

# Cyclone Gabrielle Left More Than Physical Devastation in its Wake

**Cyclone Gabrielle left more than physical devastation in its wake. It also prompted difficult legal questions about risk, responsibility and the limits of local authority liability. In *Tangoio Developments Ltd v Hastings District Council* [2025] NZHC 3817, the High Court was asked to determine whether two councils could be held liable in negligence and for breach of statutory duty after a coastal subdivision became, in practical terms, unbuildable following the cyclone.**

The answer was no. This is important because as weather events intensify and insurers pull out of the market due to intolerable risk, local government will be scrutinised as a potential insurer of last resort.

## The Background

Tangoio Developments Ltd (the Developer) owned land at Tangoio Beach, north of Napier. The land had been rezoned “Coastal Settlement Residential” through a private plan change (Plan Change 31, or PC31) made operative in 2008. In 2019, subdivision consent was granted, resulting in 36 residential lots. By February 2023, when Cyclone Gabrielle struck, the Developer retained 12 of those lots.

The cyclone – described in the judgment as a one-in-1000-year event – rendered those remaining lots effectively unbuildable. The Developer alleged the lots were a total loss and sued Hastings District Council (the District Council) and Hawke’s Bay Regional Council (the Regional Council). The claims were framed in negligence and breach of statutory duty. Broadly, the Developer argued the councils should never have allowed the residential zoning and subdivision in the first place, given known flood risks.

Both councils applied to strike out the proceeding or, alternatively, for summary judgment.

## Plan Change 31 and limitation

The Developer’s case was that the District Council acted negligently in approving PC31 in 2008, despite the Regional Council’s opposition. The Regional Council had presented technical evidence that the land lay within a floodplain, was subject to flash flooding, and that residential development was likely to “end in disaster”.

The District Council nevertheless approved the plan change, subject to mitigation measures including significant site filling and minimum floor levels designed to address a one-in-100-year flood event.

Associate Judge Lester did not need to engage deeply with the substantive negligence argument because the claim was statute-barred. The 15-year “longstop” in s 23B of the Limitation Act 1950 applied. PC31 was approved in September 2008. The proceeding was filed in September 2024 – outside the 15-year absolute cut-off.

The Court emphasised that the longstop runs from the act or omission itself, not from when damage is discovered. For local authorities, this aspect of the decision provides welcome certainty: historic planning decisions will not remain indefinitely exposed to challenge.

## The 10-year District Plan review

The Developer’s second argument was more novel. It contended that during the 2012–2013 District Plan review, the District Council should have revisited PC31. The District Council allegedly had “institutional knowledge” of flood risks and, in light of increasing awareness of climate change, was said to be under a duty to reassess the residential zoning.

The Court rejected that

proposition. Section 79 of the Resource Management Act 1991 requires periodic reviews, but plan changes made within the preceding 10 years are exempt from mandatory review. PC31 fell within that window.

More fundamentally, the Court held that the decision whether to undertake a discretionary review is a legislative and policy judgement. Imposing a private law duty of care to revisit zoning decisions – owed not only to current but to future landowners – would create an open-ended and potentially perpetual obligation. That would sit uneasily with the statutory scheme.

The Court was clear: the fact that a landowner has suffered economic loss does not, of itself, generate a duty. Not every loss must have a remedy.

## Subdivision consent and quasi-judicial functions

The Developer also attacked the 2019 subdivision consent, alleging the District Council failed to adequately consider natural hazard risks.

Here, the Court relied heavily on the Court of Appeal’s decision in *Bella Vista Resort Ltd v Western Bay of Plenty District Council*. Resource consent decision-making under the RMA is a quasi-judicial function focused on environmental effects, not on safeguarding applicants’ economic interests.

The Developer’s predecessor, sharing the same director and shareholder, had expressly acknowledged the flood risk and proposed mitigation measures consistent with PC31. The District Council assessed the application under ss 95 and 104 of the RMA and imposed conditions reflecting those measures.

The Court concluded there was no duty of care owed to protect

the Developer from economic loss arising from a consent granted on conditions its predecessor had sought. The RMA process assesses environmental impacts; it does not guarantee commercial success.

### Breach of statutory duty

The Developer also advanced claims for breach of statutory duty, arguing the RMA imposed obligations to ensure zoning avoided or mitigated natural hazards and thereby protected residential landowners.

The Court rejected this framing. The RMA’s purpose in s 5 – sustainable management – cannot be disaggregated into a free-standing duty to protect private economic interests. Nor was economic loss the kind of harm the Act was designed to prevent. Section 85, which addresses compensation in limited circumstances, further

underscored that Parliament had carefully circumscribed remedies for land-use controls.

### Practical implications

For local government, the decision reinforces several important themes:

- **Planning decisions are not guarantees.** Zoning and consenting assess risk; they do not eliminate it.
- **Quasi-judicial immunity remains robust.** Courts are reluctant to impose negligence duties in core RMA decision-making functions.
- **Policy judgments stay in the policy realm.** Decisions about whether to review plans—particularly in a climate-change context—are legislative choices, not tortious obligations.

- **Limitation provides certainty.** The 15-year longstop is a firm boundary.

The human dimension should not be overlooked. The Court acknowledged the stark reality: the Developer had lost significant value “through no fault of its own”. But sympathy could not bridge the gap between loss and legal liability.

As weather events become more frequent and historic land-use decisions come under scrutiny, *Tangoio* offers reassurance that the courts will not readily convert policy and planning functions into private law guarantees. For councils navigating increasingly complex hazard landscapes, that clarity is both timely and significant.

*By Frana Divich, Partner, Heaney & Partners*



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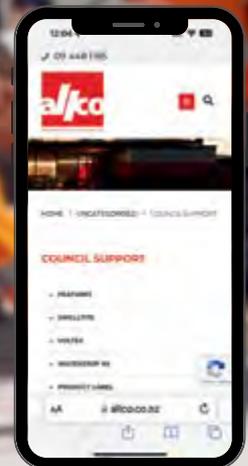
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