

Determination 2025/062

An authority's decision to issue a notice to fix for a timber deck constructed without building consent

8 Onepoto Road, Hauraki, Auckland

Summary

This determination considers an authority's decision to issue a notice to fix for a timber deck constructed without building consent in contravention of section 40. The determination considers whether the work was exempt from the requirement to obtain building consent under clause 24 of Schedule 1 of the Building Act, turning on the height of fall from the deck.



Figure 1: Photograph of the deck and barrier, taken by the authority on 2 September 2025.

In this determination, unless otherwise stated, references to “sections” are to sections of the Building Act 2004 (“the Act”).

The Act (including Schedule 1) and the Building Code (“the Code”) are available at www.legislation.govt.nz. Information about the legislation, as well as past determinations, compliance documents (eg Acceptable Solutions) and guidance issued by the Ministry, is available at www.building.govt.nz.

1. The matter to be determined

- 1.1. This is a determination made under due authorisation by me, Rebecca Mackie, for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment (“the Ministry”).¹
- 1.2. The parties to the determination are:
 - 1.2.1. TQZ Limited, represented by one of its director H Zhang, the owner of the property and recipient of the notice to fix who applied for the determination (“the owner”)
 - 1.2.2. Auckland Council, carrying out its duties as a territorial authority or building consent authority (“the authority”).
- 1.3. The matter to be determined² is the authority’s decision to issue Notice to Fix NOT21787618 (“the notice”) to the owner on 15 September 2025. The notice alleged a contravention of section 40 of the Act for building work to construct a timber deck without building consent when one was required.
- 1.4. In determining the matter, I will consider whether the building work was exempt from requiring building consent under clause 24 of Schedule 1 of the Act, and the form and content of the notice. The determination is limited to these points.³

2. Background

- 2.1. The dispute relates to the construction of a new timber deck adjacent to an existing building on the owner’s property (see Figure 1). The deck is approximately 1.1m⁴ away from the southern boundary, and 12.6m away from the eastern boundary. The deck is built on ground which slopes towards the south-east. At the eastern end, the height of the deck varies between 0.8m and 1.42m above the supporting ground. The deck has a barrier in the areas where there is a fall from the deck to the supporting ground, generally on the south and east elevations of the deck.

¹ The Building Act 2004, section 185(1)(a) provides the Chief Executive of the Ministry with the power to make determinations.

² Under sections 177(1)(b) and (3)(e).

³ This determination does not consider the Building Code compliance of the deck or the barrier as these matters are not included within the notice.

⁴ Metres used as unit of measurement, expressed as ‘m’.

- 2.2. On 13 August 2025, the authority undertook a site visit at the property and took photographs and measurements. At that point, the deck had been constructed but the barrier was not yet in place, and issues were raised in relation to the need for a barrier.⁵ The authority's officer states they observed a steep slope from the deck towards the rear of the property.
- 2.3. On 2 September 2025, the authority undertook a further site visit. At this point, a barrier had been installed (see Figure 1).
- 2.4. On 15 September 2025, the notice to fix was issued to the owner in relation to the owner's property. The notice states:

Particulars of contravention or non-compliance

Council conducted a site inspection in relation to unauthorised building works. As a result of this inspection, Council has identified that building work undertaken would have required building consent.

The Schedule 1 exemptions that the council has considered as being potentially relevant in reaching this conclusion are listed below (with numbers corresponding to Schedule clause numbers).

24 – Decks, platforms, bridges, boardwalks, etc

Building work in connection with a deck, platform, bridge, boardwalk, or the like from which it is not possible to fall more than 1.5 metres even if it collapses.

Contrary to **s.40 of the Building Act 2004** (the Act), the following building works have been undertaken [property address] without first obtaining a building consent:

Construction of a deck attached to the southern side of the minor dwelling located on the south-eastern side of the property. The height of the deck measured from ground level was approximately 1.42 meters. The approximate fall distance of the deck to the rear of the property is 12.6 meters. This exceeds 1.5 meters therefore, it is not exempt under schedule 1 of the Building Act 2004 of the need to obtain a building consent.

- 2.5. The notice has a compliance date of 8 December 2025.
- 2.6. The authority's cover letter accompanying the notice stated the authority "has no consented building records for this work". I take this to mean a building consent has not been issued for the work.
- 2.7. Following receipt of the notice, the owner sought clarification from the authority noting that the height from the deck to the ground is a maximum of 1.4m. In response, the authority stated:

...if the deck collapses or if someone is standing on the deck and falls, the distance it will travel and approximately come to a stop indicates the fall distance. This is NOT the height of the deck.

⁵ Building Code clause F4.3.1 requires a safety from falling barrier where people could fall 1m or more.

In this case, the fall distance is towards the rear of the property where the boundary fence is. If a person falls over in the slope, it will come to a complete stop where the boundary fence is.

3. Submissions

The owner

3.1. The owner submits:

- 3.1.1. Prior to constructing the deck, they confirmed with a friend (who is an architect) that as long as the deck is below 1.5m in height, it does not need building consent.
- 3.1.2. The notice was not reasonable. The exemption refers to a 1.5m fall distance and there are no other restrictions behind that wording. The authority has added an objective scenario whereby if the deck collapsed, a person may fall and roll over until they reach the fence and stop.
- 3.1.3. The builder who built the deck has over 10 years of building experience, and the deck is safe.

The authority

3.2. The authority submits:

[The officer] measured an approximate fall distance from the deck towards the rear of the property on Geomaps to be approximately 12.6 meters. For safety reasons [the officer] was unable to measure on site as the slope extending towards the rear of the property appeared to be very steep gradient and had a sharp drop without overgrown grass.

If the said deck collapses, the fall distance of the deck until it comes to a complete rest is approximately 12.6 meters. This exceeds 1.5 meters, therefore, is not exempt under Schedule 1 of the Building Act 2004 of the need to obtain a building consent from the territorial authority.

4. Discussion

Legislation

- 4.1. One of the purposes of the Building Act is to provide for the regulation of building work to ensure that people who use buildings can do so safely and without endangering their health.⁶

⁶ Section 3(a)(i).

- 4.2. The provisions concerning notices to fix are found in sections 163 to 168 of the Act. Section 164(1)(a) provides for an authority to issue a notice to fix if it considers, on reasonable grounds, that a specified person⁷ is contravening or failing to comply with the Act or its regulations. This can include carrying out building work without building consent when one is required as that would be a contravention or ‘failing to comply with’ section 40 of the Act.
- 4.3. Section 40(1) provides that a person must not carry out any building work except in accordance with a building consent. Section 41, however, states that building consent is not required in certain cases. Specifically, section 41(1)(b) sets out if building work falls within the work described in Schedule 1 of the Act, then building consent is not required for that work.
- 4.4. The purpose of Schedule 1 is to exempt low risk work from the requirement to obtain a building consent. Schedule 1 prescribes building work, organised into categories, for which a building consent is not required, or, put another way, work that is ‘exempt’ from requiring building consent. This includes the category of work being relied on by the owner, described in clause 24 of Schedule 1:

24 Decks, platforms, bridges, boardwalks, etc

Building work in connection with a deck, platform, bridge, boardwalk, or the like from which it is not possible to fall more than 1.5 metres even if it collapses.

- 4.5. The 1.5m maximum fall specified in clause 24 is intended to limit the risk of injury, so that only decks which are low risk (in terms of possible fall height) are exempt from building consent.

Were there grounds to issue the notice?

- 4.6. To establish whether there were grounds for the authority to issue the notice for a contravention of section 40, I must consider whether the building work (construction of the deck) is within the scope of work described in clause 24 of Schedule 1 and therefore exempt from requiring building consent. If not exempt, and building consent was required, there were grounds to issue the notice for a contravention of section 40.
- 4.7. The dispute centres on whether a person could fall more than 1.5m from the deck, including if the deck collapses. The owner believes the fall refers to the vertical drop from the deck (which is less than 1.5m), whereas the authority considers it is possible for a person to fall a greater distance, some 12 metres, down the slope with the fall stopping at the eastern fence. It is necessary I consider the term ‘fall’.
- 4.8. The term ‘fall’ is not defined in either the Act or the Code. Previous Determinations considered the ordinary meaning by way of the *Concise Oxford Dictionary*

⁷ Section 163 of the Act defines a ‘specified person’ to whom a notice can be issued, and this includes the owner of a building and the person carrying out the building work if the notice relates to building work being carried out.

definitions of 'fall' including to "descend rapidly from a higher to a lower level" and to "collapse forwards and downwards", finding the ordinary meaning of 'fall' does not lend itself to, or necessarily mean, only a vertical fall is to be considered.⁸ I agree with these Determinations, a fall may occur in various directions depending on the circumstances.

- 4.9. The wording in clause 24 "...from which it is **not possible to fall** more than 1.5 metres **even if collapses** [my emphasis]" differs from simply the height of the deck above the ground. A person on a deck will not necessarily fall vertically and neatly within the footprint of the deck in the event of a collapse. Depending on how the deck collapses, a person may fall outwards and into the area immediately adjacent or surrounding the deck. If the deck is located on a slope, it is possible for a person to fall further than simply the height of the deck above the ground.
- 4.10. Previous determinations have also considered falling onto slopes, confirming that a fall does not need to be vertical; if a slope is sufficiently steep, a person can tumble down and injure themselves.⁹ A sufficiently steep slope immediately adjacent to a fall can contribute to the fall height, as a person falling onto the slope will continue to fall.
- 4.11. In summary, the relevant consideration is the fall in the actual circumstances¹⁰—not only the vertical height directly beneath, but also the nature of the ground immediately surrounding it. If a steep slope exists immediately adjacent, that is a circumstance to be factored into the fall height.
- 4.12. In this case, the highest point of the deck is 1.42m above the supporting ground and it is clear that a strictly vertical fall is less than 1.5m. In the authority's view the slope is a relevant factor. The notice states "the approximate fall distance of the deck to the rear of the property is 12.6 metres. This exceeds 1.5 metres therefore, is not exempt under schedule 1...". The 12.6m fall referred to is on a slope which appears to drop approximately 3.5m over 12.6m.¹¹ This indicates a gradient of approximately 15.5 degrees on average. In my view, this gradient, along with the photos provided by the authority, do not indicate that the slope is sufficiently steep enough that a person would continue to fall or tumble down the slope (see Figure 2). As such, I disagree that this is evidence of a fall of more than 1.5m in this case.
- 4.13. As previously discussed, it is possible for a person to fall outwards if the deck collapsed. However, I have not been provided measurements of the fall distance

⁸ See Determination 2008/081 *Safety barrier to a deck located adjacent to a retaining wall* (28 August 2008) at [7.1.7], and Determination 2014/029 *Regarding the refusal to issue a code compliance certificate for failure to comply with Building Code Clause F4* (12 June 2014) at [5.6].

⁹ See 2014/029 at [5.6], and 2008/081, in which slopes of approximately 45 degrees were considered in both determinations.

¹⁰ I note where the potential fall is less than 1.0m, a 'safety from falling' barrier is not required by Building Code Clause F4. This means the fall height assessment must include the possibility of falling from the side of the deck, not just through collapse. Refer to Determination 2008/081.

¹¹ Estimated using Auckland Council's Geomaps website, based on the fall indicated in Appendix 1 of the notice to fix (<https://geomapspublic.aucklandcouncil.govt.nz/viewer/index.html>, accessed 17/11/2025).

into the area immediately surrounding the deck, and it is not evident from the photos provided that such a fall would exceed 1.5m (see Figure 2).

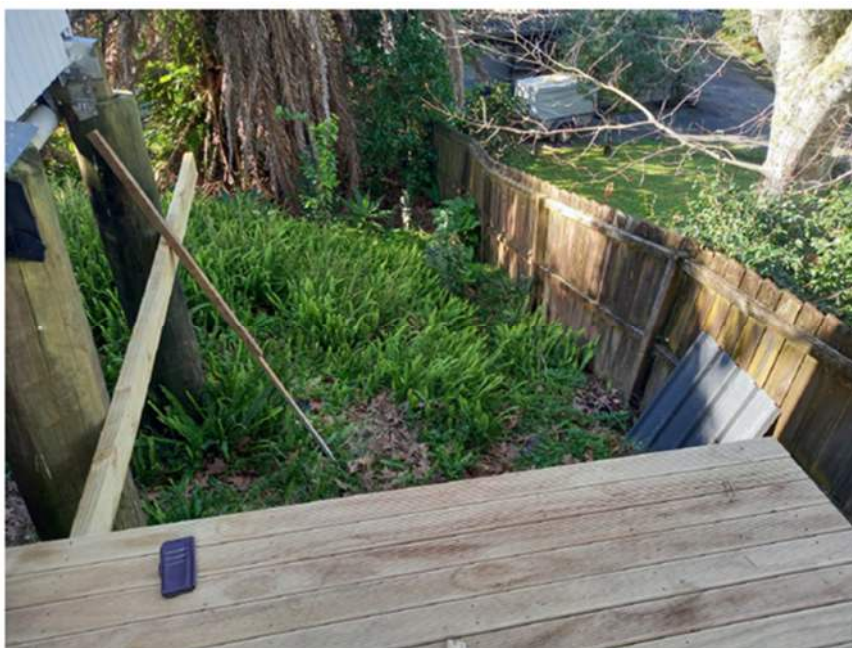


Figure 2: Photograph of the sloping ground adjacent to the deck (taken by the authority on 13 August 2025, prior to the construction of the barrier).

4.14. As such, I have no information to conclude that a person could fall more than 1.5m from the deck, even if it collapsed. I consider the deck meets the criteria in clause 24 of Schedule 1 and was exempt from the requirement to obtain a building consent. Accordingly, there was no contravention of section 40 and no grounds to issue the notice to fix under section 164.

Form and content of the notice

4.15. In my view the form and content requirements of a notice to fix in section 165 were met (had there been grounds to issue the notice). The authority:

4.15.1. clearly and adequately described the subject building work,

4.15.2. explained the contravention of section 40 including turning their mind to Schedule 1, and,

4.15.3. provided a reasonable timeframe to comply with the notice.

4.16. For completeness, I am satisfied that the owner of the property falls within the definition of a 'specified person' under section 163 of the Act, to whom a notice to fix can be issued (had there been grounds to issue the notice).

5. Decision

- 5.1. In accordance with section 188 of the Building Act 2004, I determine that there were no grounds to issue the notice to fix (NOT21787618) in relation to the construction of the deck for a contravention of section 40 of the Act, as the work falls within Schedule 1 of the Act so building consent was not required. Accordingly, I hereby reverse the notice.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 11 December 2025.

Rebecca Mackie

Principal Advisor Determinations