



**NORTHERN
MIDLANDS
COUNCIL**

**NORTHERN MIDLANDS COUNCIL
PLACEMENT OF SHIPPING CONTAINERS
BY-LAW NO. 1 OF 20..**

A by-law of Northern Midlands Council made under Section 145 of the *Local Government Act 1993* (Tas) for the purpose of regulating the placement of shipping containers within the municipality of the Northern Midlands

PART I - PRELIMINARY

1 Short Title

This By-law may be cited as the Placement of Shipping Containers By-law No. 1 of 20...

2 Commencement

This this By-law commence on the day that this by-law is published in the Tasmanian Government Gazette.

3 Application

- (a) This By-Law applies to the placement of Shipping Containers on any Premises.
- (b) This By-Law does not apply to the placement of Shipping Containers on any Premises in circumstances where such activity constitutes 'development' as that term is defined in s.3(1) of the *Land Use Planning and Approvals Act 1993* (Tas).

PART 2 – DEFINED TERMS

4 Definitions

In this By-Law, unless the contrary intention appears –

"Act" means the *Local Government Act 1993* (Tas);

"**Authorised Officer**" means the General Manager or a person appointed as an authorised officer by the General Manager for the purposes of this By-law;

"**Building**" has the meaning given to that term in section 3(1) of the *Land Use Planning and*

Approvals Act 1993 (Tas);

"By-law" is a reference to this Placement of Shipping Containers By-law No. 1 of 20..;

"Council" means Northern Midlands Council (ABN 70 695 934 223) constituted pursuant to the Act;

"General Manager" means the person appointed by Council from time to time to the position of general manager in accordance with section 61 of the Act;

"Licence" means a written authority from Council issued to a person for the purpose of this By-law;

"Municipal Area" means the municipal area of the Northern Midlands Council as defined in section 16 of the Act;

"Obstruction" of an Authorised Officer includes to resist, hinder, delay or impede;

"Occupier" means a person who is in possession or occupation of any Premises;

"Permanent Shipping Container" means a Shipping Container to be kept on the same premises for a period of more than six three months;

"Permit" means a written authority from Council issued to a person, pursuant to this By-law;

"Person" includes an individual and a body corporate;

"Planning Scheme" means the planning scheme in effect for the Northern Midlands municipality;

"Premises" means any piece of land within the Municipal Area;

"Public Land" means land within the Municipal Area which is owned, vested in or managed by Council and includes any Public Place and any Public Street;

"Public Place" has the meaning given to that term in section 3(1) of the *Police Offences Act 1935 (Tas)*;

"Public Street" has the meaning given to the term in section 3(1) of the *Traffic Act 1925 (Tas)*;

"Shipping Container" means a single, rigid, reusable metal box usually up to 2.44m in width, up to 2.90m in height and up to 12.19m in length in which merchandise is, will be, or may have been, shipped by vessel, truck, or rail. Container types include standard, high cube, hardtop, open top, open sided, flat, platform, ventilated, insulated, refrigerated, or bulk;

"Specified Offence" means an offence against the clause specified in Column 1 of Schedule 1 to this By-law; and

"Temporary Shipping Container" means a Shipping Container to be kept on the same Premises for a period of ~~not more than six months~~ not less than 7 days, and not more than three months.

PART 3 – REGULATION OF SHIPPING CONTAINERS

5 Placement of Shipping Container to require Permit or Licence

(1) The placement of any Permanent Shipping Container on any Premises shall require a Permit.

- (2) The placement of any Temporary Shipping Container on any Premises shall require a Licence.
- (3) Sub clauses 5(1) and 5(2) above do not apply to Shipping Containers:
 - (a) lawfully held in, or placed on, any Premises prior to the commencement of this By-law;
 - (b) in transit (i.e. placed on Premises for a period of not more than seven days); or
 - (c) placed wholly within a lawfully constructed Building which is enclosed by walls on all sides.

PART 4 - LICENCES AND PERMITS

6 Licence and Permit requirements and procedures

- (1) A Person seeking to do anything for which a Licence or Permit is required under this By-law is to apply to Council for the relevant Licence or Permit (as the case may be) using the form approved by the General Manager.
- (2) In order to be valid, an application for a Licence or Permit must:
 - (a) specify the Premises where it is proposed to locate the Shipping Container(s);
 - (b) include a site plan, at a scale of 1:200, depicting the location of the proposed Shipping Container(s) and all other Buildings on the site;
 - (c) provide details of the Shipping Container(s) including type, size, colour and any markings (e.g. logos);
 - (d) provide details of any measures that the applicant proposed to take to mitigate the impacts of the proposed Shipping Container (e.g. landscape plan) on views from any Public Land;
 - (e) include the written consent of the registered proprietor of the Premises where it is proposed to locate the Shipping Container(s); and
 - (f) be accompanied by the application fee (if any) prescribed by Council pursuant to section 205 of the Act.
- (3) Council or an Authorised Officer may request further information from an applicant within 14 days of receipt of a valid application.
- (4) If further information requested by Council is not provided within 14 days of a request made under sub-clause 6(3) of this By-law, Council may reject the application or consider it on the basis of the information that has been provided.
- (5) A Licence or Permit granted by Council expires on the 30th of June following the date on which the Licence or Permit was issued unless earlier cancelled pursuant to sub-clause 7(1)(d) of this By-law.
- (6) Prior to the expiration of a Licence or Permit, the holder may apply to renew it by making application to Council in the form approved by the General Manager and accompanied by the application fee (if any) prescribed by Council pursuant to section 205 of the Act.
- (7) An application for renewal of a Licence or Permit must be made prior to its expiration and

has the effect of extending the duration of the Licence or Permit until such time that the application is determined by Council under clause 7 of this By-law.

- (8) The General Manager is to keep a register of all Licences and Permits issued and is to note any amendments, corrections or cancellations in that register.
- (9) The holder of a Licence or Permit must comply with all of conditions attaching to that Licence or Permit.

PENALTY: On summary conviction a fine not exceeding 10 penalty units and in the case of a continuing offence, a further fine of 2 penalty units for each day that the offence continues.

- (10) Any Person applying for Licence or Permit, or a variation or renewal of a Licence or Permit under this By-law must not willfully make or cause to be made any false representation or declaration as part of their application.

PENALTY: On summary conviction a fine not exceeding 10 penalty units.

7 Council May Approve, Refuse or Cancel a Licence or Permit

- (1) After considering an application made under clause 6 of this By-law, Council or an Authorised Officer has the discretion to:
 - (a) grant a Licence or Permit, with or without conditions determined by Council or an Authorised Officer;
 - (b) in the case of an existing Licence or Permit, grant a renewal and add or vary the conditions of that Licence or Permit;
 - (c) refuse the application; or
 - (d) in the case of an existing Licence or Permit, cancel it subject to the operation of clause 8 of this By-law.
- (2) When exercising the discretion in sub-clause 7(1) of this By-law, the decision maker must take into account the following matters where relevant:
 - (a) whether the proposed Shipping Container(s) will be visible from any Public Land;
 - (b) the details of any measures that the applicant proposes to take to mitigate the visual impact of the proposed Shipping Container(s);
 - (c) whether the proposed Shipping Container(s) is proposed to be a Temporary Shipping Container(s) or a Permanent Shipping Container(s) or a combination of the two;
 - (d) the requirements of this By-law; and
 - (e) any other matter that the decision maker considers to be relevant under the circumstances.
- (3) At any time, Council or an Authorised Officer may:
 - (a) amend or vary the conditions of any Licence or Permit by giving one month's written notice to the holder of the relevant Licence or Permit; and

- (b) correct any accidental slip, omission or evident mistake or error in any Licence or Permit by giving seven days written notification to the holder of the relevant Licence or Permit.

8 Cancellation of a Licence or Permit

- (1) Before cancelling any Licence or Permit pursuant to sub-clause 7(1)(d) of this By-law, Council or an Authorised Officer must:
 - (a) give one month's written notice to the holder of the relevant Licence or Permit and ask that they show cause within 21 days of the date of the notice why the relevant Licence or Permit should not be cancelled; and
 - (b) give consideration to any representation made by the holder of the relevant Licence or Permit in response to a notice given pursuant to sub-clause 8(1) of this By-law.
- (2) Subject to compliance with sub-clause 8(1) of this By-law, Council or an Authorised Officer may cancel a Licence or Permit by giving 21 day's written notice of cancellation of the holder of the relevant Licence or Permit. Cancellation takes effect 21 days after the date of the written notice of cancellation.

PART 5 – TEMPORARY SHIPPING CONTAINERS

9 Temporary Shipping Container Licence Required

- (1) A Person must not place, or cause or allow to be placed, a Temporary Shipping Container on any Premises without first obtaining a Licence to do so.

PENALTY: On summary conviction a fine not exceeding 10 penalty units and in the case of a continuing offence, a further fine of 2 penalty units for each day that the offence continues.
- (2) Unless used for the temporary storage of equipment or materials associated with and during the lawful construction of a Building, a Temporary Shipping Container must be:
 - (a) contained wholly within a single Premises and not extend over any title boundary;
 - (b) located wholly behind the relevant building line; and
 - (c) screened from view from any Public Land.
- (3) Where used for the temporary storage of equipment or materials associated with and during the lawful construction of a Building, a Temporary Shipping Container must:
 - (a) not be placed on the relevant Premises prior to the issue of a start work notice pursuant to the Building Act 2016;
 - (b) not encroach onto or over any Public Land or any Premises in other ownership, without the written consent of the relevant authority or owner; and
 - (c) be removed from the relevant Premises prior to issue of occupancy or completion pursuant to the Building Act 2016, whichever occurs first.

PART 6 – PERMANENT SHIPPING CONTAINERS**10 Permanent Shipping Container Permit Required**

- (1) A Person must not place, or cause or allow to be placed, a Permanent Shipping Container on any Premises without first obtaining a Permit to do so.

PENALTY: On summary conviction a fine not exceeding 10 penalty units and in the case of a continuing offence, a further fine of 2 penalty units for each day that the offence continues.

- (2) A Permanent Shipping Container must be:
- (a) contained wholly within a single Premises and not extend over any title boundary;
 - (b) located wholly behind the relevant building line; and
 - (c) screened from view from any Public Land.

PART 7 - BY-LAW COMPLIANCE**11 Costs**

In addition to a penalty imposed in relation to a failure to comply with or a contravention of this By-law, an expense incurred by Council in consequence of that failure or contravention is recoverable by Council as a debt payable by the person so failing to comply or contravening.

12 Notices

- (1) Where an Authorised Officer reasonably believes that a Shipping Container has been placed on any Premises in contravention of this By-law, that Authorised Officer may serve a notice on the Person (or Persons) who owns (or appears to own) the Premises and/or the Shipping Container which requires the Person (or Persons) named in the notice to:
- (a) remove or cause the removal of the Shipping Container from the Premises; or
 - (b) obtain a Licence or Permit with respect to the Shipping Container.

within fourteen days of the date of service of the notice, or such other period of time as may be specified in the notice.

- (2) A person served with a notice under sub-clause 12(1) of this By-law must comply with the requirements of that notice.

PENALTY: On summary conviction a fine not exceeding 10 penalty units and in the case of a continuing offence, a further fine of 2 penalty units for each day that the offence continues.

- (3) A person served with a notice under sub-clause 12(1) of this By-law may apply to the General Manager within fourteen days of the date of service of the notice seeking:
- (a) withdrawal of the notice; or
 - (b) additional time in which to comply with the requirements of the notice.

PART 8 – MISCELLANEOUS PROVISIONS

13 Power of entry

For the purposes of enforcing this By-law, an Authorised Officer may enter and remain on an Premises after giving the owner and occupier of the Premises written notice of their intention to do so in accordance with s.20A of the Act other than where such notice is not required pursuant to s.20A(3) of that provision.

14 Name and place of abode

- (1) An Authorised Officer may require a Person to give his or her name and address if the Authorised Officer reasonably believes that the Person is offending or has offended against this By-law.
- (2) Upon request by an Authorised Officer, a person must not:
 - (a) fail or refuse to give his or her name and address; or
 - (b) give a false name or address.

PENALTY: On summary conviction a fine not exceeding 10 penalty units.

15 Obstruction of an Authorised Officer

- (1) A Person must not obstruct, assault, threaten, harass or intimidate an Authorised Officer engaged in the performance on any function or the exercise of any power under this By-law.

PENALTY: On summary conviction a fine not exceeding 10 penalty units.

PART 9 – INFRINGEMENT NOTICES

16 Infringement Notices

- (1) An infringement notice may be issued in respect of a Specified Offence and the monetary penalty set out adjacent to the offence in Column 3 of Schedule 1 is the penalty payable under the infringement notice for that Specified offence.
- (2) An Authorised Officer may:
 - (a) issue an infringement notice to a person whom the Authorised Officer has reason to believe is guilty of a Specified Offence; and
 - (b) issue one infringement notice in respect of more than one Specified Offence.
- (3) Payment of an infringement notice issued under this By-law must be made to the General Manager within 28 days of the issue of the infringement notice to avoid the infringement notice being referred to the Director, Monetary Penalties Enforcement Service.
- (4) The *Monetary Penalties Enforcement Act 2005 (Tas)* applies to an infringement notice issued under this By-law.

Placement of Shipping Containers By-law No. 1 of 20..

SCHEDULE 1

INFRINGEMENT NOTICES – OFFENCES AND PENALTIES

Column 1 CLAUSE	Column 2 DESCRIPTION OF OFFENCE	Column 3 PENALTY (Penalty Units)
6(9)	Fail to comply with conditions of Licence or Permit	2
6(10)	Make false representation or declaration	2
9(1)	Place Shipping Container without Licence	2
10(1)	Place Shipping Container without Permit	2
12(2)	Fail to comply with requirements of notice	2
14(2)(a)	Failure or refusal to give personal details	2
14(2)(b)	Giving of false personal details	2
15(1)	Obstruction of Authorised Officer	2



NORTHERN
MIDLANDS
COUNCIL

SHIPPING CONTAINER BY-LAW

REGULATORY IMPACT STATEMENT

By-law No. 1 of 2018

A By-law for the purpose of regulating the placement of shipping containers on any premises in the Municipal Area of the Northern Midlands Council.

PROPOSED PLACEMENT OF SHIPPING CONTAINERS
BY-LAW No.1 OF 2018
REGULATORY IMPACT STATEMENT
Section 156A Local Government Act 1993

1. BACKGROUND

With a combination of easier access and reduced regulation, the use of storage containers as permanent or semi-permanent outbuildings, often in a residential setting, has become more common.

Changes to planning provisions, driven by the State, and to the building legislation and regulations have effectively exempted many such containers from the approval process. This has resulted in a number of containers being located in prominent locations with little or not effort to reduce their visual impact.

One way to resolve this ongoing issue, although not able to be applied retrospectively, is the introduction of a by-law to provide some guidance and regulation in regard to where such shipping containers may be used, what measures might be taken to minimise visual impact and penalties for non-compliance.

As a consequence the Council has resolved in accordance with s.156 of the *Local Government Act 1993* its intention to make the proposed Shipping Container By-Law No. 1 of 20. for the ongoing regulation of placement of shipping containers.

In preparing the proposed By-law due regard has been given to the provisions within existing relevant legislation and the need to ensure that the new By-law does not duplicate or conflict with those statutory provisions. Particular regard has been had to the *Local Government Act 1993* and the *Land Use Planning and Approvals Act 1993* and *Regulations 2014* and *Building Act 2016*.

2. THE OBJECTIVES OF THE BY-LAW (Section 156A(2)(a))

The purpose of the proposed By-law is to regulate the placement of shipping containers on any premises in the municipal area of the Northern Midlands.

The primary objectives of the proposed By-Law is to:

- Mitigate the visual impact of shipping containers on views from Public Land.

The means by which the proposed By-law is intended to achieve the objective set out about are by:

- Requiring a licence for temporary shipping containers.
- Requiring a permit for permanent shipping containers.

3. NATURE OF ANY RESTRICTION ON COMPETITION (Section 156A(2)(b))

The proposed Shipping Container By-Law is unlikely to restrict competition of impact on business in the Northern Midlands.

The purpose of this by-law is to regulate the placement of shipping containers on premises so that their impact on the visual aesthetic and amenity of the Northern Midlands Municipality is mitigated - the by-law will not restrict the conduct of any business.

4. COSTS AND BENEFITS OF ANY RESTRICTION ON COMPETITION (Section 156A(2)(c)(i))

Council has not identified any restriction on competition, therefore no costs or benefits have been listed.

5. COSTS AND BENEFITS OF ANY IMPACT ON THE CONDUCT OF BUSINESS (Section 156A(2)(c)(ii))

The imposition of this by-law will result in developers being required to obtain a permit to locate a shipping container on premises prior to a development commencing, therefore imposing an additional cost on the developer.

6. ALTERNATIVE OPTIONS CONSIDERED BY COUNCIL (Section 156A(2)(d))

Council has considered reliance on existing planning and building legislation, however, these Acts do not give power to Council to restrict the location of a shipping container on a property, if it complies with the relevant Act.

The Northern Midlands Interim Planning Scheme 2013 does not give specific timeframes whereby a developer can place a shipping container prior to development.

7. ASSESSMENT OF GREATEST NET BENEFIT OR LEAST NET COST TO THE COMMUNITY (Section 156A(2)(e))

Benefits: The By-law will mitigate the negative impact of shipping containers on the aesthetic amenity of the municipality.

The by-law regulates the length of time shipping containers can remain on premises.

Costs: Applicants will be required to pay an application fee if one is prescribed by Council which will cover the administrative cost to Council to process applications. Applicants will incur time/monetary costs associated with preparing the application, increasing existing regulation.

8. **ASSESSMENT OF DIRECT AND INDIRECT ECONOMIC, SOCIAL AND ENVIRONMENTAL IMPACT** (Section 156A(2)(f))

Impact		Direct	Indirect
Environmental	Benefits	Improved visual amenity in Northern Midlands towns	Supports the principle of orderly development
	Costs	None identified	None identified
Social	Benefits	Improved visual amenity in Northern Midlands towns	Supports the principle of orderly development
	Costs	Members of the general public will now be required to apply for a permit whereby this has not been a requirement previously	None identified
Economic	Benefits	Supports/encourages Tourism by improving the aesthetic amenity of Northern Midlands towns	
	Costs	Cost of undertaking permit process	Cost to Council to administer another process

9. **PROPOSED PUBLIC CONSULTATION PROCESS** (Section 156A(2)(g))

The Public Consultation process will consist of:-

- (a) Referral of the proposed By-Law to the following persons or organisations:-

Northern Midlands Council Local District Committees
 The Tasmanian Planning Commission
 The Planning Policy Unit

- (b) Mention on Council's website www.northernmidlands.tas.gov.au and the Northern Midlands Courier, as well as Council's Facebook page.
- (c) In accordance with the *Local Government Act 1993*, and as part of the By-law making process, submissions will be invited from the public.

Any person wishing to comment on this proposed By-law may do so in writing addressed to the General Manager, within 21 days from the date of publication of the initial notice in the Examiner newspaper.

Council will take into consideration all submissions properly made to it during the public comment period.

Advertising for submissions will be published in the Examiner newspaper and the Northern Midlands Courier newspaper.

- (d) Copies of the proposed By-law and regulatory impact statement are available from the Council Office at 13 Smith Street, Longford and on the Council's website.
- (e) Reference to the draft By-Law in media articles and press releases.
- (f) For further information about the proposed By-law the public will be directed to visit Council's Senior Planner at the Northern Midlands Council office at 13 Smith Street, Longford.

Des Jennings
GENERAL MANAGER

DATED the day of April 2018