



3 July 2017

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By email: Gordon.Wilmshurst@jnl.co.nz

Dear Gordy

Re: Product substitution and the requirement for a minor variation

You have asked me to provide advice about when a minor variation is required and when it is not.

Put simply, there's no single answer. But I hope the following examples will help explain why that is the case.

What is a minor variation?

Firstly, I think it's important to be clear about exactly what a minor variation is. The Building (Minor Variation) Regulations 2009 define it as follows:

3 Minor variation defined

- (1) A **minor variation** is a minor modification, addition, or variation to a building consent that does not deviate significantly from the plans and specifications to which the building consent relates.
- (2) The following are examples of minor variations and do not constitute an exhaustive list:
 - (a) substituting comparable products (for example, substituting one internal lining for a similar internal lining);
 - (b) minor wall bracing changes;
 - (c) a minor construction change (for example, changing the framing method used around a window);
 - (d) changing a room's layout (for example, changing the position of fixtures in a bathroom or kitchen).
- (3) The examples in subclause (2) are only illustrative of subclause (1) and do not limit it. If an example conflicts with subclause (1), subclause (1) prevails.
- (4) To avoid doubt, a minor variation does not include any building work in respect of which compliance with the building code is not required by the [Building Act 2004](#).

The Building Act 2004 also outlines the mechanism for considering a minor variation where a building consent has been issued:





45A Minor variations to building consents

- (1) An application for a minor variation to a building consent—
 - (a) is not required to be made in the prescribed form; but
 - (b) must comply with all other applicable requirements of [section 45](#).
- (2) [Sections 48 to 50](#) apply, with all necessary modifications, to an application for a minor variation.
- (3) A building consent authority that grants a minor variation—
 - (a) must record the minor variation in writing; but
 - (b) is not required to issue an amended building consent.

Section 45A: inserted, on 1 February 2010, by [section 16](#) of the Building Amendment Act 2009 (2009 No 25).

How this legislation deals with the issue of product substitution depends on the product's compliance with the building code. In the case of J-Frame that's very straightforward: the compliance pathway is Codemark (that is, a Product Certificate).

Section 19 of the Building Act 2004 states the methods for establishing code compliance that a BCA must rely on:

19 How compliance with building code is established

- (1) A building consent authority must accept any or all of the following as establishing compliance with the [building code](#):
 - (a) compliance with regulations referred to in [section 20](#);
 - (b) compliance with an acceptable solution;
 - (ba) compliance with a verification method;
 - (c) a determination to that effect made by the chief executive under [subpart 1](#) of Part 3;
 - (ca) a current national multiple-use approval issued under [section 30F](#), if every relevant condition in that national multiple-use approval is met;
 - (d) a current product certificate issued under [section 269](#), if every relevant condition in that product certificate is met;
 - (e) to the extent that compliance with a requirement imposed by regulations made under the [Electricity Act 1992](#) or the [Gas Act 1992](#) is compliance with any particular provisions of the [building code](#), a certificate issued under any of those regulations to the effect that any energy work complies with those requirements.
- (2) In considering whether something complies with the [building code](#), a building consent authority or, as the case may be, a regional authority—
 - (a) must have regard to any relevant warning issued, and ban declared, under [section 26\(2\)](#); and
 - (b) may have regard to any guidance information published by the chief executive under [section 175](#).

Section 19(1)(d) relates to CodeMark. This shows, explicitly that under law CodeMark has the same legal status as an Acceptable Solution. In fact, I have frequently described CodeMark as a "proprietary" acceptable solution.

So for J-Frame, compliance with the building code is established using a tool that is as robust as - and has the same legal standing as - NZS3640:2003 (which is cited in the Acceptable Solution for B2 (durability)).

When is a minor variation required?

The need for a minor variation is triggered by the way a product is specified in a building consent application (plans and specifications).



The extent to which a product is specified in a consent differs. In some cases, the product will be exactly specified. In others, the product will only be generically specified.

For example, plasterboard may be specified as:

- 10mm standard GIB® plasterboard or
- 10mm standard plasterboard.

Where GIB® is specifically referenced, the substitution with SheetRock® would trigger a minor variation. But where no brand is referenced - ie the specification is generic - then any 10mm standard plasterboard can be used without any requirement for a minor variation.

In the case of structural timber framing the following would apply:

Specification	Comment
Timber framing to be H1.2, SG8	This specification is generic so any timber (solid or engineered) that can demonstrate performance equivalent to SG8 and durability to meet hazard class H1.2 can be used. J-Frame can be used without any need for a minor variation
Timber framing, solid lumber, treated in accordance with NZS3640 to H1.2, SG8	This specification is not generic, so a minor variation would be required to use J-Frame.
J-Frame H1.2, LVL8	This specification is not generic and so a minor variation would be required if J-Frame was substituted with an alternative.

It's my understanding that plans and specifications are typically generic in terms of timber structural framing. So I would expect the requirement for a minor variation to be the exception and not the rule.

I trust that this clarifies the regulatory requirements. Feel free to use this letter as necessary and if your clients would like to contact me directly, then that's fine too.

Kind regards

Louise Swann
Director

