

Blog

Determination 2025/062

Notice to fix for a timber deck construction Building Act section 40.

Section 40 Building not to be constructed, altered, demolished, or removed without consent.

- (1) A person must not carry out any building work except in accordance with a building consent
- (2) A person commits an offence under this section if the person fails to comply with this section. (it goes on to set out the fine)

The act goes on at section 41 to talk about schedule 1 which describes work for which a building consent is not required.

The above determination considered the Building Consent Authorities (BCA's) decision to issue a "Notice to Fix" for a timber deck without a Building Consent in contravention of section 40 of the Building Act 2004.

The height of deck varied between .800mm and 1.420mm above sloping ground. The deck has a barrier. While the deck was 1.420mm to ground at one end, the ground then sloped away rather steeply. The need for a barrier arises due to there being a risk of fall and subsequently, injury. At a site visit the BCA's inspector contends building work had been undertaken without a Building Consent when a Building Consent was required.

The Schedule 1 exemptions provide for decks, platforms, bridges, board walks, or the like from which it is not possible to fall more than 1.5m, even if it collapses is work that does not require a Building Consent.

The BCA's assessment is based on the steep slopes. While the deck is 1.42m above ground the steep slopes go down hill for around 12.6m, hence the risk of fall is the trigger for requiring a Building Consent. A key element of the Building Act, regulations and Building Codes is ensuring that people who use buildings can do so safely and without injury or endangering their health.

The dispute in this case centred on whether a person could fall more than 1.5m from the deck, including if it collapsed. The owner contends that the vertical drop is the measure (which is less than 1.5M) whereas the BCA considers it is possible for a person to fall greater distance, some 12 M down the slope where a fence at the bottom of the property is located. The decision hinges on the meaning of the term "fall". It is true that a fall may occur in various directions depending on the set of circumstances. Falls are not limited to vertical direction. The wording in clause 24 "*from which it is **not possible to fall** more than 1.5m, **even if it collapses***" (Emphasis added) differs from simply the height of the deck measured to ground level immediately at its edge. A person will not necessarily fall within a foot print, but is more likely to tumble off down the slope. Fall is not limited to vertical, but may include a steep

slope. Another example may be a terraced site with a 2.5 M high retaining wall, 700 mm from the deck, the deck 600mm above the ground above the retaining wall. A person falling and off balance may tumble out over the retaining wall close by, hence triggering a Building Consent.

What must be considered is the fall risk, in the actual circumstances. If a steep slope exists, or a drop over a retaining wall close by, that is a factor to be considered as a fall height.