

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 1 – Permits and Penalties By-law 2024

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:

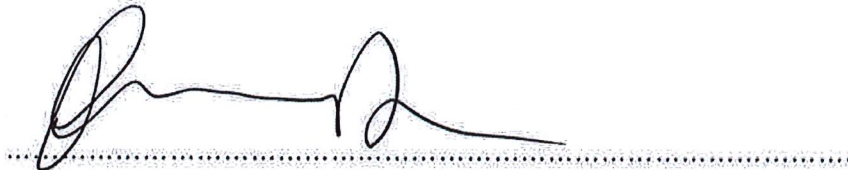
DISTRICT COUNCIL OF KIMBA

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

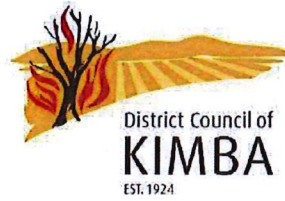
Local Government Act 1999: sections 246(1), 246(2), 246(3)(a), 246(3)(c), 246(3)(f) and 246(3)(g);

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

DATED the 28th day of March 2024



Cimon Burke, Legal Practitioner



DISTRICT COUNCIL OF KIMBA

PERMITS AND PENALTIES BY-LAW 2024

By-law No. 1 of 2024

A By-law to provide for a permit system, to fix maximum penalties in Council by-laws, and to clarify the construction of by-laws.

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PART 1 – PRELIMINARY

1. Title

This By-law may be cited as the *Permits and Penalties By-law 2024* and is By-law No. 1 of the District Council of Kimba.

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. 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

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 District Council of Kimba; and
- 6.3 **person** includes a natural person or a body corporate.

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.

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 in writing 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 the Council may authorise) may attach conditions 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 condition attached to the permission. Failure to do so is an offence (to the extent that the failure 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 a 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.

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