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Dear Sir/Madam

Waikato Regional Council Submission to the Regulatory Standards Bill

Thank you for the opportunity to submit on the proposed the Regulatory Standards Bill. Please find attached the Waikato Regional Council's (WRC's) submission regarding these documents. The submission was formally endorsed by WRC's Strategy and Policy Committee on **19 June 2025**.

Should you have any queries regarding the content of this document please contact Sydney Green, Policy Advisor, Policy Implementation directly on (07) 8586074 or by email sydney.green@waikatoregion.govt.nz.

Regards,

Tracey May
Director Science, Policy and Information

Submission from Waikato Regional Council on the Regulatory Standards Bill

Introduction

1. We appreciate the opportunity to make a submission on the Regulatory Standards Bill (RSB). This submission largely reiterates our previous feedback to the proposed RSB in December 2024, provided to you in on 9 January 2025.
2. Waikato Regional Council (WRC) recognises that the RSB has the potential to significantly impact the way in which we operate as a regional council. Our primary interest is in regard to our statutory obligations as a regional council.
3. We caution the Bill against short-term thinking, at the cost of the long-term planning that we are required to do as local government authorities. We encourage government to advocate for long-term settings that result in a durable approach that recognises the balancing exercise between efficiency of regulation and existing overlapping regulatory regimes.
4. We consider that a longer period for consultation, including with iwi, would be beneficial in order to achieve the intent of the Bill.

The submission

5. A summary of our submission is included below, with a more detailed table to follow.
6. The principles
 - a. We recommend that the principles should be rebalanced to better reflect both the protection of liberties and the quality/effectiveness of regulation, given the stated purpose of the legislation.
 - b. We observe that, overall, the suite of principles has a very strong focus on the protection of liberties. Social, environmental and macroeconomic benefits of good regulation are also relevant and should be factored into any guiding set of principles. This will result on limitation to consider public good in the allocation of natural resources.
 - c. Further, we support the inclusion of a statement that principles should be rebalanced to better reflect both the protection of liberties and the quality/effectiveness of regulation given the stated purpose of the legislation.
 - d. We seek clarity on the definition of “property” within the RSB, and if it extends to meaning land, infrastructure, permits, stock, intellectual property or profits. This definition is significant to our region as note there could be litigations risks against WRC and ratepayers if the terms is not adequately defined in legislation.
 - e. We consider the limitation on the application of administrative discretion to resolve issues of legal right and liability to be problematic, and that it will result in inefficiencies. It is the role of the courts to assess the reasonableness of such decisions.
7. The omission of Te Tiriti o Waitangi/ the Treaty of Waitangi
 - a. WRC supports the inclusion of a principle in the RSB that acknowledges and upholds iwi/Māori rights under the Treaty of Waitangi. Regulatory impacts on Māori rights extend beyond Treaty settlements, and the current omission of a Treaty principles clause leaves these rights at risk of inadequate protection.
 - b. We encourage the government to work with iwi and hapū in designing any future changes to constitutional arrangements to ensure alignment with the Treaty of Waitangi. This is important to our region to build on the successful models already in place to enhance outcomes for all communities.
8. Cost recovery

- a. We request provision be made in the RSB regarding cost recovery in relation to responding to Ministry of Regulation requests for information.
- b. We have concerns around associated costs with the Ministry for Regulation needing to obtain information from entities that exercise regulatory functions.
- c. Deciding whether a regulatory review is warranted, and informing regulatory reviews have potential to cause financial and time cost burdens for local government in their role as regulator.
- d. Associated costs could be a potential concern for WRC depending upon the nature, scale and frequency of information requests, and imposing these costs works against the stated objective of avoiding undue burdens. These would be unnecessary costs that our ratepayers would need to fund, and this seems incongruous with the government's intent for local authorities to manage costs to their communities.

9. The Ministerial Board

- a. WRC would support a new structure created specifically to consider complaints about regulation where the Board consists of independent appointees.
- b. We recommend that the Ministry further considers how the proposed Regulatory Standards Board might be established with the political separation necessary to promote the longevity of the legislation and the Board.
- c. We consider that the Board members should have practical experience in drafting and implementing regulation, working within regulation, policy evaluation, and legal or judicial experience relevant to regulatory systems.
- d. In addition to our concerns about potential costs related to requests from the Ministry for regulation, we have concerns that costs associated with Ministerial Board processes. Therefore, we recommend that provision be made in the RSB for cost recovery in relation to responding to Ministry of Regulation requests for information related to a Ministerial Board process.

Submitter details

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Feedback from Waikato Regional Council on the Regulatory Standards Bill

Relevant bill section/ clause	Waikato Regional Council feedback
<p>Part 1: Preliminary Provisions 3 - <i>Purposes (d)</i></p>	<p>We recommend that the RSB addresses low agency performance and non-compliance in relation to RIA/RIS requirements, as these documents are very important for providing effective policy and regulation. We also highlight the importance of capacity constraints across local government being an underlying factor in poor regulation. Updating and reviewing existing reforms without addressing this key shortcoming could manifest in a temporary ad hoc solution. We consider that all RIA/RIS should consider the impact of central government proposals on regional and district councils and unitary authorities. A more comprehensive analysis on the impact of regulation on the different structures of local government authorities is likely to result in more effective regulatory systems.</p> <p>We are neutral on whether the overall proposal will be effective in raising the quality of regulation in New Zealand at the current stage of the RSB.</p> <p>While we support improving regulatory quality, we have concerns that this improvement seems primarily focused on the proposed diminution of role for the judiciary, and the likely impact on the respective roles of parliament and the judiciary.</p> <p>We suggest developing a framework that sets out requirements for regulatory quality in legislation. This framework could outline a focus on regulatory quality via increased investment in policy monitoring, implementation, and evaluation. This would be developed as an alternative to “guidance” on principles as per the RSB discussion document.</p>
<p>Part 2: Principles of responsible regulations and regulatory stewardship <i>Subpart 1—Principles of responsible regulation</i></p>	<p>We recommend that the principles should be rebalanced to better reflect both the protection of liberties and the quality/effectiveness of regulation, given the stated purpose of the RSB. Social, environmental and macroeconomic benefits of good regulation are also relevant and should be factored into any guiding set of principles.</p>
<p>Part 2: Principles of responsible regulations and regulatory stewardship <i>Subpart 1—Principles of responsible regulation</i> 8. <i>Principles of responsible regulation – Rule of law</i></p>	<p>We request the deletion of subclause 8(a)(v): <i>issues of legal right and liability should be resolved by the application of law, rather than the exercise of administrative discretion</i></p> <p>Requiring responsible agencies to resolve issues of legal rights and liabilities only by application of law is impractical and inefficient. Agencies should be able to exercise administrative discretion within the statutory limits, and it is the role of the courts to assess the reasonableness of those decisions.</p> <p>There will be cases where a specific issue is not covered by the law; this will result in inability of agencies to exercise their powers effectively. Under the current drafting of the RSB, an agency would be forced to apply a penalty without having proper</p>

	<p>regard to an individual’s circumstances. The Ombudsman guide on good decision-making notes that poor decision making and ineffective administrative processes can lead to complaints and challenges to decisions. Ultimately, poor decision making can increase overall downstream costs for agencies.¹</p> <p>Further, we note that public powers of decision-making will almost always be limited in some way, whether by statute or common law, and there is sufficient case law on limits to administrative decision-making. For example, in <i>Official Assignee v Chief Executive of the Ministry of Fisheries</i> [2002] 2 NZLR 722, the Court of Appeal declared invalid regulations which allowed the Chief Executive of the Ministry of Fisheries to allocate catch entitlements, when the regulations themselves did not specify the fish stocks to which they related or provide any rules or guidelines as to how allocation will occur. The statute envisaged that the regulations themselves would stipulate how the entitlements would be allocated, and therefore the level of discretion left to the Chief Executive invalidated them.²</p>
<p>Part 2: Principles of responsible regulation and regulatory stewardship</p> <p><i>Subpart 1—Principles of responsible regulation</i></p> <p><i>8. Principles of responsible regulation – Liberties</i></p>	<p><i>Proposed principle of Liberties: “Legislation should not unduly diminish a person’s liberty, personal security, freedom of choice or action, or rights to own, use, and dispose of property, except as is necessary to provide for, or protect, any such liberty, freedom, or right of another person”:</i> We <u>do not support</u> this principle, as we argue that it does not address potential conflicts between property rights and other valid societal interests (i.e. environmental protection). As a principle it would be almost impossible to apply to the management and allocation of public good resources.</p> <p>We consider that balancing these rights can be complex in practice. The balance between individual rights and the common good may vary depending on the situation.</p>
<p>Part 2: Principles of responsible regulation and regulatory stewardship</p> <p><i>Subpart 1—Principles of responsible regulation</i></p> <p><i>8. Principles of responsible regulation – Taking of property (c)</i></p>	<p>We support the intent of this principle, responsible regulation and regulatory stewardship is critical. However we <u>oppose</u> the principle in its current form as further clarity around terminology is required to assist implementation.</p> <p>We have concerns that “impairment of property” in terms of land use would significantly impact current planning and resource management approaches (which are likely to be upheld by upcoming reform) by asserting that owners of land have no responsibilities regarding the effects of their land use to the wider community. This has the potential to lead to claims for compensation in relation to the majority of environmental regulations that in any way limit (or “impair”) land use. This is particularly applicable to our agriculturally rich region; i.e. this could include regulations relating to fencing of waterways; restriction on the grazing of steep land; exclusion of cattle from wetlands or SNAs or areas of indigenous habitat; restrictions on conversion to more intensive land; etc.</p>

¹ [Good decision making.docx](#)

² [JOYS-for-web.pdf](#)

	<p>By seeking to limit the impairment of private property, the RSB seeks to address a problem without proper regard to case law on the matter of weighing other considerations against part 2 of the Resource Management Act 1991 (RMA).</p> <p>Further, we seek clarity on the definition of “property” and if it extends to meaning land, infrastructure, permits, stock, intellectual property or profits. This definition is significant to our region as we have concerns it enable litigation against WRC and taxpayers if not adequately specified, and potentially may result in irreversible impacts on the environment.</p>
<p>Part 2: Principles of responsible regulation and regulatory stewardship</p> <p><i>Subpart 1—Principles of responsible regulation</i></p> <p><i>8. Principles of responsible regulation – Role of courts (g)</i></p>	<p>We support principle (g) – “<i>legislation should preserve the courts’ constitutional role of ascertaining the meaning of legislation</i>” but question whether clause 27(1)(a) of the RSB is consistent with this.</p> <p>Clause 27(1)(a) states that the regulatory standards Minister and the Attorney-General may jointly issue guidance on how the principles of responsible regulation should be applied. Doing so would require them to determine the meaning of the principles which, according to Principle (g), should be the preserve of the courts.</p>
<p>Part 2: Principles of responsible regulation and regulatory stewardship</p> <p><i>Subpart 2— Review of consistency of secondary legislation with principles</i></p> <p><i>Clause 13</i></p>	<p>We request amending the clause to add a subclause to provide for an exception for secondary legislation developed by local government authorities and other agencies under section 161A of the Local Government Act 2002 (LGA):</p> <p><i>13 Review of consistency of secondary legislation with principles</i></p> <p><i>(1) The responsible agency for secondary legislation must ensure that an explanatory note for the secondary legislation includes (or contains a link to)—</i></p> <p style="padding-left: 40px;"><i>(a) a consistency accountability statement; and</i></p> <p style="padding-left: 40px;"><i>(b) a statement from the maker that briefly explains the maker’s reasons for any inconsistency with the principles of responsible regulation that is identified in the consistency accountability statement.</i></p> <p><i>(2) The explanatory note must be published or made available with the secondary legislation when the legislation is published or made available under Part 3 of the Legislation Act 2019 or otherwise as required by law.</i></p> <p><i>(3) subsections (1) and (2) do not apply to local authority legislation as defined in section 161A of the Local Government Act 2002.</i></p> <p>Providing for an exception will prevent additional requirements to those already in the LGA and the RMA. Both Acts already have provisions relating to the review and consultation requirements for bylaws and plan rules.</p>
<p>Part 2: Principles of responsible regulation and regulatory stewardship</p> <p><i>Subpart 6—Guidance Clause 27</i></p>	<p>We highlight that, by definition, guidance is non-binding and has no legal weight. We consider that the provision of interpretation “guidance” by the Minister of Regulation (as opposed to the development of case law via the judiciary) invites politics into the application of the law.</p>

<p>Part 2: Principles of responsible regulation and regulatory stewardship</p> <p><i>Subpart 7—Regulatory Standards Board Clause 32</i></p>	<p>We support a new structure or organisation to consider complaints about the quality of regulation.</p> <p>We consider that there have been numerous occasions over the last few years where regulations introduced by government have been unclear and/or have imposed significant regulatory burdens on local councils for unclear purposes and unclear benefit. The best avenue for seeking recourse in these circumstances is often unclear and inconsistent. Having an organisation/structure to which such concerns can be directed would provide improvement in comparison with the status quo.</p>
<p>Part 2: Principles of responsible regulation and regulatory stewardship</p> <p><i>Subpart 7—Regulatory Standards Board Clauses 28-40</i></p>	<p>The key requirement we support for a new structure created specifically to consider complaints about regulation, is that they are independent of direct government influence and bring appropriate and relevant expertise.</p> <p>We recommend that the Ministry further considers how the proposed Regulatory Standards Board might be established with the political separation necessary to promote the longevity of the legislation and the Board. We suggest that the Board members should have practical experience in drafting and implementing regulation, working within regulatory frameworks, policy evaluation, and legal or judicial experience relevant to regulatory systems.</p> <p>Costs associated with requests for information could be a potential concern for local government. We recommend that provision be made in the RSB for cost recovery in relation to responding to Ministry of Regulation requests for information.</p>

Appendix A: the Eight Principles of Effective Implementation

1. **Start early** - officials should not turn up in the office the day after the enactment of the legislation and start thinking about what to do about implementation. While the roll-out of implementation support programmes necessarily follows enactment (which in turn follows the policy advice), the design and development of the implementation programme should start earlier. Elements of this should be concurrent with the policy and legislative processes. Indeed, it is difficult to see how a rigorous assessment of policy options can be undertaken without commencing the identification of the costs and practicalities of their being implemented.
2. **Work with the stakeholders** - for any legislative initiative impacting on local government there will be a range of groups with a stake in successful implementation. This includes not only the national sector organisations such as LGNZ and Taituarā but also related professional organisations, and a variety of occupational institutes and associations. Engagement with these stakeholders can do a lot towards achieving effective implementation.
3. **A separate process** - Taituarā notes there has been a generally increased willingness of central government to engage with local government during the process of policy development. While engagement with local government on implementation is likely to involve many of the same stakeholders, it should be set up as a separate project.
4. **A single shared plan** - Taituarā and other sector stakeholders will often see it as part of their role to support the implementation of the new legislation by local authorities (they may for instance have existing good practice guidance they will need to revise). If the actions of central government agencies and local government sector organisations are not co-ordinated in some way however, then there are risks that some work on some issues will be duplicated while others fall between the cracks. A single agreed common plan of action around the implementation process avoids these risks and is likely to lead to the most effective use of the available resources.
5. **Use the proven technology** - stakeholder organisations will generally have established and effective channels of communications with their constituents within local authorities. They may already have tools and guidance material that are widely known, recognised and used within local authorities. Government agencies should be encouraged to use these rather than establishing competing channels and tools.
6. **Clarity about audiences and needs** - there are a range of audiences, spanning elected local authority members, managers, and hands on practitioners in the specific affected areas of work. Their needs and the best means of addressing them are likely to differ. For instance, we would argue that the technology developed by our Legal Compliance Programme is often a useful technology for meeting the needs of managers and practitioners, but it does not address the needs of elected members.
7. **Linkage to the Select Committee process** - if work on developing guidance material as part of an implementation programme is started early enough there are opportunities for this to feed back in a positive way into the Select Committee process. This reflects our experience with the development of the legal compliance programme modules. The detailed work undertaken to identify the practical means of complying with legislation sometimes highlights technical shortcomings in the legislation that is being worked on – gaps and disconnects, inconsistencies and contradictions, and areas requiring clarification. If the effort is made to start this work early, there is the opportunity for these sorts of issues to be addressed prior to enactment.
8. **Life-cycle approach** - once legislation is enacted there is a necessary ongoing maintenance task for the administering department. New issues may arise, areas of uncertainty or contradiction may come to light, provisions may be interpreted in unexpected ways by either practitioners or the Courts or both. The ability of a department to respond effectively and properly maintain the legislation depends on the strength of its feedback systems from users. Engaging openly with stakeholders on implementation can assist this by establishing the foundation of relationships that can ensure open information flows into the future.