

Decision released from confidential session			
Recommendation from (agenda report)	Date of meeting	Recommendation to (decision-making meeting)	Date of meeting
n/a	n/a	Environment and Climate Committee	28 May 2020
Report Title and number			
R16989 Continuation of the transfer arrangement with port nelson Ltd for Harbourmaster responsibilities			
Documents released			
Decision, Report 16989 and Attachment 1 (A2367153)			
Decision			
<i>That the Environment Committee</i>			
<ol style="list-style-type: none"> 1. <i><u>Receives</u> the report Continuation of the transfer arrangement with Port Nelson Ltd for Harbourmaster responsibilities (R16989) and its attachments (A2367153, A2383281 and A2383290); and</i> 2. <i><u>Approves</u> the continuation of the transfer arrangement with Port Nelson Ltd, subject to amended wording in clause 29.1; and</i> 3. <i><u>Transfers</u> pursuant to section 33X(1) of the Maritime Transport Act 1994, all of its responsibilities under Part 3A of that Act (excluding the particular responsibilities listed in section 33X(1)(a)-(c)) to Port Nelson Ltd; and</i> 4. <i><u>Delegates</u>, for the avoidance of doubt, all of its responsibilities under Part 3A of the Maritime Transport Act 1994 (excluding the particular responsibilities listed in section 33X(1)(a)-(c) of that Act) to Port Nelson Ltd; and</i> 5. <i><u>Agrees</u> that the harbourmaster responsibilities that have been transferred under resolution 3 and delegated under resolution 4 will be restricted to navigation safety matters only, in accordance with the terms of the draft "Agreement regarding the appointment of harbourmaster for the Nelson region and related matters"</i> 			

appended to this resolution (in Attachment 1 to report R16989, A2367153, July 2020); and

- 6. Notes Maritime New Zealand and Worksafe will remain responsible for ensuring maritime safety for matters that do not relate to navigation safety; and*
- 7. Agrees that the transfer under resolution 3 and the delegation under resolution 4 will commence on 1 July 2020 and continue in force until the earlier of:
 - (a) 30 June 2026; or*
 - (b) the transfer or delegation is voluntarily surrendered; or*
 - (c) the transfer or delegation is revoked in writing by the Council; and**
- 8. Authorises the Chief Executive to complete negotiations with Port Nelson Ltd on an agreement to document the arrangements for the transfer in resolution 3, delegation in resolution 4, terms of the Agreement in resolution 5 and duration of the transfer in resolution 7, and to execute that agreement on behalf of Council; and*
- 9. Agrees that Report (R16989), Attachment 1 (A2367153), and the Committee's resolutions be made publicly available once an agreement has been executed; and*
- 10. Agrees that a service delivery review under section 17A of the Local Government Act 2002 is not required pursuant to section 17A(3) as the potential benefits of undertaking the review do not justify the costs.*

Carried

PUBLIC EXCLUDED

Item 1: Continuation of the transfer arrangement with Port Nelson Ltd for Harbourmaster responsibilities



Environment Committee

28 May 2020

REPORT R16989

Continuation of the transfer arrangement with Port Nelson Ltd for Harbourmaster responsibilities

1. Purpose of Report

1.1 To approve:

- a) The continuation of the transfer of Council responsibilities under the Maritime Transport Act 1994 to Port Nelson Ltd; and
- b) The execution of the attached Agreement Regarding the Appointment of the Harbourmaster for the Nelson Region and Related Matters (the draft agreement, Attachment 1 A2367153).

2. Summary

- 2.1 The Council has transferred many of its responsibilities in the Maritime Transport Act 1994 to Port Nelson Ltd, which carries out these responsibilities on the Council's behalf. The Council's current agreement with Port Nelson Ltd expires on 30 June 2020.
- 2.2 The current transfer arrangement with Port Nelson Ltd has been working well and officers consider it is desirable that it continue. On this basis, a new agreement with Port Nelson Ltd, which will commence on 1 July 2020, has been prepared. The draft agreement is based on the existing document, and includes minor updates.

3. Recommendation

That the Environment Committee

1. ***Receives the report Continuation of the transfer arrangement with Port Nelson Ltd for Harbourmaster responsibilities (R16989) and its attachments (A2367153, A2383281 and A2383290); and***
2. ***Approves the continuation of the transfer arrangement with Port Nelson Ltd; and***

PUBLIC EXCLUDED

Item 1: Continuation of the transfer arrangement with Port Nelson Ltd for Harbourmaster responsibilities

3. ***Transfers pursuant to section 33X(1) of the Maritime Transport Act 1994, all of its responsibilities under Part 3A of that Act (excluding the particular responsibilities listed in section 33X(1)(a)-(c)) to Port Nelson Ltd; and***
4. ***Delegates, for the avoidance of doubt, all of its responsibilities under Part 3A of the Maritime Transport Act 1994 (excluding the particular responsibilities listed in section 33X(1)(a)-(c) of that Act) to Port Nelson Ltd; and***
5. ***Agrees that the harbourmaster responsibilities that have been transferred under resolution 3 and delegated under resolution 4 will be restricted to navigation safety matters only, in accordance with the terms of the draft "Agreement regarding the appointment of harbourmaster for the Nelson region and related matters" appended to this resolution (in Attachment 1 to report R16989, A2367153, July 2020); and***
6. ***Notes Maritime New Zealand and Worksafe will remain responsible for ensuring maritime safety for matters that do not relate to navigation safety; and***
7. ***Agrees that the transfer under resolution 3 and the delegation under resolution 4 will commence on 1 July 2020 and continue in force until the earlier of:***
 - (a) ***30 June 2026; or***
 - (b) ***the transfer or delegation is voluntarily surrendered; or***
 - (c) ***the transfer or delegation is revoked in writing by the Council; and***
8. ***Authorises the Chief Executive to complete negotiations with Port Nelson Ltd on an agreement to document the arrangements for the transfer in resolution 3, delegation in resolution 4, terms of the Agreement in resolution 5 and duration of the transfer in***

PUBLIC EXCLUDED

Item 1: Continuation of the transfer arrangement with Port Nelson Ltd for Harbourmaster responsibilities

resolution 7, and to execute that agreement on behalf of Council; and

9. Agrees that Report (R16989), Attachment 1 (A2367153), and the Committee's resolutions be made publicly available once an agreement has been executed; and

10. Agrees that a service delivery review under section 17A of the Local Government Act 2002 is not required pursuant to section 17A(3) as the potential benefits of undertaking the review do not justify the costs.

4. Exclusion of the Public

4.1 This report has been placed in the public excluded part of the agenda in accordance with section 48(1)(a) and section 7 of the Local Government Official Information and Meetings Act 1987. The reason for withholding information in this report under this Act is to:

- Section 7(2)(i) To enable the local authority to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)

5. Background

5.1 The Council has had an arrangement with the Port Company since 1992 to carry out the Harbourmaster responsibilities on behalf of Council. After various legislation changes, Council resolved on 18 September 2012 to transfer to Port Nelson Limited (PNL) all of the functions, duties and powers (other than a power to make bylaws and the ability to appoint a harbourmaster) that relate to navigation safety in an agreement document that identified the party responsible for the various aspects of navigation safety.

5.2 The current agreement between the Council and PNL was entered into in November 2015. It was necessary to enter into the updated agreement in 2015 to reflect a change in legislation (concerning the Local Government Act 1974 and the Maritime Transport Act 1994). Provisions in Part 3A of the Maritime Transport Act 1994 identify the functions of regional councils to ensure maritime safety (s33C), the ability to appoint a harbourmaster (s33D) and the functions of harbourmasters (s33E). Section 33X enables Council to delegate or transfer any of its responsibilities to a port operator under Part 3A except the power to transfer responsibilities, the power to appoint harbourmasters and the power to make bylaws (s33X(1)(a)–(c), see Attachment 2 for these provisions).

PUBLIC EXCLUDED

Item 1: Continuation of the transfer arrangement with Port Nelson Ltd for Harbourmaster responsibilities

- 5.3 The 2015 agreement clarified that the harbourmaster responsibilities deal only with matters relating to navigation safety. This recognised that Maritime New Zealand and WorkSafe New Zealand focus on such matters as the safety of wharves and cargo handling operations while the Council and harbourmaster focus on the movement of vessels and activities that have an impact on navigation safety. The current agreement provides:
- That PNL employs the harbourmaster and deputy harbourmasters directly;
 - The process for their appointment by the Council;
 - The functions and duties of the harbourmaster;
 - That Council has ownership of the vessel; and
 - Details of responsibilities, insurance, reporting requirements and aids to navigation ownership.
- 5.4 Without the agreement Council would need to employ the harbourmaster(s) directly. This agreement has an expiry date of 30 June 2020.

6. Discussion

- 6.1 Council officers consider that the current arrangement with PNL has been working well and it is desirable that it continue. With the help of funding from Maritime New Zealand the harbourmaster functions have been conducted on a full time basis in the last two years. Increased compliance with safety checks, increased on water patrols and increased liaison with rescue organisations and water sport clubs has been achieved.
- 6.2 Council does not currently have capacity to carry out all responsibilities under the Maritime Transport Act 1994 itself. The knowledge required for the harbourmaster functions in understanding both commercial shipping and recreational boating is specialised and more aligned with Port operations than other Council operations. For these reasons officers recommend that a Local Government Act section 17A full review is not required and that the existing arrangement should continue.
- 6.3 Under section 17A Council is required to carry out a service delivery review within two years before the expiry of any contract or other binding agreement relating to the delivery of that infrastructure, service, or regulatory function. Section 17A(3) provides an exception to this review if Council is satisfied that the potential benefits of undertaking a review in relation to that regulatory function do not justify the costs.
- 6.4 Council has not delegated the approval of service delivery reviews or approving a review need not be undertaken under s17A to officers, nor is this a matter retained by Council. The Environment Committee has the power therefore to decide that a section 17A service delivery review is

PUBLIC EXCLUDED

Item 1: Continuation of the transfer arrangement with Port Nelson Ltd for Harbourmaster responsibilities

not required. Details of the recommendation that a review is not warranted are found in Attachment 3.

- 6.5 It is proposed to continue the arrangement with PNL for a further six years, meaning the draft agreement will expire on 30 June 2026. This timeframe provides a good degree of certainty while enabling the arrangement to be altered if required in a medium timeframe.
- 6.6 Both Council and PNL officers have reviewed the existing agreement and have proposed changes to update the document which do not alter the meaning or intent of any clauses. The differences between the current agreement and the draft agreement include:
- a) Clauses referring to the harbourmaster vessel, previously the "Punawai" (and currently "Kaiarataki o Otemaiea"), have been changed to the "Harbourmaster vessel" to cover any future vessels; and
 - b) Names and positions have been updated; and
 - c) Reference to the harbourmasters warrant of appointment have been removed as this is not a requirement under the Maritime Transport Act; and
 - d) Reference to a website for forms has replaced old versions of these copied into the agreement; and
 - e) Reporting requirements have been updated to align with Council quarterly report requirements.
- 6.7 No other changes to the agreement are proposed. Officers record that the draft agreement meets the requirements of section 17A(5) of the Local Government Act 2002, which sets out certain requirements for contracts (or binding agreements) that concern the delivery of regulatory functions.

7. Options

The preferred option is to approve the continuation of the arrangement with PNL on the terms set out in the draft agreement (option 1). Council could continue with the arrangement, but on different terms (option 2). Alternatively, Council could decide not to continue with the arrangement (option 3)

Option 1: Approve continuation of the arrangement with PNL on the terms in the draft agreement	
Advantages	<ul style="list-style-type: none">• Maintains the existing intent of the agreement

PUBLIC EXCLUDED

Item 1: Continuation of the transfer arrangement with Port Nelson Ltd for Harbourmaster responsibilities

	<ul style="list-style-type: none"> • Updates the terms and names to refer to current terms and names
Risks and Disadvantages	<ul style="list-style-type: none"> • Does not identify new changes that could improve the effectiveness of harbourmaster responsibilities (but no issues have been identified through the review)
Option 2: Approve continuation of the arrangement with PNL, but on different terms	
Advantages	<ul style="list-style-type: none"> • Other changes may improve the effectiveness of harbourmaster responsibilities
Risks and Disadvantages	<ul style="list-style-type: none"> • Could unintentionally alter the intent of the agreement when no issues have arisen during the review that warrant such changes • May cause confusion when administering the changes if they are not clear • Limited time now available to negotiate and agree different terms with PNL
Option 3: Refuse to approve continuation of the arrangement with PNL, meaning Council must carry out harbourmaster responsibilities	
Advantages	<ul style="list-style-type: none"> • Council may have greater control over the performance of the harbourmaster responsibilities by employing the harbourmaster directly
Risks and Disadvantages	<ul style="list-style-type: none"> • Council does not currently have capacity to undertake harbourmaster responsibilities itself, and so could fail to perform necessary regulatory tasks under the Maritime Transport Act 1994 until such time as it can employ a harbourmaster

8. Conclusion

- 8.1 It is desirable that the current transfer arrangement with PNL continue. For this purpose, the current agreement has been reviewed and no significant changes are proposed for the draft agreement. No issues were raised during the review that require addressing.

9. Next Steps

- 9.1 Negotiations will be completed and the document signed.

PUBLIC EXCLUDED

Item 1: Continuation of the transfer arrangement with Port Nelson Ltd for Harbourmaster responsibilities

Author: Mandy Bishop, Manager Consents and Compliance

Attachments

Attachment 1: A2367153 Draft Agreement regarding the Appointment of Harbourmaster for the Nelson Region and related matters

Attachment 2: A2383281 Maritime Transport Act Part 3A provisions

Attachment 3: A2383290 S17A Service delivery review - Navigation safety

Released 18 Nov 2021

PUBLIC EXCLUDED

Item 1: Continuation of the transfer arrangement with Port Nelson Ltd for Harbourmaster responsibilities

Important considerations for decision making
1. Fit with Purpose of Local Government Through the agreement the delivery of the navigation safety function is delivered in an efficient and effective manner and provides community well-being
2. Consistency with Community Outcomes and Council Policy The Long Term Plan identifies community benefits in ensuring navigation safety. The recommendation is consistent with the 2012 Council resolutions establishing the transfer of functions to Port Nelson Limited.
3. Risk If the draft agreement is not entered into before 1 July 2020, there is a risk the navigation safety operations will be disrupted while Council employs the harbourmaster(s). The disruption could result in a reduced response to an incident affecting the safety of the recreational and commercial boating community. The renewal of the agreement provides for the continuation of existing harbourmaster responsibilities.
4. Financial impact If the draft agreement is not entered into Council would need to employ the harbourmasters resulting in potential increased costs associated with the direct employment obligations.
5. Degree of significance and level of engagement This matter is of low significance because it is a continuation of the existing service. Consultation has occurred with Port Nelson Limited. Consultation is not required under section 33X(4A) of the Maritime Transport Act 1994 because Council is simply proposing to continue the current arrangement.
6. Climate Impact Climate impact has not been considered in the preparation of this report.
7. Inclusion of Māori in the decision making process No engagement with Māori has been undertaken in preparing this report.
8. Delegations The Environment Committee has the following delegations to consider the appointment of the harbourmaster and related matters:

PUBLIC EXCLUDED

Item 1: Continuation of the transfer arrangement with Port Nelson Ltd for Harbourmaster responsibilities

Areas of Responsibility:

- *Maritime and harbour safety and control*

Delegations:

- *Council has not retained powers and functions in relation to the service delivery of maritime and harbour safety and control.*

Released 18 Nov 2021

**AGREEMENT REGARDING THE APPOINTMENT OF
HARBOURMASTER FOR THE NELSON REGION AND
RELATED MATTERS**

between
Port Nelson Limited
and
Nelson City Council
~~November 2015~~ July 2020

PITT & MOORE
NELSON

TABLE OF CONTENTS

1.	Definitions and Interpretation	5
2.	Initial appointment of Harbourmaster	7
3.	Subsequent appointments of Harbourmaster	7
4.	Removal of Harbourmaster	8
5.	Effect of appointment of Harbourmaster	10
6.	Functions and duties of Harbourmaster	10
7.	Responsibility for actions of Harbourmaster and Deputy Harbourmasters	11
8.	Ability for NCC to make directions	15
9.	Conflict of interests	16
10.	Cover for temporary unavailability of Harbourmaster	17
11.	Creation of annual budget	18
12.	Obligation to maintain insurance	18
13.	Reporting requirements in relation to Harbourmaster role	19
14.	Fines and Income	19
15.	Ownership and use of <u>Punawai the Harbourmaster vessel</u>	19
16.	Navigational Safety functions to be performed by PNL	19
17.	Reporting requirements regarding Navigational Safety functions	20
18.	Functions continuing to be performed by NCC	20
19.	Ownership and financing of AtoN	<u>21</u> 20
20.	Cost recovery for Harbourmaster role and other functions to be performed by PNL	21
21.	Costs of preparation	22
22.	Payments and deductions	<u>23</u> 22
23.	Dispute resolution	23
24.	Termination	<u>24</u> 23
25.	Waiver	<u>25</u> 24
26.	Force majeure	25
27.	Notices	26
28.	Confidential Information	27
29.	Public statements	<u>29</u> 28

30.	Provision of Consent	29
31.	Contracts (Privity) Act	29
32.	Entire agreement	29
33.	Further assurance	29
34.	Assignment and sub-contracting	3029
35.	Severance	30
36.	Amendment	30
37.	Compliance with legislation	30
38.	Relationship between Parties	30
39.	Further assurances	31
40.	Governing law	31
41.	Counterpart copies	31
	SCHEDULE 1: MAP OF NELSON HARBOUR (clause 1.1)	3332
	SCHEDULE 2: MAP OF WATERS OF THE NELSON REGION (clause 1.1)	3433
	SCHEDULE 3: WARRANT OF HARBOURMASTER AT DATE OF DEED (clause 3.3.b.)	3534
	SCHEDULE 4: COPY OF CUSTOMER PROMISE (clause 6.2.c)	3635
	SCHEDULE 5A: INJURY REPORT (clause 6.2.d)	3836
	SCHEDULE 5B: REPORT FORM FOR MARITIME ACCIDENT OR INCIDENT	4139
	SCHEDULE 65: FORM OF MATERIAL MATTERS REPORT (clause 13.1)	4745
	SCHEDULE 76: ATON OWNED BY PNL (clause 19.1.c)	46
	SCHEDULE 87: INSTRUMENT OF DELEGATION RESOLUTIONS TO TRANSFER RESPONSIBILITIES (clause 16.1)	48
	SCHEDULE 98: FUNCTIONS WHICH PNL IS TO USE ITS BEST ENDEAVOURS TO PERFORM (clause 16.1)	5454

Agreement regarding the appointment of harbourmaster for the Nelson region and related matters

Date: 1 July 2020

2012

Parties

1. **Port Nelson Limited** ("PNL")
2. **Nelson City Council** ("NCC")

Background

- A. NCC is empowered to appoint one or more harbourmasters in respect of the Nelson Region by virtue of section 33D(1) of the Maritime Transport Act 1994.
- B. The Parties consider that PNL is best placed to identify appropriate candidates for the role of harbourmaster and to manage the day-to-day functions of that office. Accordingly, NCC wishes to obtain PNL's assistance with the appointment and day-to-day management of a harbourmaster for the Nelson Region.
- C. The Parties are also each responsible for various other aspects of maritime safety within the Nelson Region by virtue of:
 - (i) the Maritime Transport Act 1994;
 - (ii) the Local Government Act 2002;
 - (iii) the Resource Management Act 1991;
 - (iv) the Civil Defence Emergency Management Act 2003; and
 - (v) the Maritime Rules Part 22, Part 24A, Part 53, Part 90 and Part 91,and various subordinate rules, regulations and bylaws made thereunder (the "**Statutory Regime**").
- D. In addition, the Parties are also each responsible for various aspects of navigational safety within the Nelson Region as set out in Maritime New Zealand's "New Zealand Port and Harbour Marine Safety Code" (the "**Code**") and Maritime New Zealand's "Guidelines for Providing Aids to Navigation in New Zealand" (the "**AtoN Guidelines**").
- E. The Code, the AtoN Guidelines and the Statutory Regime each often place a duty or a power in the hands of one of the Parties, or recommend that a function be performed by one of the Parties, in circumstances where they both consider that the other Party would be best placed to exercise that power, satisfy that duty or perform that function. The Code, the AtoN Guidelines and the Statutory Regime also generally provide the Parties with a degree of freedom to delegate or subcontract certain of their respective powers, responsibilities and functions to one and other. In particular, the Code envisages (at paragraph 1.2.2.5 of the Code) that NCC (as a regional council) may enter into arrangements for other parties to have functions and powers for harbour maintenance and management.
- F. In recognition of the above, the Parties wish to apportion various powers, duties and functions in relation to maritime safety within Nelson Harbour to one and other such that those powers and duties are exercised and performed by the Party which they both consider is best placed to exercise and perform them. In particular, NCC wishes to

transfer to PNL (in accordance with section 33X (1) of the Maritime Transport Act 1994) all of the responsibilities (other than the power to transfer responsibilities under section 33X, the power to make bylaws and the power to appoint a harbourmaster under this section) of NCC under Part 3A of the Maritime Transport Act 1994 relating to maritime safety in the Nelson Harbour.

G. In furtherance of that aim, on 18 September 2012, NCC resolved as follows:

“THAT the Nelson City Council delegates to Port Nelson Limited under s650J of the Local Government Act 1974 the oversight and day-to-day management of, and financial responsibility for, the harbourmaster and navigational safety within Nelson Harbour in accordance with the terms of the “Agreement regarding the appointment of harbourmaster for the Nelson region and related matters” appended to this resolution. (RAD 1339355 September 2012)

AND THAT for the avoidance of doubt, the Nelson City Council hereby delegates to Port Nelson Limited all of the functions, duties, and powers (other than a power to make bylaws and the power to appoint a harbourmaster under section 650B of the Local Government Act 1974) under Part 39A of the Local Government Act 1974 that relate to navigation safety, until the earlier of:

- (a) 30 June 2020; or*
- (b) the delegation is voluntarily surrendered; or*
- (c) the delegation is revoked in writing by the Nelson City Council”.*

Due to legislation changes an updated resolution was approved by Council on 19 November 2015 as follows:

“THAT the Nelson City Council delegates to Port Nelson Limited under s33X of the Maritime Transport Act 1994 the oversight and day-to-day management of, and financial responsibility for, the harbourmaster and maritime safety within Nelson Harbour in accordance with the terms of the “Agreement regarding the appointment of harbourmaster for the Nelson region and related matters” appended to this resolution. (A1345500 November 2015)

AND THAT for the avoidance of doubt, the Nelson City Council hereby delegates to Port Nelson Limited all of the functions, duties, and powers (other than the power to transfer responsibilities, the power to make bylaws and the power to appoint a harbourmaster

under section 33X of the Maritime Transport Act 1994 that relate to maritime safety, until the earlier of:

- (a) 30 June 2020; or*
- (b) the delegation is voluntarily surrendered; or*
- (c) the delegation is revoked in writing by the Nelson City Council”.*

AND THAT for the purposes of the Maritime Transport Act 1994, the harbourmaster functions will be restricted to navigation safety matters while Maritime New Zealand and WorkSafe will remain responsible for ensuring maritime safety for matters that do not relate to navigation.

AND THAT the Nelson City Council authorise the Chief Executive to sign the updated agreement subject to it being approved by Port Nelson Limited.

H. Accordingly, the Parties now wish to set out in this Deed

- (i) their **continued** agreement in relation to the appointment and day-to-day management of a harbourmaster for the Nelson Region;
- (ii) which of them shall be responsible for which other aspects of maritime safety in Nelson Harbour and how the financial benefit and burden of that responsibility is to be shared; and
- (iii) their respective responsibilities and authorities for the balance of waters in the Nelson Region.

This Deed records

1. Definitions and Interpretation

1.1 In this Deed, unless the context requires otherwise:

“AtoN”	means ‘aids to navigation’;
“AtoN Guidelines”	has the meaning given to that term in Background D above;
“Code”	has the meaning given to that term in Background D above;
“Deed”	means this Deed, as may be amended from time to time in accordance with its terms, and includes the Background and any Schedules or Appendices to this Deed;
“Deputy Harbourmaster”	means a person who: <ul style="list-style-type: none"> (a) is an employee of PNL; (b) is appointed as an Enforcement Officer; (c) is a person who the parties from time to time agree in writing is eligible and suitable to be appointed as a Deputy

Harbourmaster and has been appointed as such by the NCC pursuant to section 33D(1) of the Maritime Transport Act 1994; and

(d) who has, in accordance with clause 10 of this Deed, been designated to perform certain duties of the Harbourmaster in circumstances where the Harbourmaster is temporarily unable or unwilling to act;

“Enforcement Officer”

means an enforcement officer appointed by NCC pursuant to section 177 of the LGA 2002 with the powers under section 164 of the LGA 2002;

“Effective Date”

Means ~~30 September 2012~~ 21 July 2020

“Harbourmaster”

Means a person who is appointed in accordance with section 33D(1) of the Maritime Transport Act 1994 to undertake the role of harbourmaster in respect of the Nelson Region;

“IALA”

means the International Association of Marine Aids to Navigation and Lighthouse Authorities;

“LGA 2002”

means the Local Government Act 2002;

“Nelson Harbour”

means that area identified as the Nelson Harbour on the map attached to this Deed as Schedule 1;

“Nelson Region”

means the region of the Nelson City Council as defined by the Local Government Act 2002 and as identified as waters of the Nelson Region on the map attached to this Deed as Schedule 2;

“Port Nelson”

means the coastal marine area within Nelson Harbour occupied by PNL pursuant to a coastal permit issued under section 384A of the Resource Management Act and includes any berth or channel that is from time to time agreed by NCC and PNL to be the responsibility of PNL;

“Punawai Harbourmaster vessel”

means the vessel used for on water patrols and duties by the Harbourmaster or Deputy Harbourmaster “Punawai”, its trailer and any replacement thereof;

“Statutory Regime”

has the meaning given to that term in Background C of this Deed; and

“Working Days”

means a day (other than a Saturday or Sunday) on which banks are open for banking business in Nelson, New Zealand.

1.2 In this Deed:

- a. a reference to a “Party” means a party to this Deed and includes that Party’s executors, administrators, successors, substitutes and permitted assigns;

- b. a reference to an enactment or statutory provision shall include a reference to any subordinate legislation made under the relevant enactment or statutory provision and is a reference to that enactment, statutory provision or subordinate legislation as from time to time amended, consolidated, modified, re-enacted or replaced;
 - c. headings are for ease of reference only and do not affect the interpretation of this Deed; and
 - d. a reference to "includes" and "including" shall mean "includes without limitation" or "including without limitation".
- 1.3 The Parties agree that the rule of construction known as the contra proferentum rule does not apply to this Deed.

2. Initial appointment of Harbourmaster

- 2.1 At the date of this Deed, NCC has formally appointed ~~David James Duncan~~Andrew Hogg as Harbourmaster, in accordance with section 33D(1) of the Maritime Transport Act 1994, with the functions set out in section 33E of that Act, and the powers set out under sections 33F, 33H, 33P and 453 of that Act.

3. Subsequent appointments of Harbourmaster

- 3.1 If at any time during the term of this Deed there exists a vacancy in the position of Harbourmaster (the "**Vacant Position**"), PNL shall, as soon as reasonably practicable following it becoming aware of such vacancy:
- a. nominate (by written notice to NCC) for the Vacant Position one or more candidates who:
 - i. are employees of PNL;
 - ii. are willing and able to undertake the Vacant Position;
 - iii. PNL considers would be appropriate for the role; and
 - iv. hold the necessary qualifications to act as a harbourmaster as required by any applicable maritime rules or legislation.
 - b. if no such person is currently employed by PNL, use reasonable endeavours to seek out and agree (which agreement may be conditional upon the appointment set out in clause 3.2(a) taking place) to employ a person who:
 - i. is willing and able to undertake the Vacant Position;
 - ii. PNL considers would be appropriate for the role; and
 - iii. holds the necessary qualifications to act as a harbourmaster as required by any applicable maritime rules or legislation,on the basis that they will be nominated for the Vacant Position, and immediately after securing such agreement from such person nominate (by written notice to NCC) that person for the Vacant Position.
- 3.2 Upon receipt of a nomination for a Vacant Position in accordance with clause 3.1 or clause 3.4, NCC shall either:
- a. appoint one of the nominees to the Vacant Position in accordance with section 33D(1) of the Maritime Transport Act 1994; or

- b. decline to appoint any of the nominees to the Vacant Position and, as soon as practicable thereafter, give written notice to PNL setting out the reasons for that decision.
- 3.3 In the event that NCC elects to appoint PNL's nominee to the Vacant Position in accordance with clause 3.2(a):
- a. NCC shall ensure that all formal requirements of such appointment are duly carried out such that
- i. the appointment of that person as a harbourmaster for the purposes of the Maritime Transport Act 1994 is valid and not capable of legal challenge by any person; and
- b. NCC may make such appointment subject to such conditions as it deems appropriate in its absolute discretion and may vest or decline to vest such powers in the appointee as it deems appropriate in its absolute discretion, provided that if the powers vested in the appointee are in any way less than those vested in the Harbourmaster as at the date of this Deed, or the conditions on the exercise of those powers are in any way more restrictive than those applicable to the Harbourmaster as at the date of this Deed, clause 7.2(a) shall apply. A copy of the current Harbourmaster's warrant is attached as Schedule 3 to this Deed for the purposes of establishing the powers vested in the Harbourmaster as at the date of this Deed.
- 3.4 In the event that NCC declines to appoint PNL's nominated candidate to the Vacant Position then PNL may, but shall not be obliged to, from time to time nominate (by written notice to NCC) for the Vacant Position one or more candidates who:
- a. are employees of PNL (or who have conditionally agreed to be in its employment subject to the appointment set out in clause 3.2(a) above taking place);
- b. are willing and able to undertake the Vacant Position; and
- c. hold the necessary qualifications to act as a harbourmaster as required by applicable maritime rules or legislation.
4. **Removal of Harbourmaster**
- 4.1 It is the intention of both Parties that they maintain a good working relationship and that each should feel free to raise and discuss with the other any concerns relating to or arising from this Deed and/or the matters contemplated by it.
- 4.2 The Parties acknowledge that NCC may remove a Harbourmaster from office at any time ~~by revoking their warrant.~~
- 4.3 NCC shall, except where it reasonably considers that any such delay would give rise to a real risk of significant harm to NCC, its related parties or members of the public, consult with PNL in good faith before removing a Harbourmaster from office as described in clause 4.2.
- 4.4 PNL shall, except where it reasonably considers that any such delay would give rise to a real risk of significant harm to PNL, its related parties or members of the public, consult with NCC before terminating the employment of the Harbourmaster.

- 4.5 Without in any way limiting clauses 4.3 and 4.4, and without prejudice to the dispute resolution procedure set out at clause 23, either Party may from time to time raise for discussion with the other (and with the Harbourmaster and/or any of the individuals who are from time to time eligible to be appointed as a Deputy Harbourmaster, where PNL and NCC agree that their attendance is appropriate):
- a. any issue that it has with the Harbourmaster or any of the individuals who are from time to time eligible to be appointed as a Deputy Harbourmaster or the way in which those individuals are exercising (or failing to exercise) the powers of that office;
 - b. any complaints received from members of the public in relation to the Harbourmaster or any of the individuals who are from time to time eligible to be appointed as a Deputy Harbourmaster or matters within the jurisdiction of that office; or
 - c. any such other matters in relation to or in connection with this Deed and the matters contemplated by it as that Party may from time to time wish to discuss with the other,

and appropriate representatives of PNL and NCC, and (where NCC and PNL agree that their attendance is appropriate) the Harbourmaster and/or any of the individuals who are from time to time eligible to act as Deputy Harbourmaster, shall meet within such reasonable period as the circumstances dictate and in such manner as they consider appropriate (whether in person, by telephone or otherwise) to seek to discuss and, where applicable, agree a way forward in relation to those issues, complaints or other matters.

- 4.6 The parties agree that the requirements of clause 4.5 shall be subject to any employment law obligations to which PNL is subject (whether procedural or otherwise) and that accordingly, where PNL considers that a matter raised for discussion is or may involve employment related issues it may, at its election, delay any discussion with NCC of that matter until such time as PNL is satisfied that it has complied with its legal obligations in relation to that employment related issue.

- 4.7 PNL may:

- a. if it, acting in good faith and for good cause, and following any consultation required in accordance with clauses 4.4 and 4.5, considers that a Harbourmaster is no longer a suitable person for that role; or
- b. if a Harbourmaster has left its employment, give written notice to NCC:
- c. requesting that NCC remove that Harbourmaster from office ~~by revoking their warrant~~ in accordance with clause 4.2; and
- d. putting NCC on notice that, should NCC chose not to remove that Harbourmaster from office, PNL shall accept no further responsibility for the actions of that individual from the date of receipt of such notice.

- 4.8 Upon receipt of a notice given in accordance with clause 4.6, NCC shall either:

- a. remove that Harbourmaster from office ~~by revoking their warrant~~ in accordance with clause 4.2; or

- b. retain that Harbourmaster in office, provided that the retention of such Harbourmaster following the receipt of such notice shall:
 - i. be at NCC's own risk and PNL shall accept no further responsibility for the actions of that individual from the date of receipt of such notice; and
 - ii. give rise to a right for PNL to terminate this Deed on 10 Working Days' notice to NCC (provided that if NCC removes the Harbourmaster from office at any time within those 10 Working Days' this Deed shall not terminate).

5. Effect of appointment of Harbourmaster

- 5.1 The Parties each acknowledge that any Harbourmaster duly appointed in accordance with clause 3 shall be a "harbourmaster" for the purposes of sections 33E, 33F, 33H, 33P and 453 of the Maritime Transport Act 1994 and shall therefore, at law, have all powers thereby conferred, subject to any limitations and conditions set out in the instrument of appointment.

6. Functions and duties of Harbourmaster

- 6.1 PNL shall be responsible for the day-to-day management of the Harbourmaster and any Deputy Harbourmaster(s).
- 6.2 PNL shall ensure that:
- a. the Harbourmaster shall carry on the functions of harbourmaster in respect of the Nelson Region, except for where he or she is unable to do so (whether as a result of the terms of this Deed or otherwise) in which circumstances clause 10 shall apply;
 - b. the Harbourmaster does not purport to exercise his or her powers in respect of maritime safety outside the Nelson Region;
 - c. the Harbourmaster exercises his or her powers and otherwise acts in accordance with the Nelson City Council's Customer ~~Promise Focus values and the 2014 significance and engagement policy with its community~~ (a copy of which is attached as Schedule 4 to this Deed);
 - d. the Harbourmaster records details of each incident or accident, including reports on injury on the forms or form prescribed by the Group Manager ~~Strategy and Environment~~Environmental Management or his or her successor from time to time (~~a copy of the prescribed form as at the date of this Deed is attached as Schedule 5 and 5A to this Deed~~found on the Maritime New Zealand website, "Accident or incident report form");
 - e. the Harbourmaster only collects and stores information sufficient to record the exercise of his or her powers and comply with all statutory obligations, including the Privacy Act 1993;
 - f. the Harbourmaster participates in the Regional Council Harbour Master Special Interest Group and briefs the Group Manager ~~Strategy and Environment~~Environmental Management and/or his or her successors on any significant issues arising therefrom;

- g. where authorised to do so, the Harbourmaster carries out the functional supervision of AtoN within Nelson Harbour, focusing on verifying that AtoN are operated in accordance with applicable IALA recommendations and guidelines and that the AtoN are appropriately maintained;
- h. the Harbourmaster maintains a close relationship with the NCC Marina Supervisor;
- i. the Harbourmaster administers the Nelson City Council ~~Maritime Navigation~~ Safety Bylaw 218, ~~once in force~~, and any replacement thereof;
- j. where requested to do so by NCC, the Harbourmaster acts as NCC's subject matter expert in relation to resource consents, permits and any other authorisations in relation to the coastal waters of the Nelson Region;
- k. the Harbourmaster, as an NCC appointee, does not act as subject matter expert for any other person other than NCC in relation to any resource consents, permits and any other authorisations in relation to the coastal waters of the Nelson Region, without NCC's express written permission; and
- l. at least once every three years the Harbourmaster prepares in consultation with the Group Manager ~~Strategy and Environment~~ Environmental Management or his or her successor a budget for the following 10 year period in respect of the Harbourmaster role, including provision for:
 - i. the operation and maintenance of ~~Punawai~~ the Harbourmaster vessel;
 - ii. education and publicity items, signage and marker buoys to be utilised by the Harbourmaster in the performance of his or her duties;
 - iii. work or initiatives proposed to be undertaken.

the first such budget being due for submission to NCC by no later than 1 November ~~2017~~ 2020.

7. Responsibility for actions of Harbourmaster and Deputy Harbourmasters

7.1 The Parties intend that as their employer, but subject to the terms of this Deed, PNL shall take sole responsibility for the actions (or omissions) of:

- a. any Harbourmaster duly appointed in accordance with clause 2 or clause 3 in the performance of the functions of that office within Nelson Harbour; and
- b. any Deputy Harbourmasters who may undertake any of the functions of the Harbourmaster from time to time within Nelson Harbour in accordance with clause 10;

Accordingly, and subject to clauses 7.2 and 7.3 below, PNL by this Deed indemnifies NCC against all claims, actions and proceedings of any nature whatsoever by any person, arising from:

- c. the performance (or lack of performance) by any Harbourmaster and/or any Deputy Harbourmaster who has been duly appointed in accordance with clause 2, clause 3 or clause 10 (as applicable) of the functions of that office within Nelson Harbour; or
- d. PNL's performance (or lack of performance) of its obligations under clause 16.

- 7.2 Notwithstanding clause 7.1, PNL shall not be liable for nor in any way indemnify NCC in respect of any claims, actions, proceedings, losses or liabilities whatsoever where such claim, action, proceeding, loss or liability:
- a. could have been avoided had the instrument appointing the Harbourmaster not limited their powers (either by not bestowing certain powers or through the imposition of additional conditions) in a manner in which the Harbourmaster's powers are not limited as at the date of this Deed;
 - b. could have been avoided had NCC not unreasonably directed PNL not to incur certain expenditure set out in the draft annual budget submitted to NCC in accordance with clause 11;
 - c. relates to the carrying out of a direction of NCC in circumstances where PNL had put NCC on formal notice that it disagreed with that direction in accordance with clause 8.5(a);
 - d. relates to the actions (or omissions) of a Harbourmaster in respect of whom PNL had, at the relevant time, served notice on NCC in accordance with clause 4.7, but who NCC had chosen to retain in that role in accordance with clause 4.8;
 - e. relates to the actions (or omissions) of a Harbourmaster and/or a Deputy Harbourmaster following termination of this Deed in accordance with clause 24; or
 - f. relates to the actions (or omissions) of a Harbourmaster and/or a Deputy Harbourmaster outside Nelson Harbour.
- 7.3 Notwithstanding any other provision of this Deed, PNL shall not be liable for nor in any way indemnify NCC in respect of any liability arising under this Deed (including under clauses 7.1 and 16) in excess of:
- a. in the case of a liability in respect of which PNL is able to (or, if it were in place in accordance with the terms of this Deed, would be able to) make a successful claim under the Harbourmaster Liability insurance cover to be obtained by PNL in accordance with clause 12.1.a., \$30 million; and
 - b. in the case of a liability in respect of which PNL is able to (or, if it were in place in accordance with the terms of this Deed, would be able to) make a successful claim under the Wreck Recovery insurance cover to be obtained by PNL in accordance with clause 12.1.b., \$10 million; and
 - c. in the case of a liability in respect of which PNL is able to make a successful claim under any other form of insurance cover obtained by PNL in accordance with clause 12.1.c., the amount of that insurance cover; and
 - d. in the case of a liability in respect of which PNL is unable to make a successful claim under any form of insurance cover obtained by PNL (other than where such inability to make a successful claim is as a result of a breach of clause 12.1 of this Deed by PNL), \$10,000.00.
- 7.4 If NCC becomes aware of any claim, action or proceeding made against it by a third party which may give rise to a claim under the indemnity set out in clause 7.1 (a "**Third Party Claim**"):
- a. NCC shall as soon as practicable, notify PNL giving full details of the relevant facts and circumstances relating to the Third Party Claim;

- b. NCC shall keep PNL informed of all material developments in relation to the Third Party Claim and not settle or make any admission of liability, agreement or compromise any claim or matter relating to the Third Party Claim without written consent of PNL, such consent not to be unreasonably withheld or delayed; and
 - c. subject to the NCC being indemnified against all reasonable costs and expenses which may be incurred by reason of such action, NCC shall consult with and follow the instructions of PNL in relation to all matters connected with the Third Party Claim and take all such action as PNL may reasonably request in relation to the Third Party Claim, including commencing conducting, defending, resisting, settling, compromising or appealing against any proceedings.
- 7.5 Nothing in clause 7.4 restricts or limits the general obligation at law of each of the Parties to mitigate any loss or damage which it may suffer or incur as a consequence of any breach of any provision of this Deed or in relation to any other matter, event or circumstance which may give rise to a claim under the indemnity set out in clause 7.1. Where PNL is or may become under any obligation to indemnify or make any payment to NCC pursuant to this Deed, NCC shall (and shall ensure that its subsidiaries and related parties shall) act reasonably in relation to matters giving rise to such indemnity on payment and take all reasonable steps to mitigate the loss in respect of which the indemnity or payment is or may become due.
- 7.6 NCC acknowledges that PNL has no legal obligations or interest in relation to the area within the Nelson Region but outside the Nelson Harbour (the “**Outer Nelson Region**”) and accordingly PNL’s agreement under clause 6.2.a, as the employer of the Harbourmaster and Deputy Harbourmasters, to ensure that the Harbourmaster (or Deputy Harbourmasters, as the case may be) carry on the functions of the office of harbourmaster in respect of the Outer Nelson Region is solely for the benefit of NCC.
- 7.7 Accordingly, as between NCC and PNL, NCC agrees that it shall take sole responsibility for (and PNL shall not be liable to NCC in any way in respect of) the actions (or omissions) of:
- a. any Harbourmaster duly appointed in accordance with clause 2 or clause 3 in the performance (or lack of performance) of the functions of that office in the Outer Nelson Region; and
 - b. any Deputy Harbourmasters who, in accordance with clause 10, undertakes any of the functions of the Harbourmaster from time to time in the Outer Nelson Region, provided that:
 - c. PNL instructs the Harbourmaster (as its employee) to comply with the requirements set out in clause 6.2 of this Deed (in relation to both the Nelson Harbour and the Outer Nelson Region) and to otherwise keep NCC reasonably informed as to the activities being undertaken by the Harbourmaster and any Deputy Harbourmasters in the Outer Nelson Region; and
 - d. PNL instructs the Harbourmaster (as its employee) and all Deputy Harbourmasters (as its employees) to comply with any reasonable request which PNL receives from NCC or which the Harbourmaster or Deputy Harbourmasters (as applicable) receives directly from NCC as to the way in which the Harbourmaster and/or Deputy Harbourmasters should undertake the functions of that office in the Outer Nelson Region. For the avoidance of doubt, a request shall not be “reasonable” for

the purposes of this sub-clause 7.7.d and for the purposes of sub-clause 7.8.b. if and to the extent that directing the Harbourmaster and/or any Deputy Harbourmaster to comply with such request would cause PNL in breach its employment agreements with those individuals or otherwise breach their rights at law.

7.8 Accordingly, and subject to clause 7.10 below, NCC by this Deed indemnifies PNL against all claims, actions and proceedings of any nature whatsoever by any person, arising from or in connection with the performance (or lack of performance) by any Harbourmaster and/or any Deputy Harbourmaster of the functions of that office within the Outer Nelson Region, provided that:

- a. PNL instructs the Harbourmaster (as its employee) to comply with the requirements set out in clause 6.2 of this Deed (in relation to both the Nelson Harbour and the Outer Nelson Region) and to otherwise keep NCC reasonably informed as to the activities being undertaken by the Harbourmaster and any Deputy Harbourmasters in the Outer Nelson Region; and
- b. PNL instructs the Harbourmaster (as its employee) and all Deputy Harbourmasters (as its employees) to comply with any reasonable request which PNL receives from NCC or which the Harbourmaster or Deputy Harbourmasters (as applicable) receives directly from NCC as to the way in which the Harbourmaster and/or Deputy Harbourmasters should undertake the functions of that office in the Outer Nelson Region.

7.9 NCC agrees to indemnify PNL and keep PNL indemnified against all claims, actions and proceedings of any nature whatsoever by any person, arising from or in connection with:

- a. the performance (or lack of performance) by any Harbourmaster and/or any Deputy Harbourmaster who has been duly appointed in accordance with clause 2, clause 3 or clause 10 (as applicable) of the functions of that office within Nelson Harbour; or
- b. PNL's performance (or lack of performance) of its obligations under clause 16, but only if and to the extent that any such liability is in excess of:
 - c. in the case of a liability in respect of which PNL is able to (or, if it were in place in accordance with the terms of this Deed, would be able to) make a successful claim under the Harbourmaster Liability insurance cover to be obtained by PNL in accordance with clause 12.1.a., \$30 million; and
 - d. in the case of a liability in respect of which PNL is able to (or, if it were in place in accordance with the terms of this Deed, would be able to) make a successful claim under the Wreck Recovery insurance cover to be obtained by PNL in accordance with clause 12.1.b., \$10 million; and
 - e. in the case of a liability in respect of which PNL is able to make a successful claim under any other form of insurance cover obtained by PNL in accordance with clause 12.1.c., the amount of that insurance cover; and
 - f. in the case of a liability in respect of which PNL is unable to make a successful claim under any form of insurance cover obtained by PNL (other than where such inability to make a successful claim is as a result of a breach of clause 12.1 of this Deed by PNL), \$10,000.00.

- 7.10 If PNL becomes aware of any claim, action or proceeding made against it by a third party which may give rise to a claim under one of the indemnities set out in clauses 7.8 or 7.9 (a "**PNL Third Party Claim**"):
- a. PNL shall as soon as practicable, notify NCC giving full details of the relevant facts and circumstances relating to the PNL Third Party Claim;
 - b. PNL shall keep NCC informed of all material developments in relation to the PNL Third Party Claim and not settle or make any admission of liability, agreement or compromise any claim or matter relating to the PNL Third Party Claim without written consent of NCC, such consent not to be unreasonably withheld or delayed; and
 - c. in the case of a claim under the indemnity set out in clause 7.8 only, and subject to the PNL being indemnified against all reasonable costs and expenses which may be incurred by reason of such action, PNL shall consult with and follow the instructions of NCC in relation to all matters connected with the PNL Third Party Claim and take all such action as NCC may reasonably request in relation to the PNL Third Party Claim, including commencing conducting, defending, resisting, settling, compromising or appealing against any proceedings.
- 7.11 Nothing in clause 7.10 restricts or limits the general obligation at law of each of the Parties to mitigate any loss or damage which it may suffer or incur as a consequence of any breach of any provision of this Deed or in relation to any other matter, event or circumstance which may give rise to a claim under the indemnity set out in clause 7.8 or the the indemnity set out in clause 7.9. Where NCC is or may become under any obligation to indemnify or make any payment to PNL pursuant to this Deed, PNL shall (and shall ensure that its subsidiaries and related parties shall) act reasonably in relation to matters giving rise to such indemnity on payment and take all reasonable steps to mitigate the loss in respect of which the indemnity or payment is or may become due.

8. **Ability for NCC to make directions**

- 8.1 NCC may, from time to time by way of written notice to PNL, make directions to PNL as to how it wishes the Harbourmaster to exercise his or her powers and/or fulfil his or her duties.
- 8.2 PNL shall, subject to clauses 8.3 to 8.6 (inclusive), take reasonable steps to implement any directions it receives from NCC in accordance with clause 8.1 as soon as is reasonably practicable.
- 8.3 If PNL, acting reasonably, considers that a direction it receives from NCC in accordance with clause 8.1 is, for whatever reason, unreasonable or inappropriate it may, within 5 Working Days' of receipt of such direction, request by way of written notice to NCC that NCC reconsider the giving of that direction, whereupon the NCC may, by way of written notice to PNL, either:
- a. affirm its original direction;
 - b. withdraw its original direction; or
 - c. amend its original direction (which amended direction shall be treated as a new direction given in accordance with clause 8.1).
- 8.4 In the event that NCC has, within 10 Working Days of the receipt of a written notice from PNL given in accordance with clause 8.3, taken none of the actions set out in sub-clauses

8.3(a) to (c), NCC shall be deemed for all purposes to have withdrawn its original direction.

8.5 If NCC affirms its original direction in accordance with clause 8.3(a), PNL may either:

- a. provide NCC with a formal notice that it disagrees with that direction and considers that the implementation of that direction created an unacceptable financial, statutory, safety or public relations risk to PNL, but nevertheless proceed to take reasonable steps to implement that direction at NCC's risk; or
- b. terminate this Deed on 10 Working Days' notice to NCC (provided that if NCC withdraws the relevant direction at any time within those 10 Working Days' this Deed shall not terminate).

8.6 NCC shall indemnify PNL against all claims, actions and proceedings of any nature whatsoever by any person, arising from the implementation by PNL and/or the Harbourmaster or a Deputy Harbourmaster of a direction of NCC in respect of which PNL has provided NCC with a notice in accordance with clause 8.5(a).

8.7 For the avoidance of doubt, PNL shall not be obliged to take reasonable steps to implement any direction received from NCC during such period as PNL and NCC are in discussions as to whether such direction is reasonable or appropriate in accordance with clauses 8.3 to 8.5 (inclusive).

9. Conflict of interests

9.1 PNL shall ensure that:

- a. the Harbourmaster and Deputy Harbourmasters do not exercise any powers associated with those roles in any case where they have a conflict of interest with respect to their role and responsibilities with PNL; and
- b. in the event that the Harbourmaster or a Deputy Harbourmaster is exercising a PNL role, he or she does not also fulfil the role of Harbourmaster or Deputy Harbourmaster (as applicable) at the same time,

in each case other than in circumstances where, and only to the extent that, the exercise of such power or the exercising of such role is considered by the applicable Harbourmaster or Deputy Harbourmaster to be necessary to prevent imminent danger to life, danger of injury or damage to property (in which limited circumstances the applicable Harbourmaster or Deputy Harbourmaster shall be permitted to exercise such power or role).

9.2 The following matters shall not, in and of themselves, constitute a conflict of interests for the purposes of clause 9.1 or a breach of clause 9.1(b):

- a. the Harbourmaster and/or a Deputy Harbourmaster being employed by PNL and receiving a salary from PNL;
- b. the Harbourmaster and/or a Deputy Harbourmaster being employed by PNL as a pilot or as a Marine Operations Manager;
- c. the Harbourmaster and/or a Deputy Harbourmaster undertaking any activity or exercising any power in a way that will derive income for PNL (for example, by requiring a vessel to exit the Nelson Harbour because it is creating a navigational hazard, and in doing so attracting pilotage fees for PNL);

- d. subject to clause 9.3, the Harbourmaster and/or a Deputy Harbourmaster providing verbal or written advice or directions in relation to maritime safety in their capacity as Harbourmaster and/or a Deputy Harbourmaster while also acting in their capacity as a pilot or as a Marine Operations Manager.

9.3 For the avoidance of doubt, and notwithstanding clause 9.2(d), piloting a vessel in their capacity as a pilot whilst at the same time exercising the power of Harbourmaster and/or a Deputy Harbourmaster (as applicable) to direct other vessels within Nelson Harbour which are in the vicinity of the vessel being piloted by the Harbourmaster or that Deputy Harbourmaster (as applicable) will constitute a breach of clause 9.1, unless the exercise of such power is considered by the applicable Harbourmaster or Deputy Harbourmaster to be necessary to prevent imminent danger to life, danger of injury or damage to property.

10. Cover for temporary unavailability of Harbourmaster

10.1 PNL shall use reasonable endeavours to ensure that, in the event that the Harbourmaster is temporarily unable or unwilling to perform the role of Harbourmaster, whether by reason of clause 9 of this Deed or otherwise:

- a. the Harbourmaster designates one or more Deputy Harbourmasters as his or her temporary replacement during such period of unavailability to undertake such of the duties of the Harbourmaster as that Deputy Harbourmaster is empowered to undertake (including those powers under sections 33E, 33F, 33H, 33P and 453 of the Maritime Transport Act 1994);
- b. the Harbourmaster gives written notice to the Group Manager **Strategy and Environment Environmental Management** or his/her successor of the expected period of time for which he or she will be unavailable and the names of the Deputy Harbourmaster(s) that will provide temporary cover for that role in his or her absence; and
- c. the duty pilot from time to time who is permanently employed by PNL is made reasonably available to the Deputy Harbourmaster(s) during any such unavailability of the Harbourmaster to enable, amongst other things, the Deputy Harbourmaster(s) to consult with the duty pilot as to maritime safety matters as and when he or she considers appropriate.

10.2 PNL shall:

- a. be responsible for the actions of any Deputy Harbourmaster during any such periods as if they were the Harbourmaster; and
- b. cause each such Deputy Harbourmaster to, during the terms of such appointment, fulfil the responsibilities set out in clause 6 of this Deed to the same standard as would be required of the Harbourmaster under this Deed, subject to any limitations on the powers bestowed upon such individuals.

10.3 The parties will use reasonable endeavours to agree appropriate candidates for the position of Deputy Harbourmaster from time to time. The list of persons who are eligible to be appointed as Deputy Harbourmaster may be amended from time to time by:

- a. the addition or removal of a name by written agreement between the parties; or
- b. the removal of a name by NCC by the giving of written notice to PNL (which notice shall be immediately effective).

- 10.4 In addition to the foregoing, NCC agrees that it shall use all reasonable endeavours to, in a timely manner, arrange for the appointment of one or more duly qualified individuals as a harbourmaster in respect of the Nelson Region in accordance with section 33D(1) of the Maritime Transport Act 1994, the intention of the parties being that such individual or individuals shall not perform the role of harbourmaster in respect of the Nelson Region on a day-to-day basis, but instead shall be available to act as a duly appointed harbourmaster in respect of the Nelson Region in circumstances where:
- a. the Harbourmaster is temporarily unable or unwilling to perform the role of Harbourmaster, whether by reason of clause 9 of this Deed or otherwise; and
 - b. any Deputy Harbourmaster who is temporarily acting as cover for the role of Harbourmaster in accordance with this clause 10 lacks the requisite powers or experience to deal with a particular situation that arises during such period of the Harbourmaster's unavailability.
- 10.5 For the avoidance of doubt, PNL does not accept any liability for the actions of any individual appointed as a harbourmaster in respect of the Nelson Region under clause 10.4 and nothing in this deed should be read as imposing any such liability on PNL.

11. Creation of annual budget

- 11.1 PNL shall submit a draft annual budget to NCC by such date and in such form as NCC may reasonably require (and provided that NCC shall give PNL reasonable notice of such date and form), such draft annual budget to include provision for:
- a. the operation and maintenance of Punawai the Harbourmaster vessel;
 - b. education and publicity items, signage and marker buoys to be utilised by the Harbourmaster in the performance of his or her duties;
 - c. an annual plan of work or initiatives proposed to be undertaken for any financial year; and
- 11.2 PNL acknowledges that the draft annual budget submitted to NCC in accordance with clause 11.1 will be subject to confirmation through the normal Local Government Act 2002 decision making requirements. Accordingly, upon adoption of the annual budget, NCC may direct that PNL not incur an item of expenditure set out in the draft annual budget submitted by PNL in accordance with clause 11.1.

12. Obligation to maintain insurance

- 12.1 PNL shall at all times during the term of this Deed, keep and maintain the following insurance with the following level of cover:
- a. Harbourmaster Liability: \$30 million
 - b. Wreck Recovery Cover: \$10 million
 - c. such other forms of insurance at such levels as is appropriate for a port company such as PNL.
- 12.2 NCC shall at all times during the term of this Deed, keep and maintain the following insurance with the following level of cover:
- a. Harbourmaster Liability: \$30 million
 - b. Wreck Recovery Cover: \$10 million

- c. such other forms of insurance at such levels as is appropriate for a city council such as NCC.
- 12.3 Upon termination of this Deed the Parties shall ensure that they maintain appropriate run-off insurance (such insurance to provide a similar level of protection to the Parties as that required under clauses 12.1 and 12.2).
- 12.4 Neither Party shall do any thing which shall make void or voidable any policy of insurance held by the other, or may render any increase or extra premium payable for any such policy of insurance.
- 12.5 In any case where in breach of this clause:
- a. NCC has rendered any insurance held by PNL less effective or void and PNL has suffered loss or damage, NCC shall forthwith compensate PNL in full for such loss or damage; and
- b. PNL has rendered any insurance held by NCC less effective or void and NCC has suffered loss or damage, PNL shall forthwith compensate NCC in full for such loss or damage.
- 13. Reporting requirements in relation to Harbourmaster role**
- 13.1 PNL shall, upon receipt of reasonable notice from NCC, provide NCC with information in a format and within a timeframe reasonably acceptable to the Group Manager ~~Strategy and Environment~~Environmental Management or his/her successor, of all material matters relating to the performance of the Harbourmaster role (a copy of a format which would be acceptable to the Group Manager ~~Strategy and Environment~~Environmental Management as at the date of this Deed is attached as Schedule ~~6-5~~ to this Deed).
- 14. Fines and Income**
- 14.1 PNL acknowledges that all income generated from all infringement fines imposed by the Harbourmaster, or any Deputy Harbourmaster or any other Enforcement Officer shall be income of the Nelson City Council Harbour Safety Activity Account.
- 14.2 NCC acknowledges that all income generated by PNL from log recovery fees and pilotage exemption certificate fees shall be income of PNL.
- 15. Ownership and use of Punawai the Harbourmaster vessel**
- 15.1 For the avoidance of doubt, the Parties each acknowledge that Punawai the Harbourmaster vessel shall at all times remain the property of NCC and PNL shall have no right to transfer or in any way encumber Punawai the Harbourmaster vessel.
- 15.2 Other than in the case of an emergency, PNL shall ensure that Punawai the Harbourmaster vessel is utilised solely in the performance of PNL's duties under this Deed. To the extent that, in the case of an emergency, the Harbourmaster or any Deputy Harbourmaster utilises Punawai the Harbourmaster vessel for any other purpose, PNL shall reimburse NCC for the reasonable cost of such usage.
- 16. Maritime Safety functions to be performed by PNL**
- 16.1 ~~As from the Effective Date, to the extent it is able to by law, NCC hereby delegates to PNL, and PNL hereby accepts the delegation of, The parties acknowledge that on 28 May 2020 NCC resolved to transfer to PNL~~ all of ~~the its~~ responsibilities (other than the power to transfer responsibilities under section 33X, the power to appoint a harbourmaster and

the power to make bylaws) of NCC under ~~part~~ **Part** 3A of the Maritime Transport Act 1994 that relate to ~~maritime navigation~~ safety in the Nelson Harbour ~~by instrument of delegation in the form attached hereto as a copy of which is set out in~~ Schedule ~~87~~. Without limited the generality of the foregoing, PNL will use its best endeavours to perform the functions set out in Schedule ~~9-8~~ hereto, which may be amended from time to time by agreement in writing between the parties.

17. Reporting requirements regarding Maritime Safety functions

- 17.1 PNL shall, upon receipt of reasonable notice from NCC, provide NCC with such information in such format and within such timeframe as is reasonably acceptable to the Group Manager ~~Strategy and Environment~~ **Environmental Management** or his/her successor, in relation to all material matters relating to PNL's performance of its obligations under clause 16.1.
- 17.2 Without in any way limiting the generality of clause 17.1, PNL shall provide NCC with a ~~six~~ **three** monthly report in a format reasonably acceptable to the Group Manager ~~Strategy and Environment~~ **Environmental Management** or his/her successor, such report to summarise:
- a. all AtoN outages or failures for the relevant period;
 - b. any material maritime incidents within Nelson Harbour for the relevant period (including any reported near misses);
 - c. a brief description of how PNL is currently fulfilling each of the obligations set out in clause 16.1 (including a description of any respect in which PNL considers that it is not currently fulfilling the obligations set out in clause 16.1 and a brief description of what PNL proposes to do over the forthcoming ~~six~~ **three** month period to begin fulfilling any such obligation); and
 - d. any matter or thing which PNL considers that it requires from NCC or with which NCC could assist to enable it to better perform the obligations set out in clause 16.1.

18. Functions continuing to be performed by NCC

- 18.1 For the avoidance of doubt:
- a. Nothing in this Deed shall be construed as requiring PNL to undertake any action, matter or thing outside Nelson Harbour;
 - b. NCC shall continue to perform all other functions required or recommended to be performed by regional councils under the Code, the Guidelines and the Statutory Regime in all areas outside the Nelson Harbour and PNL shall have no obligation whatsoever to perform those functions outside the Nelson Harbour; and
 - c. Notwithstanding that the Harbourmaster is responsible to perform the function of harbourmaster in respect of the entire Nelson Region (and not just the Nelson Harbour), nothing in this Deed shall impose any responsibility or liability upon PNL for any actions or omissions of the Harbourmaster in performing the role of harbourmaster of the Nelson Region outside the Nelson Harbour.
- 18.2 To the extent that the Code, the Guidelines or the Statutory Regime require or recommend that PNL undertakes any function in relation to maritime safety outside the Nelson Harbour, the Parties agree that they shall meet to discuss and endeavour to reach

a formal agreement as to how such function may best be satisfied and which of the Parties should take legal and financial responsibility for such function.

19. Ownership and financing of AtoN

19.1 The Parties agree that:

- a. any AtoN which are owned by NCC as at the date of this Deed (being all AtoN located within Nelson Harbour other than those set out in Schedule ~~7~~6) shall continue to be owned by NCC and nothing in this Deed shall be deemed to vest any ownership right in such AtoN in PNL or any other person;
- b. any AtoN which, following the date of this Deed, replaces an AtoN which is owned by NCC as at the date of this Deed shall be owned by NCC and nothing in this Deed shall be deemed to vest any ownership right in such AtoN in PNL or any other person;
- c. any AtoN which are owned by PNL as at the date of this Deed (as set out in Schedule ~~7~~6 of this Deed) shall continue to be owned by PNL and nothing in this Deed shall be deemed to vest any ownership right in such AtoN in NCC or any other person;
- d. any AtoN which, following the date of this Deed, replaces an AtoN which is owned by PNL as at the date of this Deed shall be owned by PNL and nothing in this Deed shall be deemed to vest any ownership right in such AtoN in PNL or any other person;
- e. any AtoN which are, following the date of this Deed, to be established in Nelson Harbour (other than those described at clause 17.1(b) above) shall be funded by PNL and accordingly ownership of such AtoN shall vest in PNL;
- f. any AtoN which are, following the date of this Deed, to be established in the Nelson Region, but outside Nelson Harbour (other than those described at clause 17.1(d) above) shall be funded by NCC and accordingly ownership of such AtoN shall vest in NCC.

19.2 Where any equipment is acquired by the Harbourmaster or PNL in circumstances where PNL is entitled to recoup the costs of that equipment from NCC in accordance with clause 20, the Harbourmaster or PNL (as the case may be) will be deemed to have acquired that equipment as NCC's agent and ownership of that equipment will accordingly vest in the NCC.

19.3 Where the Harbourmaster or PNL acquires equipment and PNL is not entitled to recoup the cost of that equipment from NCC, ownership of that equipment will vest in PNL.

20. Cost recovery for Harbourmaster role and other functions to be performed by PNL

20.1 The Parties intend that all direct and indirect costs associated with the performance of the role of Harbourmaster (other than the Harbourmaster's salary) be borne by NCC, including (without limitation):

- a. all costs associated with the running and repair of ~~Punawai~~the Harbourmaster vessel, including all fuel costs;

- b. all costs associated with incidental equipment required by the Harbourmaster which he or she considers reasonably necessary to enable him or her to perform the role of harbourmaster for the Nelson Region (including, by way of example only, all buoys, ropes, flags, chain, anchors, moorings and signs);
- c. all costs of all educational and promotional materials to be utilised by the Harbourmaster in the course of his or her duties as harbourmaster for the Nelson Region; and
- d. the costs of taking out the insurance described in clause 12,

provided that, other than in the case of an emergency giving rise to an imminent maritime safety risk, in the event the such expenditure exceeds the amount approved by NCC in respect of such expenditure for the relevant financial year, such additional expenditure has been pre-approved or otherwise agreed in writing by NCC (which approval shall be subject to NCC's usual processes) (the "**Agreed Harbourmaster Costs**").

- 20.2 PNL shall submit an invoice to NCC by no later than the 20th of each month in respect of the aggregate of the Agreed Harbourmaster Costs incurred during the preceding calendar month.
- 20.3 PNL shall, when submitting an invoice for payment to NCC, include where requested an accurate breakdown of time, cost and activity in respect to each Agreed Harbourmaster Cost. NCC will be entitled to query any aspect of the invoice and PNL shall fully and promptly co-operate to resolve any such query. While any matter is being queried, PNL shall continue to perform its obligations under this Deed without interruption or delay.
- 20.4 Where NCC disputes any amount of an invoice, it shall pay the portion of the amount stated in the invoice which is not in dispute, and it shall notify PNL in writing of the reasons for disputing the remainder of the invoice. The dispute will then be resolved in accordance with the dispute resolution provisions of this Deed.
- 20.5 PNL shall issue GST invoices to the NCC, and comply with all statutory and regulatory requirements and directions of IRD and New Zealand Customs with regard to the filing of returns and payment of any tax.
- 20.6 NCC shall pay each PNL invoice by no later than the 20th of the month following the month in which NCC received the relevant invoice, except to the extent it is disputed under clause 20.4
- 20.7 Except as provided above, the Parties will meet their own costs relating to the performance of their obligations under this Deed.

21. **Costs of preparation**

- 21.1 Except as otherwise provided in this Deed, the Parties will meet their own costs relating to the negotiation, preparation and implementation of this Deed.
- 21.2 NCC will upon demand pay the costs of and incidental to the negotiation, preparation and execution of this Deed and any variation of the same (including all legal expenses at the rate charged as between solicitor and own client).

22. Payments and deductions

- 22.1 Subject to clause 20.4, all payments under this Deed are to be made upon demand in cleared and immediately available funds, without any set-off, counterclaim or equity and without deduction or withholding of any taxes, or other governmental charges.
- 22.2 However if any such set-off, counterclaim, equity, deduction, withholding or charges are required by law and are made accordingly, the Party making the payment will concurrently pay to the recipient Party such additional amount as will result in the recipient Party receiving the full amount it would have received had no such set-off, counterclaim, equity, deduction, withholding or charge been required.

23. Dispute resolution

- 23.1 If either Party has any dispute with the other in connection with this Deed:
- a. that Party will promptly give full written particulars of the dispute to the other; and
 - b. the Parties will promptly meet together and in good faith try and resolve the dispute.
- 23.2 If the dispute is not resolved within 10 Working Days of written particulars being given (or any longer period agreed to by the Parties) then:
- a. in the case of a dispute relating to matters the value of which is less than \$100,000 (a "**Minor Dispute**") will be referred to mediation in accordance with the remainder of this clause; and
 - b. in the case of a dispute relating to matters the value of which is equal to or greater than \$100,000, the Parties shall be free to resolve the dispute however they best see fit.
- 23.3 A Party must use the mediation procedure to resolve a Minor Dispute before commencing any other dispute resolution proceedings.
- 23.4 The mediation will be conducted by a LEADR panel mediator chosen by the Parties or, if they cannot agree, by the President of the New Zealand Law Society or the President's nominee.
- 23.5 If the Minor Dispute is not resolved by mediation the Parties will refer the Minor Dispute to a single arbitrator.
- 23.6 The single arbitrator will be chosen by the Parties or, if they cannot agree, by the President of the New Zealand Law Society, or the President's nominee.
- 23.7 The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996.
- 23.8 The Parties must always act in good faith and cooperate with each other to promptly resolve any Minor Dispute.
- 23.9 The procedures and time frames for any mediation or arbitration will be fixed by the mediator or arbitrator (as appropriate) if the Parties cannot agree.
- 23.10 The Parties must continue to comply with their obligations under this Deed during the dispute resolution process (whether a Minor Dispute or not).

23.11 Where the Parties cannot agree as to whether a dispute is a Minor Dispute, that question shall be resolved as if it were a Minor Dispute.

23.12 This clause will not apply to any application by either Party for urgent interlocutory relief.

24. Termination

24.1 This Deed continues until ended the earlier of:

~~a.~~ by agreement between the Parties

~~b.~~ (i) 30 June 2026; or

~~c.~~ (ii) the transfer or delegation is voluntarily surrendered; or

~~a-d.~~ (iii) the transfer or delegation is revoked in writing by the Council; or

~~b-e.~~ in accordance with clause 4.8(b)(ii) or clause 8.5(b); or

~~e-f.~~ in accordance with clause 26.4; or

~~d-g.~~ by either Party by giving 24 months' notice in writing to the other Party.

24.2 Either Party can end this Deed by notice in writing to the other Party (the "**Termination Notice**") if the other Party:

a. does not fulfil any of its obligations under this Deed and either:

i. the default is a material default of a term of this Deed which goes to the essence of this Deed (and is not merely administrative, procedural or technical in nature) and which default cannot be remedied; or

ii. the default is a material default of a term of this Deed which goes to the essence of this Deed (and is not merely administrative, procedural or technical in nature) and which default can be remedied but has not been so remedied 10 Working Days after the other receives written notice of the default,

but a Party cannot end this Deed under this clause 24.2(a) if the default is not material or has been remedied before the other Party receives the Termination Notice;

b. suffers an Insolvency Event, as described in clause 24.3.

24.3 For the purposes of this clause 24.3, an "Insolvency Event" is where the relevant Party:

a. commits an act of bankruptcy or makes an assignment or composition with its creditors;

b. becomes liable to be placed in liquidation;

c. cannot pay its debts when they fall due, or is deemed not to be able to pay them in accordance with section 287 of the Companies Act 1993; or

d. suspends payment to its creditors or ceases or threatens to cease operating or convenes a meeting of its creditors to propose a scheme of arrangement with them;

e. has a liquidator appointed or its board or shareholders propose or pass a resolution to appoint a liquidator;

- f. has a receiver, manager or statutory manager appointed;
- g. has an application for it to be placed in liquidation presented or advertised;
- h. passes or purports to pass a resolution for it to be placed in liquidation.

24.4 Termination of this Deed shall be without prejudice to any accrued rights or obligations of the Parties up to the date of termination and the provisions of clauses 7, 10.5, 12.3, 12.4, 12.5, 23, 24, 28, 29, 32, 34, 38, 39 and 40 shall remain in full force and effect notwithstanding termination.

25. Waiver

25.1 The failure of a Party at any time to:

- a. enforce or insist upon the strict observance of any provision of or any right in respect of or the remedying of any breach or non-performance of this Deed; or
- b. exercise any election or discretion under this Deed,

does not operate as a waiver of those matters or of any of the rights of such Party under this Deed.

26. Force majeure

26.1 Subject to this clause 26 but not any other provisions of this Deed, neither Party is liable for non-performance of any of its obligations (other than to pay money) under this Deed during the time and to the extent that performance is materially prevented by force majeure.

26.2 The Party claiming the benefit of this clause (the "Party claiming") must:

- a. Promptly give written notice to the other Party specifying:
 - i. the cause and extent of its inability to perform any of its obligations;
 - ii. the likely duration of the non-performance.
- b. In the meantime take all reasonable steps to remedy or reduce the force majeure.

26.3 No Party is required against its will to settle any strike, lockout or other industrial disturbances.

26.4 Performance of any obligation affected by force majeure will be resumed as soon as reasonably possible after the termination or reduction of the force majeure. If a Party is unable to perform any obligation under this Deed for a period of 30 days because of force majeure the other Party may on giving 10 Working Days' written notice to that Party terminate this Deed.

26.5 Termination of this Deed under this clause does not prejudice the rights of either Party arising before termination.

26.1 "force majeure" means any:

- a. act of God (being an unavoidable event caused solely by the effect of nature or natural causes and which interrupts the expected course of events), fire, earthquake, storm, flood or landslide;
- b. strike, lockout, work stoppage or other labour hindrance;

- c. explosion, public mains electrical supply failure, or nuclear accident;
- d. sabotage, riot, civil disturbance, insurrection, epidemic or pandemic, national emergency (whether in fact or law) or act of war (whether declared or not);
- e. requirement of restriction of, or failure to act by, any government semi-governmental or judicial entity (other than, in the case of NCC, a failure to act by NCC itself);
- f. unavoidable accident;
- g. unavoidable delay in obtaining or, inability to obtain adequate labour, contractors, equipment, materials, transport or supplies;
- h. any computer related problem if the problem occurs as the result of a defect in any equipment or software program which is not owned or operated by the Party claiming;
- i. any other similar cause beyond the reasonable control of the Party claiming and which that Party is unable to overcome at reasonable cost;

but does not include:

- j. any risk or event which the Party affected could have prevented or overcome by taking reasonable care (including taking out appropriate insurance); or
- k. a lack of funds for any reason;
- l. any computer related problem if the problem occurs as the result of a defect in any equipment or software program owned or operated by the Party claiming.

26.2 The Party claiming must prove force majeure exists and that it has satisfied all its obligations under this clause 26.

27. Notices

27.1 A notice in connection with this Deed and the documents referred to in it must be in writing and must be left at the address of the addressee or sent by registered mail to the address of the addressee or sent by facsimile to the facsimile number of the addressee or by email to the email address of the addressee, in each case which is specified in this clause in relation to the Party to whom the notice is addressed, and marked for the attention of the person so specified, or to such other address, facsimile number or email address in New Zealand and/or marked for the attention of such other person, as the relevant Party may from time to time specify by notice given in accordance with this clause.

27.2 The relevant details of each Party at the date of this Deed are:

NCC

Address: 110 Trafalgar Street, PO Box 645, Nelson 7040
Facsimile: (03) 546 0343
Email: clare.barton@ncc.govt.nz
Attention: Clare Barton

PNL

Address: 10 Low Street, Port Nelson, PO Box 844, Nelson
Facsimile: (03) 546 9015

Email: daryl.wehner@portnelson.co.nz

Attention: Daryl Wehner

27.3 Each Party undertakes to notify the other by notice served in accordance with this clause if the address specified herein is no longer an appropriate address for the service of notices.

27.4 Subject to clause 27.5 below, a notice is deemed to have been received at the following times:

- a. when given personally, upon delivery;
- b. when sent by post, 3 Working Days after posting;
- c. when sent by facsimile, upon receipt of the correct answerback or receipt code; and
- d. when sent by email, when the email is received by the server of the recipient or otherwise as prescribed by the Electronic Transactions Act 2002.

27.5 Any notice which has been received on a day which is not a Working Day, or after 5 p.m. on a Working Day, shall be deemed to be received on the next following Working Day.

27.6 Time is of the essence.

28. Confidential Information

28.1 In this clause "Confidential Information" means any and all information obtained by one Party (or its agents, employees or advisers) or of which one Party (or its agents, employees or advisers) becomes aware or gains access to in the course of the performance of, or otherwise in connection with, this Deed which is, or may be, of commercial value to the other Party or which the other Party otherwise has an interest in keeping confidential, and includes the existence and content of this Deed.

28.2 Subject to clause 28.4, each Party agrees not to (or to allow its agents, employees or advisers to) disclose, communicate to or place at the disposal of any third party, the other Party's Confidential Information in any form or by any means and to keep such Confidential Information in the strictest confidence.

28.3 Each Party agrees:

- a. not to use, or modify the other Party's Confidential Information for its own benefit or the benefit of any other person; and
- b. to use the other Party's Confidential Information only for the purpose of this Deed.

28.4 Notwithstanding clause 28.2, a Party may disclose Confidential Information:

- a. to any professional adviser, financial adviser, banker, financier or auditor where that person is obliged to keep the information confidential;
- b. subject to clause 28.5, to comply with any applicable law, or any requirement of any regulatory body;
- c. to any of its employees to whom it is necessary to disclose the information in circumstances where those employees are obliged to keep the information confidential;

- d. to enforce its rights or to defend any claim or action under this Deed; and
 - e. where the information has come into the public domain through no fault of that Party.
- 28.5 If a Party is legally required to disclose any Confidential Information that Party will:
- a. immediately notify the other Party of such requirement;
 - b. fully co-operate, at the other Party's cost, with all legal actions taken by the other Party to avoid or limit such disclosure; and
 - c. if it cannot avoid such disclosure:
 - i. only disclose such portions of the Confidential Information as is legally required; and
 - ii. use its reasonable endeavours to obtain assurances that such information will be treated as confidential by any person to whom it is disclosed.
- 28.6 Each Party shall ensure that all of its employees, officers and agents who receive or have access to Confidential Information observe all of the confidentiality obligations and undertakings set out in clauses 28.2 and 28.3.
- 28.7 If a Party authorises the other Party to disclose any of its Confidential Information to any person that other Party agrees, prior to such disclosure, to have such person execute an acknowledgement in a form satisfactory to the Party who's Confidential Information it is, to the effect that the Confidential Information is disclosed to that person in confidence.
- 28.8 To ensure the continued proprietary and confidential nature of each Party's Confidential Information, each Party agrees to:
- a. Initiate and maintain a system for the proper and secure custody of any Confidential Information within its custody or control; and
 - b. Maintain complete and accurate records of the location of the Confidential Information within its custody or control (including all copies).
- 28.9 If a Party so requests at any time, the other Party agrees to:
- a. Subject to any requirement to the contrary provided at law, and as the first Party directs, immediately return to or do all things necessary to ensure the return to the first Party or destroy or ensure the destruction of all of the first Party's Confidential Information including all copies of the first Party's Confidential Information whether those copies are in the same form as the original or capable of being re-created into such or other form by any method.
 - b. Certify in writing to the first Party that it has returned or destroyed (as applicable) all forms of the first Party's Confidential Information and that it no longer has any part of the first Party's Confidential Information in its possession, custody or control.
 - c. Ensure that the first Party, its officers or agents have access to the premises in which the first Party's Confidential Information may be, or supposed to be, or have been kept from time to time.

29. Public statements

- 29.1 The Parties will issue joint or co-ordinated press releases announcing the signing of this Deed. Each Party will appoint representatives to consult with the other Party in co-ordinating all disclosures and publicity (whether required by law or otherwise).
- 29.2 The form contents and timing of any further public announcement concerning this Deed must be agreed between the Parties.
- 29.3 Any announcement or disclosure made by a Party's advisors or staff will be deemed to be made by that Party.
- 29.4 For the purposes of this clause "this Deed" includes its existence, any part of its contents and any aspect of the matters it refers to.
- 29.5 The Harbourmaster shall be permitted to respond to media enquiries of a purely technical nature provided that his or her response is of a purely technical nature and does not provide any element of opinion or any assessment of merit and provided that such responses are notified to the Group Manager ~~Strategy and Environment~~Environmental Management or his successor without delay. PNL shall ensure that the Harbourmaster does not otherwise respond to media enquiries, whether in relation to maritime safety or otherwise, without first having obtained the express permission of the Group Manager ~~Strategy and Environment~~Environmental Management or his successor in relation to the particular media enquiry.

30. Provision of Consent

- 30.1 Unless otherwise specifically stated in this Deed as being within a Party's sole discretion any consent or approval or determination to be given or made by either Party is not to be unreasonably withheld or given subject to unreasonable conditions.

31. Contracts (Privity) Act

- 31.1 Each Party's obligations, undertakings and indemnities under this Deed are for the benefit of the other Party and also (in accordance with the Contracts (Privity) Act 1982 of New Zealand) for the benefit of members of the public.

32. Entire agreement

- 32.1 This Deed embodies the entire understanding and agreement between the Parties as to its subject matter.
- 32.2 All previous negotiations, understandings, representations, warranties, memoranda, commitments or agreements in relation to, or in any way affecting, the subject matter of this Deed are merged in this Deed and are of no further effect whatsoever and no Party shall be liable to the other in respect of such matters.
- 32.3 No oral explanation or information provided by any Party or its employees or agents to another affects the meaning or interpretation of this Deed or constitutes any collateral agreement, warranty or understanding between any of the Parties.

33. Further assurance

- 33.1 Each Party will, with due diligence:
- a. execute all necessary deeds, assignments and documents;
 - b. do everything that the other Party reasonably requires;

to carry out the terms of this Deed and fully and effectively assure to the other Party the rights agreed to be granted by this Deed.

34. **Assignment and sub-contracting**

- 34.1 Subject to clauses 34.2 and 34.3, neither Party may wholly or in part, assign, transfer or otherwise part in any way with the benefit of this Deed or any right or interest thereunder without the prior written consent from the other Party.
- 34.2 PNL may sub-contract or delegate the performance of all or some of its obligations under this Deed to a third party which PNL reasonably believes is able to perform those obligations in compliance with the terms of this Deed, provided that PNL shall, as between PNL and NCC, at all times remain responsible for such performance.
- 34.3 NCC may sub-contract or delegate the performance of all or some of its obligations under this Deed to a third party which NCC reasonably believes is able to perform those obligations in compliance with the terms of this Deed, provided that NCC shall, as between NCC and PNL, at all times remain responsible for such performance.

35. **Severance**

- 35.1 If any of the provisions contained in this Deed are held to be unenforceable by any Court or tribunal:
- a. the remaining provisions not affected by the decision remain in full force and effect;
 - b. the Parties will co-operate to ensure that the spirit and intention of this Deed is carried out as far as is reasonably possible;
 - c. the Parties will negotiate in good faith with a view to amending this Deed to, as nearly as is possible, give effect to the unenforceable provisions.

36. **Amendment**

- 36.1 No modification or addition to this Deed is effective unless it is in writing signed by all of the Parties.
- 36.2 For the purposes of section 6 of the Contracts (Privity) Act 1982, this Deed may be amended by the Parties by agreement in writing signed by the Parties and the agreement of any other third party who may have third party rights under this Deed is not required.

37. **Compliance with legislation**

- 37.1 Each of the Parties shall ensure that they at all times comply with all relevant legislation, standards and codes applying to the performance of their obligations under this Deed.
- 37.2 For the avoidance of doubt, the Harbourmaster and each Deputy Harbourmaster are employees of PNL (and not NCC) for all purposes, including for the purposes of the Health and Safety in Employment Act 1992.

38. **Relationship between Parties**

- 38.1 PNL agrees that it will not, except as expressly authorised by this Deed:
- a. be an agent, partner or employee of NCC;
 - b. enter into any order, agreement or arrangement on behalf of NCC;

- c. make any express or implied representation or statement on behalf of NCC;
- d. hold itself out to have any relationship, authority or right which is excluded by this clause.

38.2 NCC agrees that it will not, except as expressly authorised by this Deed:

- a. be an agent, partner or employee of PNL;
- b. enter into any order, agreement or arrangement on behalf of PNL;
- c. make any express or implied representation or statement on behalf of PNL;
- d. hold itself out to have any relationship, authority or right which is excluded by this clause.

38.3 This clause will not apply to any authority or right expressly given to by one Party to the other by this Deed.

39. Further assurances

39.1 From time to time, as and when may be reasonably requested by PNL, NCC shall consider and, if it thinks it appropriate, undertake all such reasonable actions as may be within its powers and which are reasonably necessary or desirable to enable PNL to perform its functions under this Deed, including, for the avoidance of doubt, the promulgation or adoption (as applicable) in a timely manner of such bylaws, codes, standards and other similar things which are within the control of NCC and which are generally considered maritime safety best-practice in New Zealand (subject always to usual NCC procedure for such matters).

40. Governing law

40.1 This Deed is governed by and construed according to the current laws of New Zealand.

41. Counterpart copies

41.1 This Deed may be executed by each signatory in separate counterpart copies and when each signatory has executed at least one copy, and the separately signed documents when brought together will form a binding legal document.

41.2 The Parties may execute a counterpart copy of this Deed by photocopying a facsimile of this Deed and executing that photocopy. The transmission by facsimile by each Party of a signed counterpart copy of this Deed to the other Party is deemed proof of signature of the original and the signed facsimile so transmitted is deemed an original for the purposes of this Deed.

Signed by **Port Nelson Limited** by two directors:

Director's full name

Director's full name

Director's signature

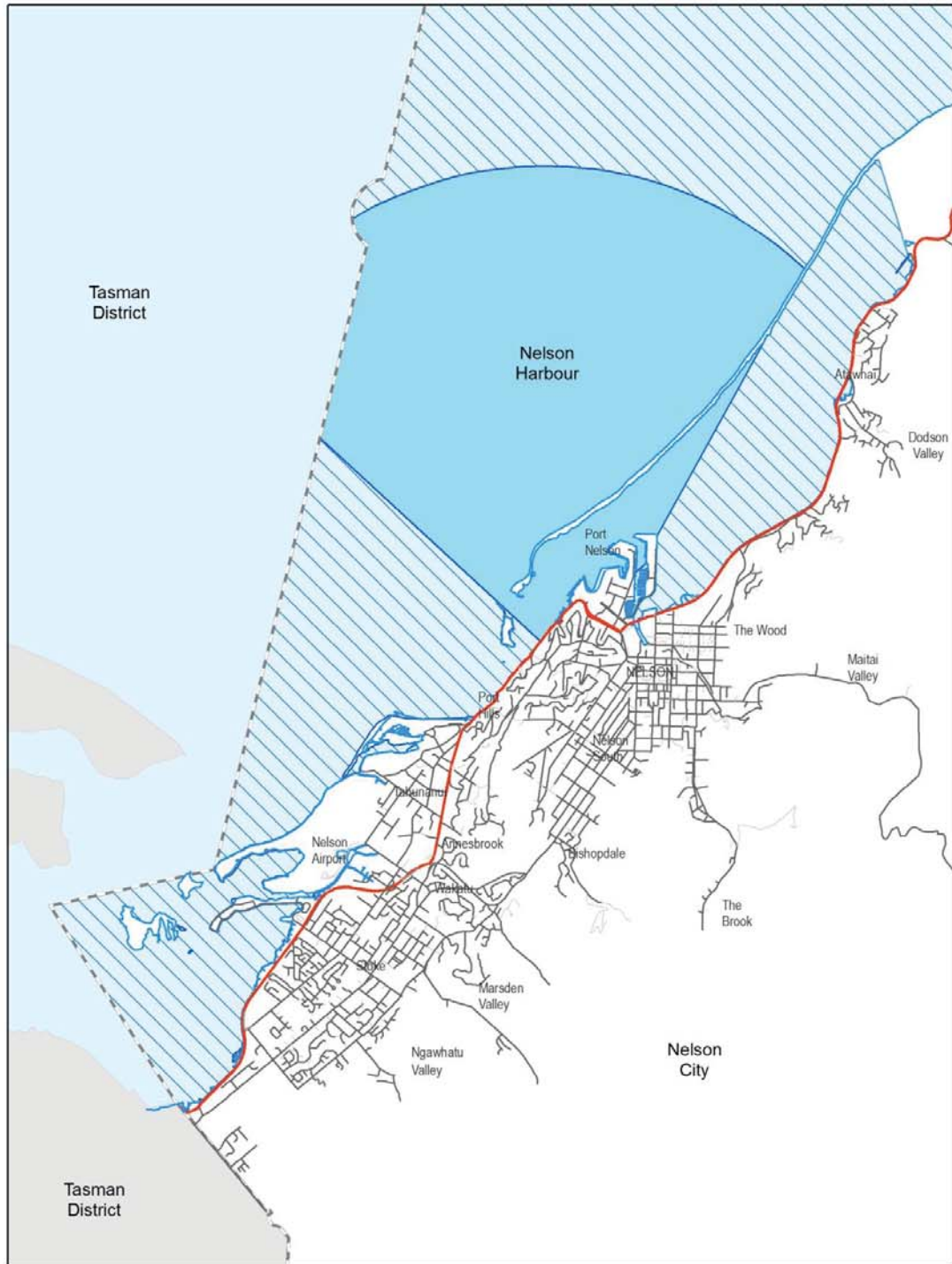
Director's signature

Signed by **Nelson City Council** by the Chief Executive:

| _____
~~Clare Hadley~~ Pat Dougherty
Chief Executive

Released 18 Nov 2021

SCHEDULE 1: MAP OF NELSON HARBOUR (clause 1.1)



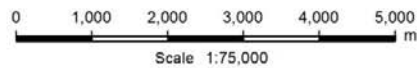
This map is a representation of the information available to the Nelson City Council. It is not intended to be used to determine the location or size of any land, or to identify legal boundaries. To the extent permitted by law, the Nelson City Council, its employees, agents and contractors will not be liable for any costs, damages or loss suffered as a result of the data or plan, and no warranty of any kind is given as to the accuracy or completeness of the information represented by the GIS data. This publication is copyright reserved by Nelson City Council. Cartorial information derived from the CRS. ©CROWN COPYRIGHT RESERVED. KIT. Original map size A4. File Ref: 1334836

Nelson Harbour as defined in the Agreement Regarding the Appointment of Harbourmaster for the Nelson Region and Related Matters

Nelson City Council
 te kaunihera o whakatū

PO Box 645 Nelson 7040 New Zealand
 PH 03 546 0200 FAX 03 546 0239
 www.nelsoncitycouncil.co.nz

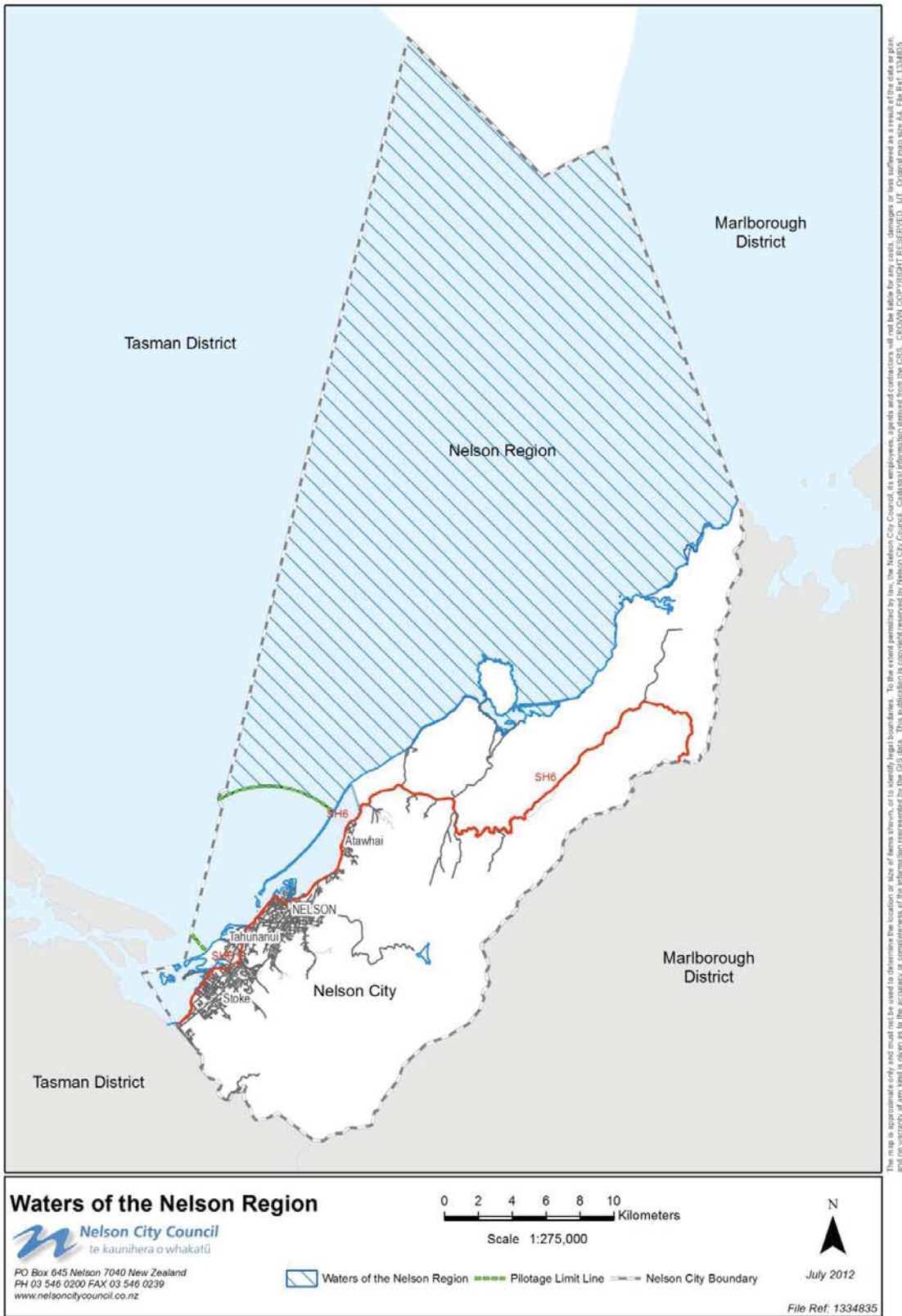
- Nelson Harbour
- Waters of the Nelson Region
- Nelson City Boundary



October 2012

File Ref: 1334836

SCHEDULE 2: MAP OF WATERS OF THE NELSON REGION (clause 1.1)



SCHEDULE 3: WARRANT OF HARBOURMASTER AT DATE OF DEED (clause 3.3.b.)



WARRANT OF APPOINTMENT



Issued pursuant to Part 3A, Section 33D of the Maritime Transport Act 1994

This is to certify that

ANDREW HOGG

Is appointed by Nelson City Council as an:

HARBOURMASTER

with the following functions and powers

S.33E – Powers to exercise all powers conferred by the Maritime Transport Act, 1994 or any other enactment to ensure maritime safety in relation to the ports, harbours or waters for which he has been appointed as Harbourmaster.

S.33F – Power to enter and remain on any ship, maritime facility, land or property of a port company or port operator, to give directions to ships, to remove ships and hazards to navigation, to require the giving of information and names and addresses, to regulate traffic and navigation on the occasion of unusual or extraordinary maritime traffic and all the powers under this Section.

S.33H – Powers of entry to any ship, building or place within the Nelson City region for the purpose of carrying out his duties.

S.33P – Power to issue infringement notices.

S.453 – Power to enter any ship or building or place at any reasonable time to undertake inspection for the reasons provided for in that section.

The Common Seal of the NELSON CITY COUNCIL was hereto affixed in the presence of

.....
Mayor

.....
Chief Executive

Issued 03/3/2020
Expires 03/3/2023

Released

SCHEDULE 4: COPY OF CUSTOMER PROMISE-FOCUS VALUES (clause 6.2.c)

The Nelson City Council Customer PromiseFocus

Service-TargetsValues

July 2011

REGULATORY	Harbour Safety Issue	We will either fix the problem or get back to you within 20 working days.
REGULATORY	Navigation Safety Bylaws	We will either fix the problem or get back to you within 20 working days.
REGULATORY	Complaint	You will receive an acknowledgement within 4 working days of your complaint being received at Council, and a final response within 10 working days
CEO	Official Information Act Request	You will receive an acknowledgement within 4 working days of your request being received at Council, and a final response within 20 working days

Customer Focus

Delivering the best we can for Nelson.

•We provide a service which is responsive, courteous, timely and accurate

•We listen to our customers and treat them with respect and fairness

•We seek to continually improve our service

Nelson City Council Customer Promise

I take personal responsibility for ensuring internal & external customer service excellence. I am successful when:

- ~~I treat customers with respect and fairness~~
- ~~I provide service which is responsive, courteous, timely and accurate~~
- ~~I listen to our customers and proactively engage with stakeholders~~
- ~~I deliver polished professional services~~
- ~~I collaborate with other team members to ensure that my co-workers are successful~~
- ~~I work within council policies~~
- ~~I continually seek to improve my service~~
- ~~I proactively enhance Council's reputation for customer excellence~~

SCHEDULE 5A: INJURY REPORT (clause 6.2.d)

Report an injury



Injured person

For each injured person, fill out a copy of this form

Vessel Name

Injured Name

Address

Phone number

Estimated age (years)

- 0-4 15-19 35-44
- 5-9 20-24 45-64
- 10-14 25-34 65 and over

Gender

- Male Female

Ethnicity

- NZ/European Asian Nth or Sth American
- Māori African other
- Pacific peoples Middle Eastern

Type of injury sustained

- amputation
- asphyxia
- bruising
- burns
- cold water immersion
- crushing
- damage to nerves or spinal chord
- dislocation
- drowning
- electric shock
- eye injury
- foreign body
- hypothermia
- internal injury
- open wound / puncture wound
- poisoning / toxic effect
- spinal fracture
- sprains / strains / muscle tear
- superficial injury

Real

Which part of their body received injuries?

- | | | |
|--------------------------------|-----------------------------|-----------------------------------|
| <input type="radio"/> feet | <input type="radio"/> legs | <input type="radio"/> pelvic area |
| <input type="radio"/> hands | <input type="radio"/> neck | <input type="radio"/> shoulder |
| <input type="radio"/> head | <input type="radio"/> arms | <input type="radio"/> back |
| <input type="radio"/> internal | <input type="radio"/> torso | <input type="radio"/> other |

How did the injury happen?

- | | |
|-----------------------------------------------------------|-------------------------------------------------------------|
| <input type="radio"/> slip / trip / fall | <input type="radio"/> physical impact / stress / strain |
| <input type="radio"/> fall from height | <input type="radio"/> temperature extremes |
| <input type="radio"/> lifting / carrying / handling | <input type="radio"/> psychological stress |
| <input type="radio"/> contact with object | <input type="radio"/> confinement |
| <input type="radio"/> hit by an object | <input type="radio"/> entrapment |
| <input type="radio"/> inhalation / ingestion / aspiration | <input type="radio"/> submersion / immersion |
| <input type="radio"/> exposure to contaminant | <input type="radio"/> pierced / punctured by object |
| | <input type="radio"/> exposure to noise / vibration / sound |

What was the main cause of the injury?

- | | |
|---------------------------------------------------------|----------------------------------------------------------------|
| <input type="radio"/> tiredness / fatigue | <input type="radio"/> inappropriate equipment / ergonomics |
| <input type="radio"/> inattention | <input type="radio"/> alcohol / drugs |
| <input type="radio"/> lack of training / qualifications | <input type="radio"/> pre-existing illness / medical condition |
| <input type="radio"/> mechanical / electrical failure | <input type="radio"/> communication issues |
| <input type="radio"/> gear/equipment failure | <input type="radio"/> policy/operating orders |
| <input type="radio"/> cargo / items / objects shifting | <input type="radio"/> deliberate decision against rule or plan |
| <input type="radio"/> fire / explosion | <input type="radio"/> working under pressure / stress |

What was the treatment of the injury?

- | | |
|---------------------------------------|---------------------------------------------------|
| <input type="radio"/> none | <input type="radio"/> Doctor (no hospitalisation) |
| <input type="radio"/> basic first aid | <input type="radio"/> hospitalisation |

Did the person die as a result of injuries sustained?

- no yes

Is the person missing?

- no yes

Was the injured person from a

- commercial vessel

recreational vessel

If you chose this option, you do not need to answer the following questions and you may submit this form.

What was the injured person's role?

- employer
- employee
- self-employed contractor
-

Harbourmaster / other person

If you chose this option, you do not need to answer the following questions and you may submit this form

Injured person's occupation

Hours on boat that shift

Experience on this boat

- none
- 1-6 months
- 3-6 years
- 1-4 weeks
- 6-12 months
- 6+ years
- 1 month
- 1-3 years

Experience in this industry

- none
- 1-6 months
- 3-6 years
- 1-4 weeks
- 6-12 months
- 6+ years
- 1 month
- 1-3 years

Once completed

Fax to:
 Maritime New Zealand's Rescue Coordination Centre (RCCNZ)
 +64 4 577 8038



Or

Post to:
 Maritime New Zealand
 Attention Accidents and Investigations
 Accident Reports
 PO Box 27006
 Wellington 6141

SCHEDULE 5B: REPORT FORM FOR MARITIME ACCIDENT OR INCIDENT

Report a maritime accident or incident



Recreational boat or craft



Reporter details

required *

Fill in your details as the person reporting the accident or incident

* Name

* Preferred contact 1

* Preferred contact 2

Email address

Address

* Your role during this accident or incident

- | | | |
|----------------------------------------|---------------------------------------------------------|-----------------------------------------------|
| <input type="radio"/> skipper / master | <input type="radio"/> crew | <input type="radio"/> owner of vessel / craft |
| <input type="radio"/> driver | <input type="radio"/> operational manager | <input type="radio"/> principal |
| <input type="radio"/> guide | <input type="radio"/> operational staff | <input type="radio"/> passenger |
| <input type="radio"/> trip leader | <input type="radio"/> volunteer | <input type="radio"/> witness |
| <input type="radio"/> paddler | <input type="radio"/> health & safety advisor / officer | <input type="radio"/> other |



Boat / craft details

Provide details about the boat (if applicable / known)

Name

MSA / MNZ number

Overall length (m)

Category

<input type="radio"/> dinghy (motorised)	<input type="radio"/> inflatable	<input type="radio"/> rigid inflatable boat (RIB)
<input type="radio"/> dinghy (paddle)	<input type="radio"/> launch	<input type="radio"/> waka ama
<input type="radio"/> jet ski (PWC)	<input type="radio"/> power boat / jet boat	<input type="radio"/> windsurfer / sailboard
<input type="radio"/> kayak / canoe	<input type="radio"/> raft	<input type="radio"/> yacht (sailboard)

6 Crew and owner information

Who was the skipper / driver of the boat / craft?

you

Your date of birth:

someone else

Their name

Their phone number

Their address

Who is the owner of the boat / craft?

you

someone else

Owner name / company name

Owner phone number

Owner address

7 Time and location information

Date of incident

Time of incident

Where did the accident or incident take place?

- at sea
- in harbour
- at berth / marina / boat ramp
- a river
- a lake

Region

- | | | |
|-------------------------------------|-----------------------------------|---------------------------------------|
| <input type="radio"/> Northland | <input type="radio"/> Taranaki | <input type="radio"/> Canterbury |
| <input type="radio"/> Auckland | <input type="radio"/> Manawatu | <input type="radio"/> Otago |
| <input type="radio"/> Waikato | <input type="radio"/> Wellington | <input type="radio"/> Southland |
| <input type="radio"/> Bay of Plenty | <input type="radio"/> Tasman | <input type="radio"/> Chatham Islands |
| <input type="radio"/> Gisborne | <input type="radio"/> Marlborough | |
| <input type="radio"/> Hawke's Bay | <input type="radio"/> West Coast | |

Location in this region



Environmental conditions

Provide information about conditions around the scene of the accident or incident

Visibility good fair poor

Other factors affecting visibility

- | | | |
|---------------------------------|---------------------------------------|------------------------------------|
| <input type="radio"/> sunstrike | <input type="radio"/> snow | <input type="radio"/> dust storm |
| <input type="radio"/> fog | <input type="radio"/> change of light | <input type="radio"/> smoke |
| <input type="radio"/> rain | <input type="radio"/> dark | <input type="radio"/> hail / sleet |

Fill in information below if your accident or incident occurred on a lake or at sea

Describe the state of the waters

- | | |
|--------------------------------------------------------|-----------------------------------------------------|
| <input type="radio"/> N/A | <input type="radio"/> 5 rough (2–4m waves) |
| <input type="radio"/> 0 calm (glassy) (no waves) | <input type="radio"/> 6 very rough (4–6m waves) |
| <input type="radio"/> 1 calm (rippled) (0–0.25m waves) | <input type="radio"/> 7 high (6–9m waves) |
| <input type="radio"/> 2 smooth (0.25–0.5m waves) | <input type="radio"/> 8 very high (9–14m waves) |
| <input type="radio"/> 3 slight (0.5–1m waves) | <input type="radio"/> 9 phenomenal (over 14m waves) |
| <input type="radio"/> 4 moderate (1–2m waves) | |

Wind force (knots)

- | | | |
|------------------------------------|-----------------------------------------|---------------------------------------------|
| <input type="radio"/> none | <input type="radio"/> moderate (11–27) | <input type="radio"/> gale (34–39) |
| <input type="radio"/> light (4–10) | <input type="radio"/> near gale (28–33) | <input type="radio"/> strong gale (over 40) |

Fill in information below if your accident or incident occurred on a river

Describe the river flow

- | | |
|-------------------------------|-----------------------------|
| <input type="radio"/> low | <input type="radio"/> high |
| <input type="radio"/> average | <input type="radio"/> flood |

Other river characteristics

- | | | |
|---------------------------------|-----------------------------------|-------------------------------------------|
| <input type="radio"/> fast flow | <input type="radio"/> rocky rapid | <input type="radio"/> deep single channel |
| <input type="radio"/> braided | <input type="radio"/> drop pool | |

River flow (cumecs)

River grade at scene 1 2 3 4 5 6

6 Event details

* Choose an event that best describes what happened (choose as many as apply)

- | | | |
|-----------------------------------------------------------|--------------------------------------------------|---------------------------------------------|
| <input type="radio"/> chemical or harmful substance spill | <input type="radio"/> flip / overturn | <input type="radio"/> person overboard |
| <input type="radio"/> collision | <input type="radio"/> flooded | <input type="radio"/> propeller entangled |
| <input type="radio"/> contact | <input type="radio"/> gear / items shifting | <input type="radio"/> propulsion failure |
| <input type="radio"/> electrical power failure | <input type="radio"/> grounding | <input type="radio"/> spin |
| <input type="radio"/> emergency dumping | <input type="radio"/> hit submerged object | <input type="radio"/> steering gear failure |
| <input type="radio"/> entrapment | <input type="radio"/> in hydraulic | <input type="radio"/> structural failure |
| <input type="radio"/> equipment failure | <input type="radio"/> mooring line failure | <input type="radio"/> touch |
| <input type="radio"/> explosion | <input type="radio"/> near miss / close quarters | |
| <input type="radio"/> fire | <input type="radio"/> oil spill | |

Was another boat/craft involved?

- no yes

Name (if known)


Other distinguishing features of the boat/craft

Boat / craft category

- | | | |
|------------------------------------------|---------------------------------------------|---------------------------------------------------|
| <input type="radio"/> cargo ship | <input type="radio"/> fishing boat | <input type="radio"/> rigid inflatable boat (RIB) |
| <input type="radio"/> dinghy (motorised) | <input type="radio"/> kayak/canoe | <input type="radio"/> waka ama |
| <input type="radio"/> dinghy (paddle) | <input type="radio"/> inflatable | <input type="radio"/> water taxi |
| <input type="radio"/> jet ski (PWC) | <input type="radio"/> launch | <input type="radio"/> windsurfer / sailboard |
| <input type="radio"/> ferry (small) | <input type="radio"/> power boat / jet boat | <input type="radio"/> yacht (sail) |
| <input type="radio"/> ferry (large) | <input type="radio"/> raft | |

* Your description of the events that took place

If you need to write more, attach a blank sheet with details of what happened

 Injury information

Were there any injuries? yes no

If yes, how many?

*
For each person injured, you must fill out a copy of the injury form

Once completed

Fax to:
Maritime New Zealand's Rescue Coordination Centre (RCCNZ)
+64 4 577 8038



Or

Post to:
Maritime New Zealand
Attention Accidents and Investigations
Accident Reports
PO Box 27006
Wellington 6141

SCHEDULE 65: FORM OF MATERIAL MATTERS REPORT (clause 13.1)

Harbour Safety

~~The Harbourmaster vessel Punawai has been well used for patrols and skipper education.~~

Month	Patrol Hours

The Harbourmaster ~~has been engaged in a range of other~~ report of activities within the ~~harbour~~ (amend as necessary)region includes the following:

- a) ~~Assisting vessel~~ total hours of the harbourmaster being on duty
- b) ~~Retrieving and securing abandoned vessel~~ total hours of on water patrols
- c) ~~Assisting in enforcement actions for swing moorings~~ the number of safety checks performed
- d) ~~Assisting in oil spill responses~~ any non-compliance issues
- e) ~~Retrieving log debris and other navigation hazards arising from floods~~ maintenance of the vessel
- f) ~~Search and rescue~~ AtoN maintenance or issues
- g) ~~Attend Blessing of the Fleet~~ maritime incidents
- h) ~~Observing organised recreation activity in the harbour and at Tahunanui Beach~~ other activities such as education, club meetings, training and supporting events

~~The Harbourmaster has provided expert advice on~~

- a)
- b)
- c)

SCHEDULE 76: ATON OWNED BY PNL (clause 19.1.c)

Item #	Beacon	Nelson Circuit geodetic 1949 North & East Of BH	World geodetic system 1984 Hrs-Minutes-seconds
1	North Cardinal Beacon	704403.64 294685.03	41-13-59.3081 s 173-14-09.9417 e
2	Sector light – front outer channel lead	700423.68 296358.44	41-16-08.3526 173-15-21.7110
3	Mole end	701106.50 296272.5	41-15-46.2175 s 173-15-18.0339 e
4	Rear outer lead on cliffs	699841.06 296517.94	41-16-27.2408 s 173-15.28.5515 e
5	Rear inner harbour lead (rear turning light)	700913.59 296417.45	41-15-52.4731 s 173-15-24.2567 e
6	Front inner harbour lead (front turning light)	700913.71 296514.95	41-15-52.4707 s 173-15-28.4454 e
7	Front entrance dolphin lead	700697.64 296838.58	41-15-59.479 s 173-15-42.344 e
8	Back entrance beacon on section Rocks Road	700477.87 297054.14	41-16-06.606 s 173-15-51.602 e
9	#1	701177.03 296489.46	41-15-43.935 s 173-15-27.356 e
10	#2	701063.09 296620.22	41-15-47.630 s 173-15-32.971 e
11	#3	701016.75 296760.01	41-15-49.134 s 173-15-38.975 e
12	#4	701033.70 296890.85	41-15-48.587 s 173-15-44.596 e
13	#5	701141.03 297043.27	41-15-45.110 s 173-15-51.146 e
14	#6	701324.08 297191.43	41-15-39.178 s 173-15-57.514 e
15	#7	701533.18 297364.67	41-15-32.402 s 173-16-04.959 e
16	#8	701687.03 297492.32	41-15-27.417 s 173-16-10.445 e
17	#9	701822.07 297626.06	41-15-23.041 s 173-16-16.192 e

18	#10 Safe Water Beacon	701848.71 297811.04	41-15-22.179 s 173-16-24.138 e
19	Coastal Berth Approach Beacon	701054.07 297298.26	41-15-47.932 s 173-16-02.099 e
20	Approach Beacon	701727.2 296101.9	41-15-26.1 s 173-15-10.7 e
21	#12	702050.05 297988.06	41-15-15.7 s 173-16-31.7 e
22	#14	702069.26 298202.79	41-15-15.0 s 173-16-41.0 e
23	#15	701995.38 298204.55	41-15-17.4 s 173-16-41.0 e
24	#16	702023.10 298312.91	41-15-16.5 s 173-16-45.7 e
25	#17	701908.33 298432.03	41-15-20.3 s 173-16-50.8 e
26	#18	701755.48 298475.40	41-15-25.2 s 173-16-52.7 e
27	Schnapper Point Light	707734.22 302027.83	41-12-11.4 s 173-19-25.2 e
28	Old Light House		
29	Haulashore Island Power Cable		
30	Inner Lead Power Cable		
31	Brunt Quay Stbd Hand Light	701237.19 297668.34	41-15-42.0 s 173-16-18.0 e

**SCHEDULE 8.7
INSTRUMENT OF DELEGATION**

Delegation under the Maritime Transport Act 1994 (Section 33X) from the Nelson City Council (a local authority under the Local Government Act, 2002) to Port Nelson Limited a company incorporated under the Companies Act, 1993 (No. 401730)

Pursuant to section 33X of the Maritime Transport Act 1994, the Nelson City Council hereby delegates to Port Nelson Limited the functions, duties and powers set out and defined in the Agreement Regarding the Appointment of Harbourmaster for the Nelson Region and Related Matters dated November 2015 (Council reference A1345500) and attached to this Instrument of Delegation until:

- 1. 30th June 2020; or
- 2. until the delegation is voluntarily surrendered by Port Nelson Limited; or
- 3. until the delegation is revoked by resolution of the Nelson City Council and notified to Port Nelson Limited in writing,

whichever comes first.

This delegation is subject to all the provisions, terms and conditions set out in the Agreement Regarding the Appointment of Harbourmaster for the Nelson Region and Related Matters.

Signed this _____ day of _____ 2015 pursuant to a resolution of the Nelson City Council dated 19 November 2015 in the presence of:

.....**Chief Executive**

The Seal of Port Nelson Limited was hereto affixed this.....day of.....2015 accepting this delegation

pursuant to a resolution of the Board of Port Nelson Limited

.....**Chairman**

.....**Director**

Extract from Minutes of part of a meeting of the Nelson City Council -
~~Governance-Environment Committee~~

Held ~~with the public excluded~~ in the Council Chamber, Civic House,
Trafalgar Street, Nelson

On ~~Tuesday Thursday 18 September 2012~~ 28 May 2020, commencing
at ~~10.02am~~

~~Delegation of Navigation Safety Responsibilities to Port Nelson Limited~~ Continuation of the
transfer arrangement with Port Nelson Ltd for Harbourmaster responsibilities

Resolved

~~THAT the Nelson City Council delegates to Port Nelson Limited under Section 650J of the Local Government Act 1974 the oversight and day-to-day management of, and financial responsibility for, the harbourmaster and navigational safety within Nelson Harbour in accordance with the terms of the "Agreement regarding the appointment of harbourmaster for the Nelson Region and related matters" (RAD 1339355, September 2012);~~

~~AND THAT for the avoidance of doubt, the Nelson City Council hereby delegates to Port Nelson Limited all of the functions, duties, and powers (other than a power to make bylaws and the power to appoint a harbourmaster under section 650B of the Local Government Act 1974) under Part 39A of the Local Government Act 1974 that relate to navigation safety, until the earlier of:~~

~~(a) 30 June 2020; or~~

~~(b) the delegation is voluntarily surrendered; or~~

~~(c) the delegation is revoked in writing by the Nelson City Council;~~

~~AND THAT this delegation only take effect upon confirmation that the delegation is confirmed by resolution of the Directors of Port Nelson Limited;~~

~~AND THAT this resolution be released to the public.~~

~~Barker/Rainey Carried~~

~~Due to legislation changes an updated resolution was approved by Council on 19~~

~~November 2015 as follows:~~

~~“THAT the Nelson City Council delegates to Port Nelson Limited under s33X of the Maritime Transport Act 1994 the oversight and day-to-day management of, and financial responsibility for, the harbourmaster and maritime safety within Nelson Harbour in accordance with the terms of the “Agreement regarding the appointment of harbourmaster for the Nelson region and related matters” appended to this resolution. (A1345500 November 2015)~~

~~AND THAT for the avoidance of doubt, the Nelson City Council hereby delegates to Port Nelson Limited all of the functions, duties, and powers (other than the power to transfer responsibilities, the power to make bylaws and the power to appoint a harbourmaster under section 33X of the Maritime Transport Act 1994 that relate to maritime safety, until the earlier of:~~

- ~~(a) 30 June 2020; or~~
- ~~(b) the delegation is voluntarily surrendered; or~~
- ~~(c) the delegation is revoked in writing by the Nelson City Council”.~~

~~AND THAT for the purposes of the Maritime Transport Act 1994, the harbourmaster functions will be restricted to navigation safety matters while Maritime New Zealand and WorkSafe will remain responsible for ensuring maritime safety for matters that do not relate to navigation.~~

~~AND THAT the Nelson City Council authorise the Chief Executive to sign the updated agreement subject to it being approved by Port Nelson Limited.~~

~~That the Environment Committee~~

- ~~1. Receives the report Continuation of the transfer arrangement with Port Nelson Ltd for Harbourmaster responsibilities (R16989); and~~
- ~~2. Approves the continuation of the transfer arrangement with Port Nelson Ltd; and~~
- ~~3. Transfers pursuant to section 33X(1) of the Maritime Transport Act 1994, all of its responsibilities under Part 3A of that Act (excluding the particular responsibilities listed in section 33X(1)(a)-(c)) to Port Nelson Ltd; and~~
- ~~4. Delegates, for the avoidance of doubt, all of its responsibilities under Part 3A of the Maritime Transport Act 1994 (excluding the particular responsibilities listed in section 33X(1)(a)-(c) of that Act) to Port Nelson Ltd; and~~
- ~~5. Agrees that the harbourmaster responsibilities that have been transferred under resolution 3 and delegated under resolution 4 will be restricted to navigation safety matters only, in accordance with the terms of the draft “Agreement regarding the appointment of harbourmaster for the Nelson region and related matters” appended to this resolution (in Attachment 1 to report R16989, A2367153, July 2020); and~~

6. Notes Maritime New Zealand and Worksafe will remain responsible for ensuring maritime safety for matters that so not relate to navigation safety; and
7. Agrees that the transfer under resolution 3 and the delegation under resolution 4 will commence on 1 July 2020 and continue in force until the earlier of:
 - (a) 30 June 2026; or
 - (b) the transfer or delegation is voluntarily surrendered; or
 - (c) the transfer or delegation is revoked in writing by the Council; and
8. Authorises the Chief Executive to complete negotiations with Port Nelson Ltd on an agreement to document the arrangements for the transfer in resolution 3, delegation in resolution 4, terms of the Agreement in resolution 5 and duration of the transfer in resolution 7, and to execute that agreement on behalf of Council; and
9. Agrees that Report (R16989), Attachment 1 (A2367153), and the Committee's resolutions be made publicly available once an agreement has been executed.

SCHEDULE 9.8 – FUNCTIONS WHICH PNL IS TO USE ITS BEST ENDEAVOURS TO PERFORM (CLAUSE 16)

1. Managing and maintaining Nelson Harbour having regard to its intended use and ensuring that Port Nelson is in a fit condition for use by vessels that it serves. (refer paragraph 1.2.2.1(a) of the Code);
2. Ensuring the provision of adequate information about the condition of the Nelson Harbour as determined by the Harbour Risk Assessment (as is defined in paragraph 8 below) to enable users to identify whether it is fit for the intended use. (refer paragraph 1.2.2.1(b) of the Code);
3. Providing users of Port Nelson and the Harbourmaster with adequate information about conditions relating to Port Nelson facilities and to ensure provision of related AtoN. (refer paragraph 1.2.2.1(c) of the Code);
4. Managing and maintaining the Nelson Harbour with regard to its use and the type and size of vessels that use it. In particular, PNL shall:
 - a. keep proper hydrographic and hydrological records of the Nelson Harbour;
 - b. ensure public notification or dissemination as conspicuously and widely as is appropriate of such further information as will supplement the guidance given by navigation marks;
 - c. Communicate appropriate warnings to Nelson Harbour users if hydrographic and hydrological information is not current. (refer paragraph 1.2.2.2 of the Code);
5. Finding, monitoring and maintaining the appropriate navigable channel or channels in the Nelson Harbour where the Harbour Risk Assessment carried out in accordance with paragraph 8 below demonstrates this is required and ensuring that such channels are marked. (Refer 1.2.2.3 of the Code);
6. Marking and monitoring any other channel or area of the Nelson Harbour seabed where the Harbour Risk Assessment demonstrates this is necessary to provide for the safe navigation of vessels. (Refer paragraph 1.2.2.4 of the Code);
7. Where PNL states that there is a certain depth of water available for the use of the Nelson Harbour, taking reasonable care to ensure that the depth of water is available under normal conditions, or giving warning that the advertised depth has not been maintained. (Refer paragraph 1.2.2.6 of the Code);
8. Undertaking in respect of Nelson Harbour a full harbour risk assessment of marine operations (the “Harbour Risk Assessment”), and implementing a harbour safety management system (through the Harbourmaster) (“Harbour Safety Management System”). (Refer 2.2.1(A) of the Code);
9. Developing a formal Port Nelson safety management system for Port Nelson related marine operations, developed after a formal harbour risk assessment and thereafter communicating the assessment and the safety management system to the Harbourmaster for incorporation into the Harbour Risk Assessment and Harbour Safety Management System. (Refer paragraph 2.2.1(B) of the Code);

10. Making the Harbour Safety Management System available to the Maritime Safety Authority, setting out NCC's and PNL's policies and procedures. (Refer paragraph 2.2.1(C) of the Code);
11. Exercising any of NCC's statutory powers that have been delegated to it to regulate marine operations (including through the Harbourmaster) in accordance with the Harbour Safety Management System in respect of the Nelson Harbour. (Refer paragraph 2.2.1(D) of the Code);
12. Ensuring that the Harbour Safety Management System includes a systemic approach to formally monitor and review the effectiveness of the system. (Refer paragraph 2.2.1(E) of the Code);
13. Ensuring that the Harbour Safety Management System deals with preparedness for emergencies. (Refer paragraph 2.2.1(F) of the Code);
14. Ensuring that the Harbour Safety Management System includes a statement of harbour safety policy (the "**Nelson Harbour Safety Policy**"). (Refer paragraph 2.2.2.1 of the Code);
15. Ensuring that the Nelson Harbour Safety Policy commits PNL to undertake and regulate marine operations in a way that safeguards the Nelson Harbour, its users, the public and the environment. (Refer paragraph 2.2.2.1 of the Code);
16. Ensuring that the Nelson Harbour Safety Policy makes a commitment to:
 - a. Use the Code and its supporting guidelines as a standard against which PNL will measure itself and be measured by others;
 - b. Ensure that the relevant navigational safety assets of the Nelson Harbour are managed safely;
 - c. Enforce bylaws and Harbourmaster directions appropriately;
 - d. Ensure that staff are properly trained for emergencies and contingencies;
 - e. Identify measures to address conflicts of interest;
 - f. Adequately resource management of the Nelson Harbour navigation safety.(refer paragraph 2.2.2.1 of the Code);
17. Carry out a risk assessment as described in paragraph 1 of the AtoN Guidelines in order to establish what AtoN are required for the Nelson Harbour for safe navigation. (Refer paragraph 1 of the AtoN Guidelines);
18. Supply and management of all AtoN within the Nelson Harbour and required for safe operation of Port Nelson (or required by the approving authority), other than coastal lights provided by the Maritime Safety Authority. (Refer paragraphs 2.3(a) and 2.6(a) of the AtoN Guidelines);
19. Audit and inspect of all AtoN within the Nelson Harbour, including documenting AtoN availability and the AtoN maintenance/inspection regime. (Refer paragraphs 2.3(b) and 2.7 of the AtoN Guidelines);
20. Ensure that the level of AtoN performance approved through the Maritime New Zealand consents process is maintained and that this level is still appropriate. (Refer paragraph 2.7 of the AtoN Guidelines);

21. Where 'approval' delegation from the Director of Maritime Safety Authority exists, approving the establishment, removal, or alteration of AtoN within the Nelson Harbour. (Refer paragraph 2.3(c) of the AtoN Guidelines);
22. Promulgate local navigation warnings in respect of the Nelson Harbour. (Refer paragraph 2.3(d) of the AtoN Guidelines);
23. Apply to the Maritime Safety Authority or the appropriate delegated person to establish, remove or alter any AtoN within the Nelson Harbour in accordance with any rules or guidelines then in place. (Refer paragraphs 2.3(e) and 2.6(b) of the AtoN Guidelines);
24. Comply with any directions given by the Director of Maritime Safety Authority in respect of AtoN within the Nelson Harbour, whether those directions are given to PNL or NCC. (Refer paragraph 2.5 of the AtoN Guidelines);
25. Comply with the provisions of paragraphs 3.1 to 3.3 of the AtoN Guidelines;
26. Maintain any AtoN within the Nelson Harbour and establish a planned routine maintenance schedule based on manufacturer's recommendations, local conditions, experience, risk assessment and special needs. This maintenance schedule shall include periodic visual inspection of buoys and moorings and replacing moorings at an interval suitable for the location. (Refer paragraph 3.4 of the AtoN Guidelines);
27. Maintain a record of all visits to an AtoN and of any work carried out and make such record reasonably available to NCC upon request. (Refer paragraph 3.4 of the AtoN Guidelines);
28. Report (and keep a record of) all AtoN failures and outages with the Nelson Harbour:
 - a. for inclusion in the national AtoN register; and
 - b. to the appropriate maritime VHF services and any other appropriate channels for the promulgation of navigation warnings. (Refer paragraph 4.2 of the AtoN Guidelines); and
 - c. to the Group Manager ~~Strategy and Environment~~Environmental Management and his/her successors NCC.
29. Ensure that appropriate navigation warnings continue until the Harbourmaster is satisfied that the AtoN within the Nelson Harbour is operating correctly. (Refer paragraph 4.2 of the AtoN Guidelines);
30. Maintain a local log of all failures and outages of AtoN within the Nelson Harbour, which shall include the problem, actions taken, notices issued and the date repaired. (Refer paragraph 4.2 of the AtoN Guidelines);
31. Issuing navigational warnings through appropriate channels on being notified of any AtoN failure or outage. (Refer paragraph 4.2 of the AtoN Guidelines);
32. Inform the NCC and Marine Safety Authority and indicate the estimated time to repair if the AtoN within the Nelson Harbour cannot be repaired immediately. (Refer paragraph 4.2 of the AtoN Guidelines);
33. Report all changes to AtoN within the Nelson Harbour to the Maritime Safety Authority immediately through the approving authority (by resubmitting a Maritime Safety Authority form MSA16006 to the approving authority). (Refer paragraph 4.3 of the AtoN Guidelines);

34. Record all AtoN outages and maintain records of their maintenance programme and obtain and retain all factory performance certificates where practical for all of their AtoN. (Refer paragraph 4.4 of the AtoN Guidelines).

DOCUMENT ENDS

Released 18 Nov 2021