears, permission means permission granted by the Council (or its delegate) prior to the act, event or activity to which it relates and includes:

7.2.1 permission granted specifically to an applicant; or

7.2.2 permission of general application granted by way of the Council adopting a policy of general application for that purpose.

PART 2 – PERMITS AND PENALTIES

8. Permits

8.1 Where a By-law requires that permission be obtained, any person seeking the grant of permission must submit a written application to the Council in the form (if any) and accompanied by the fee (if any) prescribed by the Council.

8.2 The Council (or such other person as may be authorised by the Council) may attach such conditions as it thinks fit to a grant of permission and may vary or revoke such conditions or impose new conditions by notice in writing to the person granted permission.

8.3 A person granted permission under a By-law must comply with every such condition. Failure to do so is an offence (to the extent that it gives rise to a contravention of a By-law).

8.4 The Council (or such other person authorised by the Council) may suspend or revoke a grant of permission under a By-law at any time by notice in writing to the person granted permission.

9. Offences and Penalties

9.1 A person who commits a breach of any By-law of the Council is guilty of an offence and may be liable to pay:

9.1.1 the maximum penalty, being the maximum penalty referred to in the Act that may be fixed by a By-law for any breach of a By-law; or

9.1.2 subject to any resolution of the Council to the contrary, the expiation fee fixed by the Act for alleged offences against By-laws, being a fee equivalent to 25 per cent of the maximum penalty fixed for any breach of a By-law.

9.2 A person who commits a breach of a By-law of the Council of a continuing nature is guilty of an offence and, in addition to any other penalty that may be imposed, is liable to a further penalty for every day on which the offence continues, such penalty being the maximum amount referred to in the Act that may be fixed by a By-law for a breach of a By-law of a continuing nature.

Note-

The maximum penalty for a breach of a By-law is prescribed by section 246(3)(g) of the Act.

Pursuant to section 246(5) of the Act expiation fees may be fixed for alleged offences against By-laws either by a By-law or by resolution of the Council. However, an expiation fee fixed by the Council cannot exceed 25 per cent of the maximum penalty for the offence to which it relates.

10. Liability of Vehicles Owners and Expiation of Certain Offences

10.1 Without derogating from the liability of any other person, but subject to this clause 10, if a vehicle is involved in a prescribed offence, the owner of the vehicle is guilty of an offence and liable to the same penalty or expiation fee as is prescribed for the principal offence.

10.2 The owner and driver of a vehicle are not both liable through the operation of this clause to be convicted of an offence arising out of the same circumstances, and consequently conviction of the owner exonerates the driver and conversely, conviction of the driver exonerates the owner.

10.3 An expiation notice or expiation reminder notice given under the *Expiation of Offences Act 1996* to the owner of a vehicle for an alleged prescribed offence involving the vehicle must be accompanied by a notice inviting the owner, if they were not the driver at the time of the alleged prescribed offence, to provide the Council or officer specified in the notice, within the period specified in the notice, with a statutory declaration:

10.3.1 setting out the name and address of the driver; or

10.3.2 if they had transferred ownership of the vehicle to another prior to the time of the alleged offence and has complied with the *Motor Vehicles Act 1959* in respect of the transfer - setting out details of the transfer (including the name and address of the transferee).

10.4 Before proceedings are commenced against the owner of a vehicle for a prescribed offence, the Informant must send the owner a notice:

10.4.1 setting out particulars of the alleged prescribed offence; and

10.4.2 inviting the owner, if they were not the driver at the time of the alleged prescribed offence, to provide the Informant, within 21 days of the date of the notice, with a statutory declaration setting out the matters referred to in subclause 10.3.

10.5 Subclause 10.4 does not apply to:

10.5.1 proceedings commenced where an owner has elected under the *Expiation of Offences Act 1996* to be prosecuted for the offence; or

10.5.2 proceedings commenced against an owner of a vehicle who has been named in a statutory declaration under this section as the driver of the vehicle.

10.6 Subject to subclause 10.7, in proceedings against the owner of a vehicle for an offence against this paragraph, it is a defence to prove:

10.6.1 that, in consequence of some unlawful act, the vehicle was not in the possession or control of the owner at the time of the alleged prescribed offence; or

10.6.2 that the owner provided the Informant with a statutory declaration in accordance with an invitation given pursuant to this clause 10.

10.7 The defence in subclause 10.6.2 does not apply if it is proved that the owner made the declaration knowing it to be false in a material particular.

10.8 If:

10.8.1 an expiation notice is given to a person named as the alleged driver in a statutory declaration under this paragraph; or

10.8.2 proceedings are commenced against a person named as the alleged driver in such a statutory declaration,

the notice or summons, as the case may be, must be accompanied by a notice setting out particulars of the statutory declaration that named the person as the alleged driver.

10.9 The particulars of the statutory declaration provided to the person named as the alleged driver must not include the address of the person who provided the statutory declaration.

11. Evidence

In proceedings for a prescribed offence, an allegation in an Information that:

11.1 a specified place was a road or local government land; or

11.2 a specified vehicle was driven, parked or left standing in a specified place; or

11.3 a specified vehicle was parked or left standing for the purposes of soliciting business from a person or offering or exposing goods for sale; or

11.4 a specified place was not formed or otherwise set aside by the Council for the purposes of the driving, parking or standing of vehicles; or

11.5 a specified person was an authorised person; or

11.6 a specified provision was a condition of a specified permit granted under paragraph 5 of this by-law; or

11.7 a specified person was the owner or driver of a specified vehicle; or

11.8 a person named in a statutory declaration under clause 10 of this by-law for the prescribed offence to which the declaration relates was the driver of the vehicle at the time at which the alleged offence was committed; or

11.9 an owner or driver of a vehicle for a prescribed offence was given notice under clause 10 of this by-law on a specified day,

is proof of the matters so alleged in the absence of proof to the contrary.

This By-law was duly made and passed at a meeting of the Berri Barmera Council held on **22 July 2025** 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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TIM PFEIFFER
Chief Executive Officer