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**MINUTES – ORDINARY MEETING**  
**21 AUGUST 2017**



**253/17 DRAFT BYLAW:  
 PLACEMENT OF SHIPPING CONTAINERS**

*Responsible Officer:* Des Jennings, General Manager  
*Report prepared by:* Paul Godier, Senior Planner

**1 PURPOSE OF REPORT**

This report seeks Council's endorsement of the draft Placement of Shipping Containers By-Law.

**2 INTRODUCTION/BACKGROUND**

Initial consultation was undertaken on the draft Placement of Shipping Containers By-Law with key stakeholders and a report brought to the April 2017 Council meeting.

At that meeting, Councillors raised questions which were discussed at its July workshop and are addressed in this report.

**3 STRATEGIC PLAN 2017-2027**

The Strategic Plan 2017-2027 provides the guidelines within which Council operates.

- Lead –
  - Leaders with Impact  
Core Strategies:
    - ◆ Communicate – Connect with the community
    - ◆ Lead – Councillors represent honestly with integrity
    - ◆ Manage – Management is efficient and responsive
  - Best Business Practice & Compliance  
Core Strategies:
    - ◆ Council complies with all Government legislation
- People –
  - Sense of Place – Sustain, Protect, Progress  
Core Strategies:
    - ◆ Developments enhance existing cultural amenity
- Place –
  - Environment – Cherish & Sustain our Landscapes  
Core Strategies:
    - ◆ Cherish & sustain our landscapes
  - History – Preserve & Protect our Built Heritage for Tomorrow  
Core Strategies:
    - ◆ Our heritage villages and towns are high value assets

**4 POLICY IMPLICATIONS**

Council does not currently have a formal policy dealing with the placement of shipping containers and is this is not considered to be a matter that can be resolved by policy rather than regulation.

**5 STATUTORY REQUIREMENTS**

The introduction of a by-law is regulated by the Local Government Act 1993. Section 156 states that a council which intends to make a by-law is to pass a resolution by an absolute majority to that effect.

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**6 FINANCIAL IMPLICATIONS**

A by-law to regulate the placement of shipping containers will require an increased input of staff hours in regulating the by-law.

**7 RISK ISSUES**

There is a risk that without a by-law, the placement of shipping containers will proliferate, with a negative impact on the amenity of the municipality.

**8 CONSULTATION WITH STATE GOVERNMENT**

Referral to the Director of Local Government will occur if Council passes a formal resolution of its intention to make a by-law.

**9 COMMUNITY CONSULTATION**

Consultation with Council's Local District Committees has been undertaken. The Ross Local District Committee asked that Council consider including provisions to remove non-compliant containers.

The Campbell Town Local District Forum observed the placement of shipping containers has increased within the township and raised concern was raised regarding the process to manage the removal of existing shipping containers under the proposed by-law.

**10 OPTIONS FOR COUNCIL TO CONSIDER**

Council can:

- Endorse the draft by-law as attached; or
- Require amendments to the draft by-law;
- Elect not to pursue the draft by-law.

**11 OFFICER'S COMMENTS/CONCLUSION**

Legal Advice to Councillors questions raised at the April meeting is as follows:

***When a property is sold, would the purchaser be required to apply for a planning permit for any existing shipping container on the property?***

*If the new owner of the land:*

1. *does not change the use of the existing shipping container; and*
  2. *does not modify the shipping container in a way that amounts to 'development',*
- the mere fact that the land has changed hands does not trigger a requirement to obtain planning approval under Council's Interim Scheme.*

*The new owner would need to do something new with/to the existing shipping container that amounts to a change of use or a form of development.*

***Are there any other ways we can require planning applications for existing shipping containers?***

*The vast majority of shipping containers placed on residential land are used in conjunction with the approval residential use.*

*The result is that separate planning approval is not required for the shipping container; the existing residential approval will cover a container which, in effect, forms part of the approved residential use and does not itself amount to a discrete form of development.*

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Council can potentially require a land owner to obtain separate planning approval with respect to a shipping container if:

1. the use of the shipping container changes in a way that triggers a requirement to obtain a separate use approval; and/or
2. the shipping container is developed in a way that triggers a requirement to obtain a separate development approval (this can also trigger building regulation).

An example of this is a shipping container which is converted from residential storage to a discrete habitable space used for 'home occupation' or some other purpose unrelated to the residential use.

In practice each case will be unique and will need to be carefully assessed.

### **"Wholly within a building"**

The term 'Building' is defined in Part 4 of the draft By-law with reference to the definition of this term given in section 3(1) of the Land Use Planning and Approvals Act 1993.

That definition provides as follows:

**building** includes –

- (a) a structure and part of a building or structure; and
- (b) fences, walls, out-buildings, service installations and other appurtenances of a building; and
- (c) a boat or a pontoon which is permanently moored or fixed to land;

It is arguable that the erection of a roofed structure with open sides is a 'building' for the purposes of this definition because it is a 'structure'. This argument could be used by land owners to circumvent the intent of the exemption (i.e. shipping containers stored wholly within an enclosed building) by simply building an open sided roof (which may itself require planning and/or building approval) and placing shipping containers under it.

Accordingly, I suggest the following revised version of the exception in Part 5, clause 3(c) of the draft By-law:

**"placed wholly within a lawfully constructed Building which is enclosed by walls on all sides."**

If a land owner joined two or more shipping containers together and affixed a roof to the shipping containers this would most likely trigger planning and/or building regulation and the matter could be handled under those regimes.

As a general comment, when preparing a by-law it is difficult to anticipate how people may attempt to circumvent the controls. I recommend addressing the more generally applicable matters and then, if required, modifying or replacing the by-law in the future in order to respond to any particularly creative attempts to defeat the By-law.

The proposed by-law will allow Council to take action on shipping containers where the planning scheme does not allow for such. Public consultation has raised the issue that the by-law should apply to existing shipping containers, however the by-law cannot do this because section 150 (1) (a) of the Local Government Act 1993 states that a council must not make a by-law which applies retrospectively.

## **12 ATTACHMENTS**

### **12.1 Draft Placement of Shipping Containers By-Law**

#### **RECOMMENDATION 1**

That the matter be discussed.

#### **RECOMMENDATION 2**

That, in accordance with s.156 of the Local Government Act 1993, Council resolves that it intends to make

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the proposed Placement of Shipping Containers By-Law No. 1 of 2017 to regulate the placement of shipping containers in the Northern Midlands municipality.

**DECISION**

Cr Goss/Cr Knowles

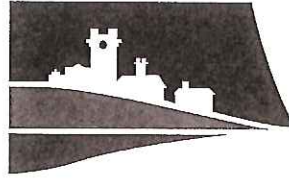
That the matter be discussed.

Carried unanimously

Cr Knowles/Cr Goss

That, in accordance with s.156 of the *Local Government Act 1993*, Council resolves that it intends to make the proposed Placement of Shipping Containers By-Law No. 1 of 2017 to regulate the placement of shipping containers in the Northern Midlands municipality.

Carried unanimously



**NORTHERN  
MIDLANDS  
COUNCIL**

**NORTHERN MIDLANDS COUNCIL  
PLACEMENT OF SHIPPING CONTAINERS  
BY-LAW NO. 1 OF 2018**

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 2018

**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 2018;

"**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 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 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 30<sup>th</sup> 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 2018

## 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