

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 3 – Roads By-law 2024

This By-Law is for the management, control and regulation of certain activities on roads in the Council's area.

and do certify that in my opinion:

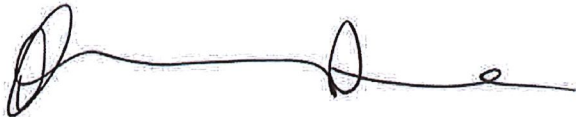
DISTRICT COUNCIL OF KIMBA

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

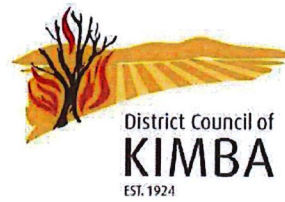
*Local Government Act 1999: sections 239, 246(1), 246(2), 246(3)(a), 246(3)(c), 246(3)(e), 246(3)(f) and 246(3)(h)(iii); and
Local Government (General) Regulations 2013: regulation 28.*

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

DATED the 28th day of March 2024



Cimon Burke, Legal Practitioner



DISTRICT COUNCIL OF KIMBA

ROADS BY-LAW 2024

By-law No. 3 of 2024

A By-law for the management, control and regulation of activities on roads in the Council's area.

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PART 1– PRELIMINARY

1. Title

This By-law may be cited as the *Roads By-law 2024* and is By-law No. 3 of the District Council of Kimba.

2. Authorising Law

This By-law is made under sections 239 and 246 of the Act and regulation 28 of the *Local Government (General) Regulations 2013*.

3. Purpose

The objectives of this By-law are to manage, control and regulate certain uses of roads in the Council area:

- 3.1 to protect the convenience, comfort and safety of road users and members of the public;
- 3.2 to prevent damage to buildings and structures on roads;
- 3.3 to prevent certain nuisances occurring on roads; and
- 3.4 for the good rule and government of the Council's area.

4. Expiry

This By-law will expire on 1 January 2032.

Note-

1. Generally, a By-law comes into operation 4 months after the day on which it is gazetted (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 subclause 5.3, this By-law applies throughout the Council's area.
- 5.3 Subclause 7.2 of this By-law only applies to those 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 7.4.2 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, insects and poultry but does not include a dog;

- 6.3 **authorised person** is a person appointed by the Council as an authorised person under section 260 of the Act;
- 6.4 **camp** includes setting up a camp or causing:
- 6.4.1 a tent or other structure of calico, canvas, plastic or other similar material;
 - 6.4.2 a swag or similar bedding; or
 - 6.4.3 subject to the *Road Traffic Act 1961*, a caravan, 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 thereon;
- 6.5 **Council** means the District Council of Kimba;
- 6.6 **effective control** means a person exercising effective control of an animal either:
- 6.6.1 by means of a physical restraint; or
 - 6.6.2 by command, the animal being in close proximity to the person and the person being able to see the animal at all times;
- 6.7 **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 a person within its immediate vicinity;
- 6.8 **emergency worker** has the same meaning as in the *Road Traffic (Road Rules - Ancillary and Miscellaneous Provisions) Regulations 2014*;
- 6.9 **moveable sign** has the same meaning as in the Act;
- 6.10 **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:
- 6.10.1 a bridge, viaduct or subway; or
 - 6.10.2 an alley, laneway or walkway;
- 6.11 **vehicle** has the same meaning as in the *Road Traffic Act 1961*; and
- 6.12 **waste containers** means a container for the disposal of domestic waste, recyclables or green organics that is used to facilitate the kerbside collection of waste from premises by the Council or its agents or contractors.

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 Acts under which the By-law was made.

PART 2 – USE OF ROADS

7. Activities Requiring Permission

A person must not engage in or undertake any of the following activities on a road without the permission of the Council.

7.1 Advertising

Display, hold or cause to be displayed on a road or on a structure on a road, any poster, advertising or sign for the purpose of advertising goods or services or for any other purpose, other than a moveable sign that is displayed in accordance with the Council's *Moveable Signs By-law 2023*.

Note-

Moveable signs on roads are regulated by sections 226 and 227 of the Act and the Council's *Moveable Signs By-law 2022*.

7.2 Animals

Lead, drive or exercise any animal on any road to which the Council has resolved this subclause applies and only then, in accordance with any conditions determined by the Council which conditions may relate to an animal of a particular kind.

7.3 Attachments

Attach or cause to be attached, hang or fix anything to a Council owned tree, plant, equipment, fence, post, structure or fixture on a road.

7.4 Camping and Tents

7.4.1 Subject to this subclause 7.4, erect a tent or other structure of calico, canvas, plastic or other similar material as a place of habitation.

7.4.2 Camp, sleep overnight or occupy any caravan or other vehicle for or in connection with undertaking camping activities (including but not limited to washing, cooking, sleeping) except:

7.4.2.1 on a road to which the Council has resolved this subclause applies (and thereby designated as a camping area); and

7.4.2.2 in accordance with any conditions determined by the Council and displayed on any signage on or near the road.

7.5 Obstructions

Erect, install, place or maintain or cause to be erected, installed, placed or maintained any structure, object or material of any kind so as to obstruct a road, footway, water-channel, vegetation, or watercourse in a road or cause a hazard to users of the road.

7.6 Public Exhibitions and Displays

7.6.1 Sing, busk, play a recording or use a music instrument, or perform similar activities.

7.6.2 Conduct, cause or hold a concert, festival, show, display public gathering, circus, performance or a similar activity.

7.6.3 Erect a stage or structure for the purpose of conducting or holding a concert, festival, show, circus, performance or a similar activity.

7.6.4 Cause any public exhibition or displays.

7.7 Repairs to Vehicles

Repair, wash, paint, panel beat or perform other work of any nature on or to any vehicle, except for running repairs in the case of a vehicle breakdown.

7.8 Waste and Rubbish Bins

7.8.1 Deposit or leave thereon anything obnoxious or offensive.

7.8.2 Deposit in any bin on a road that is provided by the Council for use by the public any rubbish:

7.8.2.1 emanating from a domestic, commercial or trade source; or

7.8.2.2 that is not rubbish of the type permitted to be placed in that bin, as indicated on signs on the bin or in its vicinity.

7.9 Waste Containers

Place, cause or allow to be placed on a road any waste containers to facilitate the collection of waste generated on neighbouring or nearby premises by the Council (including its agents or contractors), unless the waste containers:

7.9.1 are of a type approved by the Council;

7.9.2 are placed on the road in a position that:

7.9.2.1 is adjacent to the kerb (not on the carriageway) so that the front of the bin faces the road; and

7.9.2.2 as may otherwise be directed by the Council.

PART 3 – ENFORCEMENT

8. Directions

A person on a road who, in the reasonable opinion of an authorised person is committing 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, which may include an order that the person leave that part of the road.

9. Orders

If a person does not 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:

*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 busking on a road;
- remove an object or structure blocking a footpath; or
- remove advertising displayed on a structure on a road.

10. Removal of Animals and Objects

- 10.1 The Council (or its delegate) may, pursuant to section 234 of the Act, remove an animal or object that is on a road in breach of a By-law if the Council (or its delegate) reasonably believes that no person is in charge of the animal or object.
- 10.2 The Council may seek to recover from the owner of an object removed under subclause 10.1 the costs it incurs in removing that object.

PART 4 – MISCELLANEOUS

11. Exemptions

- 11.1 The restrictions in this By-law do not apply to any emergency worker, 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 or in accordance with a direction of a Council Officer.
- 11.2 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.
- 11.3 An exemption under subclause 11.2:
- 11.3.1 may be granted or refused at the discretion of the Council;
 - 11.3.2 may operate indefinitely or for a period specified in the instrument of exemption;
 - 11.3.3 is subject to any conditions specified in the instrument of exemption;
 - 11.3.4 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
 - 11.3.5 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.

12. Liability of Vehicle Owners

- 12.1 For the purposes of this clause 12, **owner** in relation to a vehicle has the same meaning as contained in section 4 of the Act.
- 12.2 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.



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DEB LARWOOD
Chief Executive Officer