



Department of  
Building and Housing  
*Te Tari Kaupapa Whare*

# **Minor variations to building consents: Guidance on definition, assessment and granting**

Building Act 2004

Building (Minor Variations) Regulations 2009

February 2010



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# Introduction

## Purpose of this document

This document provides information and guidance to building consent authorities (BCAs), and to others such as builders, designers and project managers, about:

- the legislation that provides for minor variations to building consents
- how to define minor variations in practice
- how BCAs should assess and grant minor variations
- recommended BCA systems and processes for dealing with minor variations.

This document is not intended to be a guide for DIY homeowners; it assumes a knowledge and understanding of the Building Act 2004 (the Act) and its requirements that most DIY homeowners will not have.

The Department recommends that BCAs should take into account this guidance when developing and implementing their own policies, systems and procedures for minor variations. However, if they have legal questions about minor variations and about the policies, systems and procedures they should adopt, BCAs should seek their own independent legal advice.

## Background

The Act was amended in July 2009 to provide for minor variations to building consents. Electronic copies of the Act and the Building Amendment Act 2009 (Amendment Act) are available online at [www.legislation.govt.nz](http://www.legislation.govt.nz) or [www.dbh.govt.nz](http://www.dbh.govt.nz).

Section 45A of the Act enables a BCA to grant a minor variation prior to or during construction without having to go through the formal process of issuing an amendment to the building consent. However, the BCA must record the granting of the minor variation in writing.

Section 402(1)(kd) of the Act has enabled the making of regulations defining the minor variations that may be made to a building consent for the purposes of section 45A. These regulations titled the 'Building (Minor Variations) Regulations 2009' came into effect on 1 February 2010.

The reasons for amending the Act to allow for minor variations were to:

- formalise a number of pragmatic and efficient practices already being operated by some BCAs to deal with minor changes during construction
- improve national consistency in BCA practices
- enable BCAs to lawfully distinguish between minor and other more significant changes to building consents and treat them differently
- provide time and cost savings for building owners, builders, BCAs and others when dealing with minor changes to building work for which a consent has already been granted.

# What is a minor variation?

## Legal definition of 'minor variation'

Regulation 3 of the Building (Minor Variations) Regulations 2009 defines a minor variation 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](#).

\*Building work defined under 3 (4) above is any type of work associated with the construction of a building that does not need to comply with the Building Code. This is not the same type of building work as defined under section 7 of the Act.

Some examples of where regulation 3(4) is relevant (that is, where a change can happen as of right without the need to seek approval for a minor variation) include, but are not limited to:

- built-in shelving, storage units or seating in a residential dwelling
- changing most wall coverings in a residential dwelling from paint to wallpaper, or vice versa
- kitchen or bathroom joinery carcasses
- skirting, ceiling coving or decorative mouldings.

# How BCAs should assess and process minor variations

## Proposed minor variations

All proposed minor variations need to be communicated to the BCA before the building work is undertaken. Decisions about whether a change meets the definition of a minor variation and whether the minor variation can be granted are the responsibility of the BCA, not any other party. Following receipt of a minor variation proposal the BCA should advise the applicant whether the change will be assessed as a minor variation or is too significant a change from the consented building work and requires a formal application for an amendment to the building consent.

A minor variation proposal does not mean a formal application in the way that a building consent amendment is applied for. In some circumstances this may be as simple as a:

- conversation on site between the builder and the inspector (documented afterwards)
- covering letter or e-mail from the designer or builder accompanying revised architectural plans or construction details covering the proposed change.

## Assessing a proposed minor variation

The Department recommends that BCAs assess a proposed minor variation by addressing, in sequence, the following questions:

First, does the proposed change involve building work that is required to comply with the Building Code? If the work is **not** required to comply with the Code, then it is not necessary to seek approval for the change; the work can simply be carried out as of right.

Second, is the proposed change sufficiently minor that it comes within the definition of 'minor variation' contained in the Building (Minor Variations) Regulations 2009 and explained in this guide? A proposed change will generally come within that definition if it involves, for example:

- substituting comparable building products in the same or similar position/manner; or
- any alteration that does not change the footprint of the building or the location of internal load-bearing supports, or does not change fire safety aspects; or
- altering a room's layout (for example, the position of sanitary fixtures in a room).

Third, does the proposed change:

- comply with the Building Code; and
- reflect common appropriate industry practice or standards (for example, drainage or roof truss 'as-built' plan); and
- not significantly increase the likelihood of a building element's performance failure or of damage to other property.

If the answer to each of those three questions is 'Yes', then it will generally be appropriate for the BCA to grant the minor variation.

There may be cases where a proposed minor variation involves aspects of specific engineering design. For example, changing the size of a specific engineering designed beam or lintel and approving this change might be quite straightforward in some situations. The BCA may only require information on the revised beam or lintel, such as size and structural calculations from an engineer to assess and approve this as a minor variation. This will require professional judgement by the Building Official to judge each case on its merits, assess and consider the significance of the proposed change, and make and record a decision.

### **Best practice for processing minor variations**

BCAs need to ensure that they consistently follow the policies, systems and procedures they have put in place for assessing and granting minor variations. The Department recommends that BCAs base their policies, systems and procedures on this guidance and on existing good industry practices, which have enabled a reasonably flexible approach to minor changes during construction. In line with those practices, BCAs should determine each minor variation on its merits. Whilst standard operating policies and procedures can help achieve better consistency, there will always be cases that are different and require professional judgement, individual assessment and consideration.

BCAs should make reasonable efforts to streamline their processes, to reduce time and cost for all those involved. They should consider carefully what evidence they will require consent applicants to provide to show that the work will comply with the Building Code. For example, for a minor variation to a structural element during construction, it may be enough to require a producer statement with supporting calculations provided by a chartered professional engineer.

Construction changes that require a minor variation or an amendment to a building consent should not be made before the BCA has granted the minor variation or amendment.

### **Approving minor variations on-site**

Discussions about proposed minor variations will often be held on site with the building inspector. If the inspector decides that the minor variation can be granted there and then, the inspector should record this in writing, with their reasons. Depending on the significance of the change, this might include a handwritten change on the approved consent documents, initialled and dated by the building inspector and an inspection record for the consent file. The building inspector might also advise the owner, builder or contractor to provide 'as-built' drawings to the BCA once the work is completed, to reflect the changes.

After a minor variation has been approved, it is important that it is always recorded on the inspection notes and consent file. The relevant council records should also be updated. This is to ensure that BCAs records are accurate and to assist with issuing the code compliance certificate.

Just because a minor variation cannot be approved on-site does not mean it cannot be approved at a later stage. If an inspector lacks the specific technical capability to approve a minor variation, the Department recommends that they seek advice from someone else, such as another building official or their team leader back at the BCA. It is perfectly acceptable for the inspector to take some photos and go back to the office to discuss the situation with their colleagues first, or to consider additional information they have asked the builder or designer to provide, before approving a minor variation, later that day, the next day or a week later.

A proposed minor variation should not escalate into an amendment to the building consent merely because the on-site inspector cannot approve it there and then. The key question is whether the proposed change meets the definition of a minor variation or whether it meets the threshold for an amendment to the building consent.

### **Approving minor variations at the BCA office**

Minor variations can also be approved at the BCA office. The owner or designer might send a letter or an email to the BCA seeking approval for a minor variation, or the BCA might have a conversation with them over the phone (in which case the BCA might require additional information for their records) or at the front counter discussing the proposed change. Again, it is important that, once a minor variation is granted, the BCA records this on the consent file and updates the relevant council records.

# Minor variations that involve product substitution

The Building Code imposes minimum performance requirements for buildings. These requirements can be met through a variety of building products and systems.

In assessing proposed minor variations that involve substituting products, BCAs, builders, designers and project managers should note that:

- some building products substantially exceed the minimum Building Code requirements
- product performance is often dictated by the preferences of the owner or designer or by considerations of cost
- the consent applicant (or their agent) is responsible for demonstrating that a substitute product will comply with the Building Code
- if a substitute product performs differently from the original product, the applicant should also describe the effect of the change on other building products or work
- if the BCA already has knowledge about the substitute product, it may choose to rely on this knowledge (and record that it has done this) rather than requiring every applicant to submit the same or similar information demonstrating that the product complies with the Building Code (eg substituting well known and proven insulation products)
- applicants should be made aware that substituting an element of a supplier's proprietary system may void any warranty offered by the supplier
- if the minor variation includes the use of a product outside the conditions of a product certificate, the product certificate is no longer valid.

# Examples: Minor variation or amended building consent?

The following table sets out examples of situations where a proposed change:

- meets the definition of a minor variation
- does not meet the definition of a minor variation (ie, the proposed change would need to be dealt with by the BCA issuing an amendment to the building consent).

## Examples of alterations that do not change the footprint of the building, location of internal loadbearing supports or fire safety aspects

| Example of minor variation   | Example of amendment to a building consent   |
|--|--|
| <p>During the construction of a new two-storey dwelling on a concrete slab, the owner proposes to enlarge a small window in the guest bedroom on the ground floor. The builder draws this to the attention of the building inspector during an on-site inspection; the builder is able to show the inspector that although the opening size will change, there will not be any point loads on the new lintel (provided it complies with NZS 3604) and any wall-bracing requirements will not be affected.</p> <p><b>The building inspector accepts this as a minor variation as it does not significantly deviate from the original design and will have a minimal effect on overall compliance with the structural stability requirements. The building inspector records the decision and the reasons for it on the inspection notes and makes a notation on the approved plans of what has been approved.</b></p> <p><b>Note: It is important to ensure this approval is recorded on the consent file. This ensures that the file and council records are accurate; but it is also a legal requirement under the Act and the BCA accreditation regulations.</b></p> | <p>On the same job the owner proposes to change a small window in the master bedroom to a large floor to ceiling picture window. However, the new lintel will incur a point load and the transfer of loads to the lower storey will be affected. This will require structural engineering design and could also have implications for Energy efficiency, Safety from falling and Hazardous building materials.</p> <p><b>This work would be considered a significant deviation from the approved consent plans and specifications. Subsequently, this is not considered a minor variation but is work that would require an application for an amendment to the building consent. In this case the building inspector would advise the builder that this work must not proceed until the BCA grants the amendment. The building inspector would then record the decision not to approve the minor variation on the inspection notes and update relevant council records.</b></p> |

| Example of minor variation   | Example of amendment to a building consent  |
|--|---|
| <p>The plans and specification specify wire dog purlin fixings, but the builder wants to use a screw instead, and seeks approval for a minor variation from the building inspector.</p> <p><b>The building inspector grants the minor variation because it does not significantly deviate from the approved building consent. The same purpose and</b></p> | <p>An owner wants to change part of the roof structure design from a trussed roof to a skillion roof using NZS3604 rafters and seeks approval for a minor variation from the building inspector.</p> <p><b>This would not be considered a minor variation because it is a significant departure from the approved building consent design as it is a completely different</b></p> |

|  |  |
|--|--|
| <p>function will be achieved. The building inspector simply inspects the work and records on the inspection notes that the purlins are screw fixed from the top rather than wire dogged. The building inspector notes this on the consent file and updates the consent records when arriving back at the office.</p> | <p>structural system. Other elements of the building could significantly be affected such as insulation and bracing requirements. The building inspector advises the owner that the builder must not do any more work on the roof until an amendment to the building consent (including new plans detailing the construction change) has been applied for and the BCA has granted the amendment. The building inspector then records the decision not to approve the minor variation on the inspection notes and updates relevant council records.</p> |
|--|--|

| <p><b>Example of minor variation</b></p>  | <p><b>Example of amendment to a building consent</b></p>  |
|---|---|
| <p>The owner of a single-storey residential dwelling wishes to remove a large section of a load-bearing wall to accommodate a breakfast bar as part of a revised layout for a proposed kitchen. They engage a structural engineer as the span for the new lintel is outside the scope of NZS3604 requiring specific engineering design and to provide wall bracing calculations. The owner obtains a producer statement, structural calculations and wall bracing details from the engineer for this new work. The builder engaged by the owner approaches the building inspector during the next inspection seeking a minor variation and hands over the additional information from the engineer.</p> <p><b>The building inspector accepts the additional information for the new lintel. The building inspector then approves the minor variation (prior to the work being done) as the proposed minor variation is within the scope of the original building consent design and the information provided is sufficient to satisfy the building inspector that Building Code compliance would be achieved. The building inspector then records the decision to grant the minor variation on the inspection notes. When back at the office the building inspector updates the consent file and consent records.</b></p> | <p>An owner wants to extend the kitchen by knocking out an external wall and adding four square metres of additional floor area to the kitchen seeking approval for a minor variation from the building inspector.</p> <p><b>This is not considered a minor variation because there are lots of Building Code clauses to consider such as Water supplies, Foul water, Structure, Durability, External Moisture, and possible planning implications. The building inspector informs the owner that an amendment to the building consent will be required as the proposed minor variation deviates significantly from the original building consent. The building inspector then records the decision for the refusal to grant the minor variation on the inspection notes. When back at the office the building inspector updates the consent file and consent records. The BCA awaits an amendment application before this part of the work proceeds.</b></p> |

## Additional or reconfigured sanitary fixtures where the structure is not affected

| Example of minor variation   | Example of amendment to a building consent  |
|--|---|
| <p>A bathroom on an upper level is approved to be laid out in a particular way. During the project the owner proposes to move the vanity from the outside wall to an interior wall. They contact a BCA Official to seek a minor variation explaining that the additional pipe work will not affect any structural elements such as floor joists or wall framing and G13 compliance will still be achieved.</p> <p><b>The BCA Official agrees to approve this as a minor variation as the proposed building work does not deviate significantly from the original building consent design. However, the BCA Official informs the owner that upon completion of the work they will require a revised floor plan and plumbing schematic for their records. The decision to grant the minor variation is recorded in the form of a file note and relevant consent records are updated.</b></p>   | <p>In a similar situation an owner wants to convert an existing wardrobe in an adjacent bedroom into a WC compartment and approaches a BCA Official for a minor variation.</p> <p><b>This work would not be considered a minor variation as this work deviates significantly from the original building consent design. The BCA Official advises that this requires a formal amendment to the building consent as issues such as Internal moisture, Ventilation, Durability and Personal hygiene will need to be considered. The BCA Official then notes the decision not to grant the minor variation as a file note on the consent file and updates relevant consent records.</b></p>   |
| Example of minor variation   | Example of amendment to a building consent  |
| <p>The plumbing inspector is undertaking a pre-line plumbing inspection. During the inspection, the plumber advises the plumbing inspector that the owner wants to add a shower head above the bath.</p> <p><b>The plumbing inspector considers this a minor variation because there will be no additional Building Code requirements regarding Internal Moisture or Hazardous building materials (such as safety glass) as the walls surrounding the bath are already covered in waterproof linings and the proposed shower is clear of any windows. The plumbing inspector notes the proposed minor variation on the approved plans and records the decision (and reasons for the decision) to grant the minor variation on the inspection notes and consent file. When back at the office the plumbing inspector also updates relevant consent records. The next day the plumbing inspector inspects the new plumbing work.</b></p> | <p>An owner intends to replace a bath with a tiled open wet area shower, proposing a minor variation to the plumbing inspector.</p> <p><b>The plumbing inspector considers that this is not a minor variation because it is a significant change to a complex construction method affecting a number of different Building Code requirements such as Internal Moisture and Durability and advises that the owner should apply for an amendment to the building consent providing the wet area shower design. The plumbing inspector then records this discussion on the inspection notes, places a copy on the consent file and updates relevant consent records.</b></p> <p><b>Note: Internal wet area showers can be complicated to design and construct properly and have a high failure rate.</b></p> |

## Replacement using comparable materials or components in the same or similar position

| Example of minor variation   | Example of amendment to a building consent   |
|--|--|
| <p>The building inspector visits a new dwelling to inspect the roof installation. During the inspection, the building inspector identifies that although the specifications and drawings show profiled metal roofing the owner wants to use pressed metal tiles instead. The roofer asks the building inspector to give approval to a minor variation on site.</p> <p><b>The building inspector considers this a minor variation because compliance with the Building Code is still achieved and the change is well within the scope of the original building consent design. The building inspector approves the minor variation and records the proposed minor variation on the inspection notes and consent file, as well as dates and initials the approved building consent plans. However, the building inspector informs the roofer that, upon completion of the work and before issue of CCC, revised plans illustrating this change will be required. When back at the office the building inspector also updates relevant consent records.</b></p> | <p>In a similar same situation, the owner wishes to change the roofing to wooden shingles seeking approval for a minor variation.</p> <p><b>The building inspector explains that the proposed roofing is outside the scope of the Acceptable Solution requiring an alternative solution assessment. The proposed change is not considered minor as it deviates significantly from the original building consent design. The roofer is advised that this work requires an amendment to the building consent. The building inspector records the on-site discussion with the roofer on the inspection notes, places a copy on the consent file and updates relevant consent records.</b></p> |

| Example of minor variation   | Example of amendment to a building consent  |
|--|---|
| <p>The plumber contacts the plumbing inspector advising that the designer wants to change the water reticulation pipe work from copper to a polybutylene system and seeks approval for a minor variation.</p> <p><b>The plumbing inspector considers this a minor variation because the Building Code requirements would be met by the new product. However, the plumbing inspector advises that approval from the consent applicant/owner is required first for the change in material before the minor variation can be granted recording this as a file note. The plumbing inspector then updates relevant consent records.</b></p> | <p>A plumber wishes to use an alternative aluminium piping system from overseas that they have read about on the internet approaching a BCA Official for a minor variation approval.</p> <p><b>The Official considers this not to be a minor variation because the new piping system is unfamiliar and falls outside the Acceptable Solution requiring an alternative solution assessment. They then advise the plumber that the consent applicant needs to apply for an amendment to the building consent demonstrating how Building Code compliance would be achieved using this alternative product. The Official records the conversation with the plumber in form of a file note on the consent file and updates relevant consent records.</b></p> |

# Compliance with other legislation

As well as information relating to compliance with the Building Code, documents submitted in support of a proposed minor variation may also need to include information relevant to the territorial or regional authority's other statutory responsibilities. For example, the consent applicant may need to include details showing that the building work will continue to comply with:

- the District or Regional Plan or with other requirements under the Resource Management Act 1991
- other Acts, such as the Fencing of Swimming Pools Act 1987
- council bylaws.

In these cases, the BCA may grant a minor variation, but include a reference to the requirements of other legislation administered by the territorial or regional authority. Those other requirements are, however, outside the scope of the Act and of this guidance document.

# Recommendations for building consent authorities

The Department recommends, that BCAs:

- develop, maintain and implement policies, systems and procedures for assessing minor variation applications and for granting minor variations. These should include training and guidance notes, and process flow charts for building inspectors and officials. This guidance document could form the basis for these policies and procedures
- provide general and comprehensive information and advice to the public and consent applicants about the legislative change – for example, through newsletters, brochures, website, advice notes or fact sheets etc.
- remind building consent applicants (or their agent on their behalf) about the need to obtain prior approval from the BCA if they want to change building work after a consent has been issued
- be prepared to take phone enquiries from people asking for advice about the minor variation process and the information they would need to provide to support a proposal for a minor variation
- establish permanent written records (including electronic records) of decisions to grant or refuse minor variations (for example, by adding a note on the approved building consent documents and inspection notes and to the consent file)
- assess how a proposed minor variation meets the performance requirements of the Building Code using the same criteria as the BCA would normally use to establish 'reasonable grounds' under section 49 of the Act
- if new design plans or specifications include significant changes, attach any new design plans or specifications to the approved building consent documents and stamp or mark and file the original documents as superseded (some BCAs require applicants to countersign new plans)
- consider any other applicable requirements under the District Plan, local bylaws or other legislation. The BCA should inform the applicant (or their agent on their behalf) of these other requirements where they exist
- ensure that the final set of approved building consent plans and specifications that are used for the CCC accurately represent what has been constructed on-site. For minor variations this may require some use of 'as-built' plans and other information that is provided during construction.

# Recommendations for builders, designers and project managers

In regard to minor variations the Department recommends, that builders, designers and project managers:

- advise the owner if you are thinking about making changes to the building work in any way that differs from the approved building consent plans and specifications. Ultimately, the owner is responsible for Building Code compliance and for obtaining a CCC and needs to agree to any proposed changes, but you are responsible (or can be held liable) for complying with the approved consent.
- remind the building consent applicant (or their agent on their behalf) to apply for any proposed minor variation.
- involve the designer in the process of considering whether to apply for a minor variation to help ensure that the proposed change does not adversely affect other parts of the building work.
- as part of good project and site management practices, provide for timely and effective management of any proposed changes and associated minor variation approvals that may be needed during a building project.
- discuss proposed minor variations with the BCA as early as possible to avoid or limit delays in construction.
- when preparing an application for a minor variation, present information on the plans and specifications that relates to compliance with the Building Code in a way that is clear and easy for the BCA to follow. Do not include details that are irrelevant to compliance with the Building Code, or alternatively, separate out those details. Make the changes clear and obvious for building officials. It is good practice for designers to use a design summary form for this purpose.
- provide the BCA with all the information it needs to show why the proposed minor variation is necessary and how it complies with the Building Code.
- do not carry out building work that varies from the building consent until the BCA has approved the minor variation.
- obtain and keep a written record of any minor variation granted by the BCA.
- build from the approved building consent and/or minor variation plans and specifications. Look after the approved plans and specifications on site as they are important legal documents, and read and refer to them frequently throughout the project.

## Q and A


1. **Q.** When did the minor variation provisions of the Act commence?  
**A.** From 1 February 2010.
2. **Q.** Do BCAs need to change their existing systems and processes for approving building consent amendments (ie, amendments that are not minor variations)?  
**A.** No, the BCA should be able to continue to use their existing systems and processes for approving changes that require an amendment to the building consent.
3. **Q.** Do BCAs need to introduce a new process for assessing and granting minor variations?  
**A.** This will depend on the current situation in each BCA.  
Depending on what processes were in place before, BCAs might be able to use or modify existing processes. For example, applications for amendments to building consents need to be made in the prescribed form, whereas applications for minor variations do not. Conversely, amendments to building consents must be issued in the prescribed form, whereas the granting of a minor variation merely needs to be recorded in writing.
4. **Q.** When is it appropriate for a BCA to refuse a minor variation that meets the definition of minor variation?  
**A.** Where the proposed minor variation would not comply with the Building Code.
5. **Q.** What should a BCA do where they refuse a minor variation that does not comply with the Building Code?  
**A.** The BCA must record the reasons for their decision to refuse the minor variation as it will be a refusal under section 50 of the Act. They must also inform the applicant in writing of the refusal.

## Further information

For further information, guidance and advice on minor variations and other Building Act requirements, please contact the Department's Consent Authority Capability and Performance Group:

Free phone (0800) 242 243

Email [info@dbh.govt.nz](mailto:info@dbh.govt.nz) Please mark your email enquiries 'attention of the Consent Authority Capability and Performance Group'.



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