

# Are Harbourmasters' “Standing Directions” Lawful?

Wellington, 14 May 2021

John Burton & Bevan Marten, IZARD WESTON

# Maritime Transport Act 1994

## **33E Functions of harbourmasters**

A harbourmaster may exercise the powers and perform the duties conferred by this Act or any other enactment for the purpose of ensuring maritime safety in relation to the ports, harbours, or waters for which he or she has been appointed as a harbourmaster by the regional council.

# A Growing Trend



- Port Taranaki, *Harbour Master's General Directions* (2015)
- Auckland Council, *Navigation Safety Operating Requirements* (2016)
- Environment Canterbury, *Harbourmaster's Direction* (2016)



# Maritime Transport Act 1994

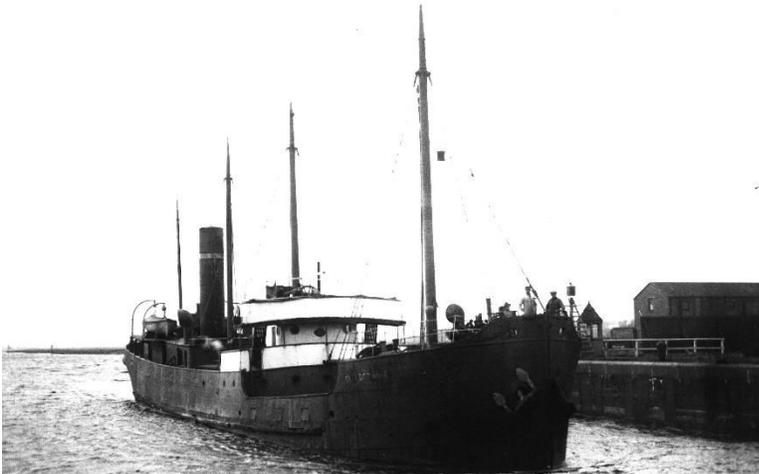
## 33F Harbourmasters' general powers

- (1) For the purposes of ensuring maritime safety, or enforcing navigation bylaws or regulations and rules made under this Act relating to maritime safety, a harbourmaster may, in relation to the areas for which he or she has been appointed as a harbourmaster by the regional council,— [...]
- (c) **give directions** regarding—
- (i) the time and manner **in which ships** may enter into, depart from, lie in, or navigate waters within the region:
  - (ii) the position, mooring, unmooring, placing, removing, securing, or unsecuring **of ships**:
  - (iii) the manner **in which ships** may take in or discharge cargo:
  - (iv) the manner in which cargo is secured or handled **on a ship** if there is a risk of cargo falling overboard or becoming a hazard to navigation:
- (d) **direct** the master of **any ship** to—
- (i) weigh anchor; or
  - (ii) moor, unmoor, anchor, secure, unsecure, place, or move the ship:
- (e) cause **a ship** to be moored, unmoored, anchored, secured, unsecured, placed, or removed, or to weigh anchor: [...]

# *The Guelder Rose (1927, EWCA)*

Harbourmaster's powers *“are given to him for the purpose of giving **specific directions to specific ships for specific movements.** Those are powers which must be exercised in the circumstances sometimes at once, or on an emergency in respect of which the procedure as to bylaws would be quite unreasonable and useless”.*

Standing directions are *“more in their nature bylaws than directions”.*



# Subsequent Cases

- *MacDonald v Mackenzie* (1947) (Scotland)
- *Pearn v Sargent* (1973) (England)
- *Moyne, Thompson and McCauley Bros v Londonderry Port and Harbour Commissioners* (1986) (Ireland)



**October 2015**

**PORT TARANAKI**

**HARBOUR MASTERS GENERAL  
DIRECTIONS**



Port Taranaki Limited  
PO Box 348  
New Plymouth 4615  
New Zealand  
Tel: (06) 751 0200  
Fax: (06) 751 5051  
[www.porttaranaki.co.nz](http://www.porttaranaki.co.nz)

## **OVERVIEW**

This document contains information for ship's masters regarding general navigational directions for vessels transiting Port Taranaki.

Port Taranaki Ltd. accepts no responsibility for any errors or omissions contained in this document and the parameters and information outlined in this document should be regarded as guidelines only and may be varied at any time for any reason at the discretion of the Harbourmaster.



## Harbourmaster's Direction 2-20 Vessel Operating Requirements

### Purpose

The purpose of this direction is to ensure that vessels manoeuvring within a pilotage area can be navigated in a manner that will not adversely affect the safety of navigation.

This direction updates and supersedes previous Harbourmaster Direction 2-16 and should be read in conjunction of Maritime Rule Part 90.

### Harbourmaster Directions

- Vessel operating requirements
- Downtown ferry basin
- Pilotage

### Navigation Safety Operating Requirements

- Tamaki River
- Operation of a superyacht in the Auckland region
- Auckland downtown ferry terminal area
- Auckland pilotage area tug and towing operations
- Operation of vessels during periods of restricted visibility
- Operation of emergency response vessels within Auckland

## Auckland Harbour Bridge Precautionary Area

1. Passenger ferries navigating from west to east, then;
2. Passenger ferries navigating from east to west, then;
3. Vessels navigating from west to east, then;
4. Vessels navigating from east to west.

**What about the Collision Regulations (MR22)?**



### Harbourmaster's Office Operation of Vessels During Periods of Restricted Visibility. Navigation Safety Operating Requirements

#### Foreward

These Navigation Safety Operating Requirements set a single standard operating procedure for the Waitemata Harbour, Tamaki River and Motu Korea Channel during periods of restricted visibility.

A wide-angle photograph of a coastal city skyline across a body of water. In the foreground, waves are breaking onto a sandy beach. The city buildings and two large blue cranes are visible in the background under a cloudy sky.

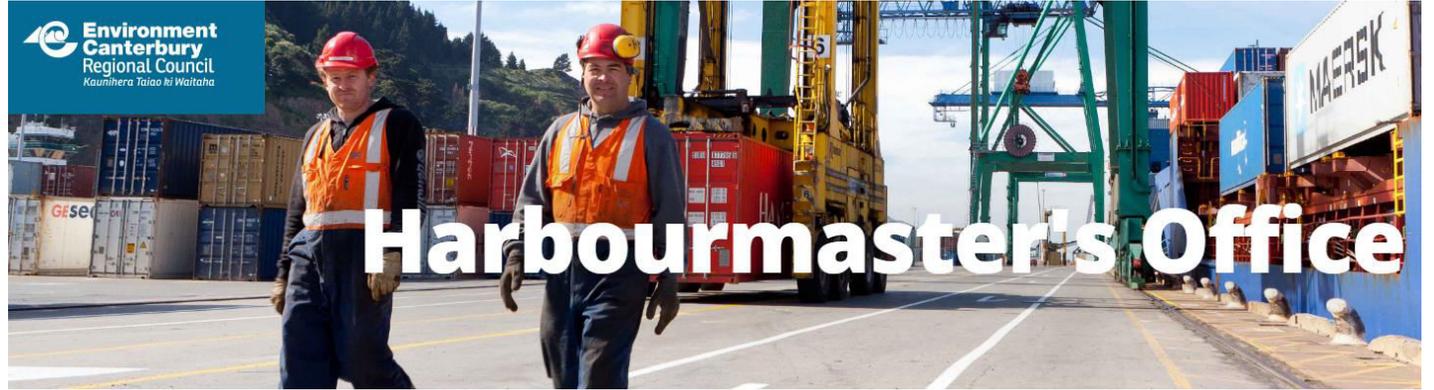
# Harbourmaster's Direction 16-1

A wide-angle photograph of a coastal harbor. In the foreground, gentle waves with white foam wash onto a sandy beach. The water is a clear, light blue-green. In the background, a city skyline is visible across the water, featuring several buildings and two prominent blue cranes. The sky is filled with soft, white clouds.

# Harbourmaster's Direction 16-1

Harbourmaster's Direction 16-1 Version 1.3; 07<sup>th</sup> May 2021

---



## [6.3(4)] Wind limits

Every commercial port shall, in consultation with the Harbourmaster, set and operate agreed wind limit guidelines<sup>4</sup> for that port

## [6.1(2)(a)] [Approval for hot work]



Specific prior written approval from the Harbourmaster shall be obtained before any hot work may commence on board any vessel ...

# Questions / comments?

