



## TROUBLE WITH SUBSTITUTES\*

**Think hard and check before substituting one building product for another. Get it wrong and you could be creating quality issues and have trouble getting a Code Compliance Certificate.**

**Designers, contractors or building owners may consider using building products other than those specified or requested for a variety of reasons including personal preference, price or availability. However, if you don't do this right, product substitution can degrade the building quality and cause real problems.**

### SUBSTITUTING CAN CAUSE PROBLEMS

Improper substitution has often turned out to be the culprit in the Ministry of Business, Innovation and Employment's (MBIE's) recent work with building consent authorities (BCAs) concerned about inferior products.

Products substituted after building consent has been granted may have no evidence of compliance with the relevant Building Code requirements. Product substitution can invalidate contract conditions and the implied warranties in the Building Act. It can also result in building work the BCA can't sign off for a Code Compliance Certificate.

### IF SUBSTITUTING, DO IT RIGHT

**If you are thinking about substituting a product, you need to:**

- Consider the legal context, particularly any additional obligations you might incur from product substitution.
- Consider the broader implications of using a different product to that specified, including whether it is fit for the same purpose and still meets the owner's needs.
- Implement any changes, for example, if substituting the product requires an amendment to a building consent.

### Before substituting a building product:

- Check your contract with the owner for any potential issues.
- Make sure the implied warranties in the Building Act (section 362I) are not affected.
- If the product will be used in building work, check the manufacturer/supplier has provided evidence of Building Code compliance and that the proposed use is within scope.

### Next, consider the wider implications for the building project, including any:

- Environmental challenges
- Impact on other design features
- Restrictions under the Resource Management Act, district plans or similar
- Interaction with other building products and systems
- Impact on performance/other features required by the designer or building owner.

### Finally:

- Discuss the proposed substitution with all parties (designer, owner, BCA) and record changes in contract.
- If building work is involved and the building consent has already been issued, contact the BCA for approval before going ahead.
- The BCA will decide whether this change is a minor variation or if you need to apply for an amendment to the consent.
- Advise the owner of any maintenance requirements.

*\*Article 'Trouble with Substitutes' by John Gardiner appeared in Build 155: Achieving quality, 1 August 2016. [www.buildmagazine.org.nz](http://www.buildmagazine.org.nz)*

For more information see MBIE's quick guide to product substitution, available at [www.building.govt.nz/product-assurance](http://www.building.govt.nz/product-assurance), call 0800 242 243 or email [info@mbie.govt.nz](mailto:info@mbie.govt.nz).

