

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:

**DISTRICT COUNCIL OF KIMBA**

**By-law No 2 – Local Government Land By-law 2024**

*This By-law is to manage and regulate the access to and use of Local Government land (other than roads), and certain public places.*

and do certify that in my opinion:

**DISTRICT COUNCIL OF KIMBA**

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

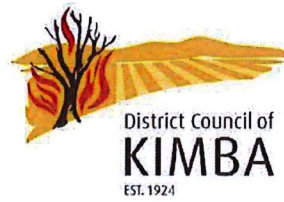
*Local Government Act 1999: sections 238, 246(1), 246(2), 246(3)(a), 246(3)(c), 246(3)(e), 246(3)(f) and 246(3)(h)(iii); and  
Harbors and Navigation Act 1993: section 18A.*

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

**DATED** the 28<sup>th</sup> day of March 2024



.....  
Cimon Burke, Legal Practitioner



**DISTRICT COUNCIL OF KIMBA  
LOCAL GOVERNMENT LAND BY-LAW 2024**

**By-law No. 2 of 2024**

*This By-law is to manage and regulate the access to and use of Local Government land (other than roads), and certain public places.*

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**PART 1 – PRELIMINARY****1. Title**

This By-law may be cited as the *Local Government Land By-law 2024* and is By-law No. 2 of the District Council of Kimba.

**2. Authorising Law**

This By-law is made under sections 238 and 246 of the Act and section 18A of the *Harbors and Navigation Act 1993*.

**3. Purpose**

The objectives of this By-law are to regulate the access to and use of Local Government land (other than roads) and certain public places:

- 3.1 to prevent and mitigate nuisances;
- 3.2 to prevent damage to Local Government land;
- 3.3 to protect the convenience, comfort and safety of members of the public;
- 3.4 to enhance the amenity of the Council's area; and
- 3.5 for the good rule and government of the Council's area.

**4. Expiry**

This By-law will expire on 1 January 2032.<sup>3</sup>

**Note-**

1. Generally, a By-law comes into operation 4 months after the day on which it is gazetted pursuant to section 249(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**

- 5.1 This By-law operates subject to the Council's *Permits and Penalties By-law 2024*.
- 5.2 Subject to subclauses 5.3 and 5.4, this By-law applies throughout the Council area.
- 5.3 Subclauses 9.2, 9.3.2, 9.15.1, 9.15.4, 9.15.5, 9.17.2, 9.24 and 10.7 of this By-law only apply in such part or parts of the Council area as the Council may, by resolution direct in accordance with section 246(3)(e) of the Act.
- 5.4 Subclause 9.7.2, of this By-law applies throughout the Council area except in such parts of the Council area as the Council may by resolution direct in accordance with section 246(3)(e) of the Act.

**6. Interpretation**

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

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

- 6.2 **animal** includes birds and insects but does not include a dog unless otherwise stated;
- 6.3 **aquatic life** means any animal or plant living or growing in water including, but not limited to, yabbies, molluscs, fish, insects, insect pupa or larvae and water plants;
- 6.4 **authorised person** is a person appointed by the Council as an authorised person under section 260 of the Act;
- 6.5 **camp includes** setting up a camp or causing:
- 6.5.1 a tent or other structure of calico, canvas, plastic or other similar material;
- 6.5.2 a swag or similar bedding; or
- 6.5.3 subject to the *Road Traffic Act 1961*, a caravan, tent trailer, motor home or other vehicle;
- to remain on the land for the purpose of staying overnight, whether or not any person is in attendance or sleeps on the land;

**Note-**

To avoid doubt, setting up a calico, canvas, plastic or other tent, marquee or similar structure for recreation purposes to provide shade during daylight hours only (and not overnight) is not within the meaning of 'camp'.

- 6.6 **Council** means the District Council of Kimba;
- 6.7 **effective control** means a person exercising effective control of an animal either:
- 6.7.1 by means of a physical restraint; or
- 6.7.2 by command, the animal being in close proximity to the person and the person being able to see the animal at all times;
- 6.8 **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;
- 6.9 **emergency worker** has the same meaning as in the *Road Traffic (Road Rules – Ancillary and Miscellaneous Provisions) Regulations 2014*;
- 6.10 **funeral ceremony** means a ceremony only (i.e. a memorial service) and does not include a burial;
- 6.11 **liquor** has the same meaning as in the *Liquor Licensing Act 1997*;
- 6.12 **Local Government land** means land owned by the Council or under the Council's care, control and management (except roads);
- 6.13 **offensive** includes threatening, abusive, insulting or annoying behaviour and offend has a complementary meaning;
- 6.14 **open container** means a container that:
- 6.14.1 after the contents of the container have been sealed at the time of manufacture:
- 6.14.1.1 being a bottle, it has had its cap, cork or top removed (whether or not it has since been replaced);



- 6.14.1.2 being a can, it has been opened or punctured;
  - 6.14.1.3 being a cask, it has had its tap placed in a position to allow it to be used;
  - 6.14.1.4 being any other form of container, it has been opened, broken, punctured or manipulated in such a way as to allow access to its contents; or
- 6.14.2 is a flask, glass, mug or other container able to contain liquid;
- 6.15 **recreation ground** means Local Government land commonly used for playing sports or games, or accommodating the spectators at any sport or game, and any area of land contiguous thereto and used in connection with it;
- 6.16 **road** has the same meaning as in the Act;
- 6.17 **special event** means an organised gathering of more than fifty (50) persons for any social, sporting or cultural purpose;
- 6.18 **tobacco product** has the same meaning as in the *Tobacco and E-Cigarette Products Act 1997*;
- 6.19 **vehicle** has the same meaning as in the *Road Traffic Act 1961*;
- 6.20 **waters** includes a body of water, including a pond, lake, river, creek or wetlands under the care, control and management of the Council;
- 6.21 **wheeled recreational device** has the same meaning as in the *Road Traffic Act 1961*.

**Note-**

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

## **PART 2 – ACCESS TO LOCAL GOVERNMENT LAND**

### **7. Access**

The Council may:

- 7.1 close, or regulate or restrict access to, any part of Local Government land to the public for specified times and days; and
- 7.2 fix charges or fees payable for entry onto any part of Local Government land.

### **8. Closed Land**

A person must not without permission, enter or remain on any Local Government land:

- 8.1 which has been closed, or in respect of which access by the public is regulated or restricted in accordance with subclause 7.1;
- 8.2 where entry fees or charges are payable, without paying those fees or charges; or
- 8.3 where the land has been enclosed by fences and/or walls and gates that have been closed and locked or, where a sign is displayed at or near the entrance of the land notifying that the land has been closed.

**PART 3 – USE OF LOCAL GOVERNMENT LAND****9. Activities Requiring Permission**

A person must not without the permission of the Council, do any of the following on Local Government land.

**Note-**

Pursuant to section 238(3) of the Act, if a Council makes a By-law about access to or use of a particular piece of Local Government land (under section 238), the Council should erect a sign in a prominent position on, or in the immediate vicinity of, the land to which the By-law applies.

**9.1 Advertising**

Display, paint or erect or cause to be displayed, painted or erected, on Local Government land or a structure, building or fixture on Local Government land any sign, advertising or hoarding for the purpose of commercial advertising or any other purpose.

**9.2 Alcohol**

Consume, carry or be in possession or in charge of any liquor on Local Government land comprising parks or reserves to which the Council has resolved this subclause applies.

**9.3 Animals**

9.3.1 Cause or allow an animal to stray onto, move over, graze or be left unattended.

9.3.2 Lead, herd, drive or exercise an animal on any Local Government Land to which the Council has resolved to apply this subclause.

**9.4 Attachments**

Subject to subclause 9.1, attach or cause to be attached, hang or fix anything to a tree, plant, equipment, fence, post, structure or fixture on Local Government land.

**9.5 Buildings**

Use a building, or structure on Local Government land for a purpose other than its intended purpose and otherwise in accordance with any conditions of use contained on signage in or on the building or structure.

**9.6 Burials and Memorials and Cemeteries**

9.6.1 Bury, inter or spread the ashes of any human or animal remains, including the remains of a dog.

9.6.2 Erect or affix any memorial.

9.6.3 In any cemetery, drive or propel any vehicle except on paths or roads constructed and set aside for that purpose.

**9.7 Camping and Tents**

9.7.1 Subject to this subclause 9.7, erect a tent or other structure of calico, canvas, plastic or similar material as a place of habitation;

9.7.2 Camp or sleep overnight except:

9.7.2.1 in a caravan park on Local Government land, the proprietor of which has been given permission to operate the caravan park on that land; or

9.7.2.2 on Local Government land to which the Council has resolved this clause applies (and thereby designates as a camping area), and in accordance with such time limits and other conditions determined by the Council (if any) and displayed on any signage on or near the land.

9.7.3 Subject to this subclause 9.7, use or occupy or cause, suffer or permit to be used or occupied, any caravan, motorhome or other vehicle on Local Government land for or in connection with camping activities, including (but not limited to), washing, cooking or sleeping.

#### 9.8 Defacing Property

Deface, remove, paint, spray, write upon, cut names, letters or make marks on any tree, rock, gate, fence, object, monument, building, sign, bridge or property of the Council.

#### 9.9 Distribution

Subject to subclause 13.2 and the *Local Nuisance and Litter Control Act 2016*, give out or distribute any book, leaflet or other printed matter to any bystander, passer-by or other person.

#### 9.10 Encroachment

Erect or cause to be erected or placed any fencing, post or other structures or any other items so as to encroach onto the land.

#### 9.11 Entertainment and Busking

9.11.1 Sing, busk or play a recording or use a musical instrument for the apparent purpose of either entertaining others or receiving money.

9.11.2 Conduct or hold a concert, festival, show, public gathering, circus, meeting, performance or any other similar activity.

#### 9.12 Fires

Subject to the *Fire and Emergency Services Act 2005* light a fire except in a place provided by the Council for that purpose.

#### 9.13 Fireworks

Ignite, explode or use any fireworks.

#### 9.14 Flora and Fauna

Subject to the *Native Vegetation Act 1991* and the *National Parks and Wildlife Act 1972*:

9.14.1 plant, damage, pick, cut, disturb, interfere with or remove any plant, tree or flower thereon;

9.14.2 cause or allow an animal to stand or walk on any flower bed or garden plot;



- 9.14.3 deposit, dig, damage, disturb, interfere with, clear or remove any soil, sand stone, wood, clay, gravel, pebbles, timber, bark or any part of the land;
- 9.14.4 take, interfere with, tease, harm or disturb any animal, bird or aquatic life or the eggs or young of any animal, bird or aquatic life;
- 9.14.5 pick, collect, take, interfere with or disturb any fruit, nuts, berries or native seeds;
- 9.14.6 disturb, interfere with or damage any burrow, nest or habitat of any animal or bird;
- 9.14.7 use, possess or have control of any device for the purpose of killing or capturing any animal, bird or aquatic life; or
- 9.14.8 collect or take any dead wood or timber or burn any timber or dead wood;

with the exception that subclauses 9.14.4 and 9.14.7 do not apply to lawful fishing activities.

#### 9.15 **Games and Sport**

- 9.15.1 Participate in, promote or organise any organised competition or sport as distinct from organised social play on any Local Government land to which the Council has resolved this subclause applies.
- 9.15.2 Play or practise any game which involves kicking, hitting or throwing a ball or other object:
  - 9.15.2.1 on Local Government land to which the Council has resolved this subclause applies; and
  - 9.15.2.2 in a manner that causes or is likely to cause injury or discomfort to a 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.
- 9.15.3 Play or practice the game of golf other than on a properly constructed golf course or practice fairway.
- 9.15.4 Engage or participate in or conduct any organised group fitness activity or training on Local Government land to which the Council has resolved this subclause applies.
- 9.15.5 Play or practice any game or sport on Local Government land to which the Council has resolved this subclause applies except at the times determined by the Council and indicated on a sign on or in the vicinity of the land.

#### 9.16 **Interference with Land**

Interfere with, alter or damage the land (including a building, structure or fixture located on the land) including:

- 9.16.1 altering the construction or arrangement of the land to permit or facilitate access from an adjacent property;
- 9.16.2 erecting or installing a structure in, on, across, under or over the land;



- 9.16.3 changing or interfering with the construction, arrangement or materials of the land;
- 9.16.4 planting a tree or other vegetation on the land, interfering with the vegetation on the land or removing vegetation from the land; or
- 9.16.5 otherwise use the land in a manner contrary to the purpose for which the land was designed to be used.

9.17 **Model Aircraft, Boats and Cars**

Subject to the *Civil Aviation Safety Regulations 1998*:

- 9.17.1 fly or operate a model or drone aircraft, boat or model or remote-control vehicle in a manner which may cause or be likely to cause injury or discomfort to a person being on or in the vicinity of the land or detract from or be likely to detract from another person's lawful use of and enjoyment of the land; or
- 9.17.2 fly or operate a model or drone aircraft, boat or model or remote-control vehicle on any Local Government land to which the Council has resolved this subclause applies.

9.18 **Overhanging Articles**

Suspend or hang an article or object from a building, verandah, pergola, post or other structure on Local Government land where it might present, in the reasonable opinion of an authorised person cause either a nuisance or danger to a person using the land or, an unsightly condition.

9.19 **Playing Area**

Use or occupy a recreation ground:

- 9.19.1 in such a manner as to damage or be likely to damage the surface of the recreation ground or infrastructure (above and under ground level);
- 9.19.2 in a manner contrary to the purpose for which the recreation ground was intended to be used or occupied; or
- 9.19.3 contrary to any conditions of the Council displayed on a sign on or in the vicinity of the recreation ground.

9.20 **Rubbish and Rubbish Dumps**

- 9.20.1 interfere with, remove or take away any rubbish that has been discarded at any rubbish dump on Local Government Land.
- 9.20.2 remove, disperse or interfere with any rubbish (including bottles, newspapers, cans, containers or packaging) that has been discarded in a bin on any Local Government Land, or placed on Local Government Land for collection by the Council (or its agent).

9.21 **Trading**

- 9.21.1 Sell, buy, offer or display anything for sale or hire or lease any goods, merchandise, commodity, article or thing.

- 9.21.2 Set up a van or other vehicle, stall, stand, table or other structure, tray, carpet or device for the apparent purpose of buying, selling, offering, displaying or exposing for sale or the hiring or leasing of any goods, merchandise, commodity, article, service or thing.

#### 9.22 Vehicles

- 9.22.1 Drive or propel a vehicle except on any Local Government land constructed or set aside by the Council for that purpose including as may be indicated by signs in or on the area.
- 9.22.2 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.
- 9.22.3 Repair, wash, paint, panel beat or carry out any other work to a vehicle, except for running repairs in the case of a breakdown.

#### 9.23 Weddings, Functions and Special Events

- 9.23.1 Hold, conduct or participate in a marriage ceremony, funeral ceremony or special event.
- 9.23.2 Erect a marquee, stage or structure for the purpose of holding or conducting a wedding, funeral ceremony or special event.
- 9.23.3 Hold or conduct any filming where the filming is for a commercial purpose.

#### 9.24 Wheeled Recreational Devices

Subject to the *Road Traffic Act 1961*, ride a wheeled recreational device on Local Government land to which the Council has resolved this subclause applies.

### 10. Prohibited Activities

A person must not do any of the following activities on Local Government land.

#### 10.1 Animals

- 10.1.1 Cause or allow an animal to damage a flowerbed, garden plot, tree, lawn or like thing or place.
- 10.1.2 Lead, herd or exercise a horse in such manner as to cause a nuisance or endanger the safety of a person.

#### 10.2 Annoyances

- 10.2.1 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.

#### 10.3 Equipment

- 10.3.1 Use any item of equipment, facilities or property belonging to the Council:
- 10.3.1.1 other than in the manner and for the purpose for which it was designed, constructed or intended to be use;
- 10.3.1.2 where any nearby sign states the conditions of use, except in accordance with such conditions; or

10.3.1.3 in such a manner as is likely to damage or destroy it.

10.3.2 Use an item of equipment, facilities or property belonging to the Council if that person is of or over the age indicated by a sign or notice as the age limit for using such equipment, facility or property.

#### 10.4 **Interference with Permitted Use**

Interrupt or unreasonably interfere with any other person's use of Local Government land where the person is using the land in a manner permitted by the Council or in accordance with any permission that has been granted by the Council.

#### 10.5 **Nuisance**

Behave in such an unreasonable manner as to cause discomfort, inconvenience, annoyance or offence to any other person including by using profane, indecent or obscene language.

#### 10.6 **Playing Games**

Play or practice a game or sport:

10.6.1 which is likely to cause damage to the land or anything on it;

10.6.2 which endangers the safety or interferes with the comfort of any person; or

10.6.3 in any area where a sign indicates that the game or sport is prohibited.

#### 10.7 **Smoking**

Subject to the *Tobacco and E-Cigarette Products Act 1997*, smoke, hold or otherwise have control over an ignited tobacco product on any land to which the Council has resolved this subclause applies.

#### 10.8 **Obstruction**

Obstruct:

10.8.1 any path or track;

10.8.2 any door, entrance, stairway or aisle in any building; or

10.8.3 any gate or entrance to or on Local Government land

#### 10.9 **Toilets**

In any public convenience (including toilets, showers or change rooms) on Local Government land:

10.9.1 urinate other than in a urinal or pan or defecate other than in a pan set apart for that purpose;

10.9.2 deposit anything in a pan, urinal or drain which is likely to cause a blockage or damage to the facility, or any drain, pipe or property associated with the facility;

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

10.9.4 enter any gender specific public convenience except:



- 10.9.4.1 if the person is of the gender indicated on a sign or writing located on the public convenience;
- 10.9.4.2 where the person is:
  - (a) a vulnerable person; or
  - (b) a caregiver, parent or guardian and is providing assistance to a vulnerable person in that person's care;
- 10.9.4.3 for the purpose of providing assistance to a person with a disability;
- 10.9.4.4 where the person identifies as gender diverse and is using the public convenience of the gender that the person identifies with, or
- 10.9.4.5 in the case of a genuine emergency.

#### 10.10 Waste

- 10.10.1 Deposit or leave thereon anything obnoxious or offensive.
- 10.10.2 Deposit any rubbish other than in receptacles provided by the Council for that purpose.
- 10.10.3 Deposit in any rubbish bin:
  - 10.10.3.1 any trash or rubbish emanating from a domestic, trade or commercial source; or
  - 10.10.3.2 any rubbish contrary to any information on signs on the bin or in its vicinity.

### PART 4 – ENFORCEMENT

#### 11. Directions & Orders

- 11.1 A person on Local Government land must comply with a reasonable direction from an authorised person relating to:
  - 11.1.1 that person's use of the land;
  - 11.1.2 that person's conduct and behaviour on the land;
  - 11.1.3 that person's safety on the land; or
  - 11.1.4 the safety and enjoyment of other persons on the land.
- 11.2 A person who, in the reasonable opinion of an authorised person, is likely to commit or has committed, a breach of this By-law must immediately comply with an order of an authorised person made pursuant to section 262 of the Act to leave that part of Local Government land.
- 11.3 If a person fails to comply with an order of an authorised person made pursuant to section 262 of the Act in respect of a breach of this By-law, the Council may seek to recover its costs of any action taken under section 262(3) of the Act from the person to whom the order was directed.

**Note-**

Section 262(1) of the Act states:



- (1) If a person (the offender) engages in conduct that is a contravention of this Act or a By-law under this Act, an authorised person may order the offender-
- a) if the conduct is still continuing - to stop the conduct; and
  - b) whether or not the conduct is still continuing- to take specified action to remedy the contravention.

Subsections (2) and (3) of section 262 also provide that it is an offence to fail to comply with an order and that if a person does not comply, the authorised person may take action reasonably required to have the order carried out. For example, an authorised person may order a person to:

- cease smoking on Local Government land;
- remove an object or structure encroaching on Local Government land;
- dismantle and remove a structure erected on Local Government land without permission.

## 12. Removal of Animals and Objects

An authorised person may remove an animal or object that is on Local Government land in breach of a By-law if the authorised officer reasonably believes that no person is in charge of the animal or object.

## PART 5 – MISCELLANEOUS

### 13. Exemptions

- 13.1 The restrictions in this By-law do not apply to any Police Officer, emergency worker, Council officer or Council 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 or in accordance with a direction of a Council officer.
- 13.2 The restrictions in subclause 9.9 of this By-law do not apply to electoral matter authorised by a candidate and which is:
- 13.2.1 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;
  - 13.2.2 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
  - 13.2.3 related to, and occurs during the course of and for the purpose of a referendum.
- 13.3 The Council may, by notice in writing, on application or on its own initiative, exempt a person (or a class of persons) from the operation of a specified provision of this By-law.
- 13.4 An exemption under subclause 13.3:
- 13.4.1 may be granted or refused at the discretion of the Council;
  - 13.4.2 may operate indefinitely or for a period specified in the instrument of exemption;
  - 13.4.3 is subject to any conditions specified in the instrument of exemption;
  - 13.4.4 may be varied (including by way of an additional condition being imposed) by notice in writing to the person to whom the exemption applies; and
  - 13.4.5 may be revoked by the Council by notice in writing for a contravention of a condition of the exemption, or for any other reason that the Council thinks fit.

**14. Liability of Vehicle Owners**

- 14.1 For the purposes of this clause 14, **owner** in relation to a vehicle has the same meaning as contained in section 4 of the Act.
- 14.2 The owner and the driver of a vehicle driven, parked or standing in contravention of this by-law are each guilty of an offence and liable to the penalty as prescribed for that offence.

This By-law was duly made and passed at a meeting of the District Council of Kimba held on 10 April 2024 by an absolute majority of the members for the time being constituting the Council, there being at least two thirds of the members present.



.....  
DEB LARWOOD  
Chief Executive Officer