

Determination 2026/027

The compliance of a pool and associated pool deck with Building Code Clause F4 Safety from falling

152 Endsleigh Road, Havelock North

Summary

This determination considers the compliance of a proposed new pool and associated pool deck with Building Code clause F4 *Safety from falling* without a barrier being installed. The determination considers whether a barrier is required to reduce the likelihood of accidental fall from either the pool or pool deck.

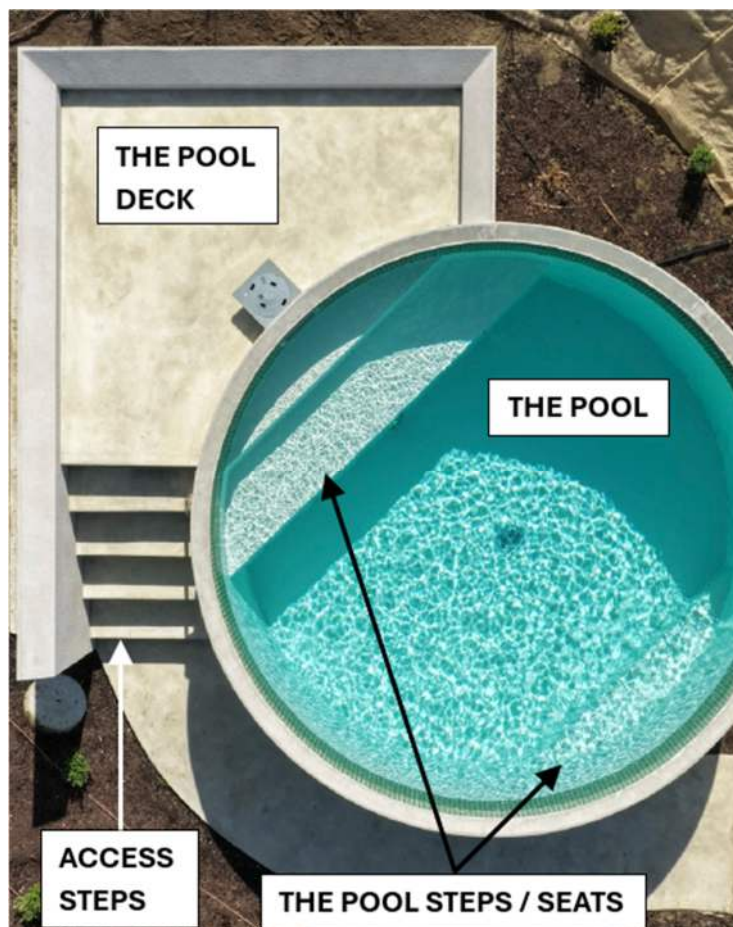


Figure 1: Plan view of pool, pool deck and access steps

In this determination, unless otherwise stated, references to “sections” are to sections of the Building Act 2004 (“the Act”) and references to “clauses” are to clauses in Schedule 1 (“the Building Code”) of the Building Regulations 1992.

The Act and the Building 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, Peta Hird, 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. G and B Gaddum, and R Sinclair, the owners of the property (“the owners”), who applied for this determination.
 - 1.2.2. Hastings District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3. The matter to be determined, under section 177(1)(a), is whether a proposed pool and pool deck, as shown in figure 1, complies with Building Code Clause F4 *Safety from falling*. In deciding this matter, I will consider the likelihood people could fall one metre or more from a sudden change in level within or associated with the pool and pool deck.
- 1.4. The determination does not consider the compliance of the building work with any other Building Code clauses, such as F9 *Means of Restricting Access to Residential Pools*.

2. Background and building work

- 2.1. The property is a lifestyle block near Havelock North which contains a dwelling and outbuildings. The pool is to be in a grassed field, approximately 39m from the dwelling, and more than 10m from the property boundary.

The pool

- 2.2. The pool is intended to be used as a plunge pool (ie for sitting or standing in). The pool is circular and made of precast concrete. It is 1.85m deep (internally) with an external diameter of 3.7m, and its top edge will be 1.2m above finished ground

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

level. The owner states the water level is to be maintained 200mm below the edge of the pool, and I note the location of the skimmer box supports that claim.

- 2.3. The pool incorporates several internal steps / seats, as can be seen in figure 1. The two closest to the pool deck are 450mm and 750mm from the top edge of the pool; the step on the opposite side is approximately 40mm high above the pool floor. At their widest they provide enough space to sit or stand, but not at the ends where they meet the curvature of the pool wall.
- 2.4. The pool is intended to be orientated so the two steps / seats are closest to the pool deck for the purpose of getting in and out of the pool.
- 2.5. The pool wall is 100mm thick. It incorporates a 30-degree bevel that slopes into the pool, leaving a 30, wide flat surface at the top (see figure 2).

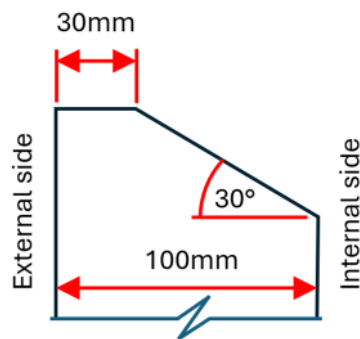


Figure 2: The pool edge (not to scale)

The pool deck

- 2.6. The pool deck, constructed of reinforced concrete, is approximately 4m long and 3m wide. It is broadly L-shaped and adjoins onto one quadrant of the pool (see figure 1).
- 2.7. The owners state the pool deck will be less than 1m above the finished ground level but did not provide an exact dimension. Access to the pool deck is through a self-closing / self-latching gate before ascending several steps. The owner advises the concrete deck and steps “will be finished with exposed aggregate or a similar finish, providing a rough, slip resistant surface suitable for wet environments”.
- 2.8. The wall that surrounds the pool deck is to be 1.2m high above the finished ground level. Based on the owners’ submission on the height of the pool deck, this would make the surface of the pool deck more than 200mm below the top of the wall that surrounds it.² The wall is approximately 190mm wide and, similar to the pool wall, the top incorporates a 30-degree internal bevel, leaving a 32mm wide flat top.
- 2.9. The owner does not intend to provide a barrier to restrict accidental falls around the pool or the pool deck.

² The owner has not provided the dimension of the deck relative to either the deck wall or the top of the pool.

- 2.10. On 16 and 17 April 2026, the owner and authority exchanged emails regarding the proposed pool and pool deck – their views from that correspondence are summarised below. The authority had completed a review of the proposed design and concluded it did not demonstrate compliance with clauses F4.3.1.

3. Submissions

The owner

- 3.1. The owner's position is that while the vertical height from the top of the pool edge to ground level exceeds 1m, the pool wall does not function as a location from which a person could fall, and functions instead "as a non-walkable boundary rather than a platform". This is because:
- 3.1.1. the geometry of the top of the proposed pool wall does not constitute an occupiable or useable surface, and the design discourages sitting, standing or pedestrian use.
 - 3.1.2. from the inside of the pool, people would be discouraged from climbing onto the edge because the water level will be 200mm from the top, and there are designated pool steps (where the height between the top edge and the two steps is less than 1m).
- 3.2. Regarding the proposed design of the top edge of the wall surrounding the pool deck, the owners submit this element is "not intended as a pedestrian platform" and should not be considered like "a conventional deck edge as described in [Acceptable Solution] F4/AS1".

The authority

- 3.3. The authority considers that a fall exceeding 1m could occur from the pool wall, which is "reasonably wide and level". Users may access the pool edge from the pool or the deck area, and a person could also fall from a floatation device. The authority believes the edge geometry of the pool does not adequately restrict access or reduce the risk of a fall for the purposes of clause F4.
- 3.4. The authority also considered the design of the pool deck wall incorporates a perimeter edge where a fall of 1m or greater as it "is reasonably wide and level". This detail is not considered comparable to Figure 6 of Acceptable Solution F4/AS1³ in an "area intended or likely for pedestrian use".
- 3.5. The proposed "design does not demonstrate compliance with...clauses 4.1 and F4.3.1".

³ Acceptable Solution F4/AS1, third edition, amendment 2, effective 1 January 2017. Figure 6 is titled 'Fixed seat on a deck to housing'.

4. Discussion

4.1. The matter to be determined is whether the proposed pool and pool deck comply with clause F4.3.1 where a barrier is not intended to be provided.

4.2. The relevant performance requirement is clause F4.3.1:

F4.3.1 Where people could fall 1 metre or more from an opening in the external envelope or floor of a building, or from a sudden change of level within or associated with a building, a barrier shall be provided.

4.3. The functional requirement states ‘buildings shall be constructed to reduce the likelihood of accidental fall’, and the objective of clause F4 ‘is to safeguard people from injury caused by falling’.⁴

4.4. In considering the ‘likelihood of accidental fall’, the functional requirement is to reduce that likelihood, not eliminate the occurrence of all falls. The term “likely” has been considered by the courts to mean ‘what is alleged must be “a reasonable consequence” or “could well happen”’⁵ or ‘that having regard to the circumstances of the case it could well happen’.⁶

4.5. Further, I hold the same view expressed in Determination 1999/012 where it was considered “clause F4.3.1 is to be interpreted as requiring a barrier where it is reasonably foreseeable that people are likely to be at risk if there is no barrier”.⁷

The pool edge and pool deck wall

4.6. The requirement to comply with clause F4.3.1 is to those areas where there is a sudden change in level of one metre or more. As the pool deck is proposed to be less than one metre above the finished ground level, it falls outside the requirement for a barrier.

4.7. The changes in level where a person could fall one metre or more are from the pool edge to the external finished ground level or to the lowest step below, or from the top edge of the block wall around the pool deck to the finished ground level. Since the top edges of the pool and the pool deck wall are similar in construction, ie being approximately 30mm wide and include a 30-degree internal bevel, I have considered them together.

4.8. Previous determinations have considered various types of pool edge construction. Determination 2010/085 considered a pool with a wall 200mm thick, a top edge 25mm wide with a 45-degree bevel on either side, and a water level 150mm below

⁴ Clauses F4.2 and F4.1 respectively.

⁵ *Auckland Council v Weldon Properties Ltd*, 8 August 1996, District Court Auckland NP 2627/95.

⁶ *Rotorua District Council v Rua Developments Ltd*, 17 December 1999, District Court Rotorua NP 1327/97.

⁷ Determination 1999/012 *The requirement for a safety barrier on a retaining wall* (12 October 1999), at paragraph 7.1.

the top edge of the pool. The determination concluded the sloping edge detail prevents people from walking on the edges of the pool.

- 4.9. Other determinations involving pool edges with wider dimensions concluded these did not comply with clause F4.3.1; for example, determination 2010/097 where the edge was between 270mm – 450mm wide and flat. In determination 2022/015 where the edge was 240mm wide with an inward slope of 15 degrees there was no dispute that the construction did not comply with clause F4.3.1.⁸
- 4.10. In this case, I have considered whether it is reasonably foreseeable that a person would stand, walk, sit or perch on either the pool edge or the deck wall. There is no standard measure or optimum width of a surface that can or will be walked or stood on. However, narrow surfaces and those that incorporate slopes are less likely to provide a platform on which people are likely to stand, sit, walk or perch. I note that F4/AS1 incorporates a 30-degree or greater inward slope for parapets 100mm or wider when used as barriers “so that they are not readily able to be used as seats”.
- 4.11. Considering the proposed design, incorporating an approximate 30 to 32mm wide top edge and 30-degree internal bevel, I am of the view:
- 4.11.1. The size of the flat surface and the 30-degree internal bevel mean it is less likely persons would be on the top edges of the pool and pool deck wall and therefore would not require protection from the likelihood of accidental fall.
- 4.11.2. Although a person inside the pool could grasp the top edge of the pool to lift themselves up, falling over the wall would require deliberate effort to shift their body mass over the edge, making an accidental fall in normal use unlikely.
- 4.12. I also consider the size and intended use of the pool is such that it is unlikely to promote playing games, general boisterous behaviour, or the use of equipment such as flotation devices.
- 4.13. Based on the proposed design of the top edges of the pool and pool deck wall, I conclude people are not likely to be in a position where accidental fall of one metre or more is likely, and therefore the pool and pool deck complies with clause F4. I note this conclusion is reached on the basis of the information provided to me about the height and dimensions of the pool and deck wall, and the same conclusion may not be reached in other circumstances where those differ.

⁸ Determination 2010/097 *Safety barriers to a swimming pool and a spa pool* (22 October 2010) and Determination 2022/015 *Regarding the compliance of a 1200mm high masonry swimming pool wall with Building Code Clause F4 Safety from falling, and whether to grant a modification of clause F4.3.1* (16 August 2022) at paragraphs 5.5 and 5.6.

5. Decision

- 5.1. In accordance with section 188 of the Building Act 2004, I determine the proposed design of the pool and pool deck as described in this determination complies with clause F4 *Safety from falling*.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 13 August 2026.

Peta Hird

Lead Determinations Specialist