



Seal of approval

STORY
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Your dreams are shattered. You wanted to build a new house and the local council has rejected your application or, worse, imposed conditions that make it impractical for you to do what you want. What now?

In Australia the laws governing planning and building permits are different depending on your state and local government area. When you are knocked back for either a planning or building permit, it is a decision of the local council which can be appealed or reviewed.

Consult an expert to minimise the risk that your planning or building permit is knocked back

How do you do that?

In the case of a new house or building you are often required to obtain both a planning and a building permit. If you are renovating your existing house then the type of permit needed will depend on the type of work that you are doing. Generally, renovation of an existing bathroom or kitchen does not require either. If you are changing the structure or the roof, adding a bathroom or adding new structures to the building then you will generally require both a planning and a building permit. These permits are different and many people do not realise that they need to obtain both for many works.

Why was it rejected?

You should know the risks that your application may be rejected before you lodge it for either type of permit. When you make the initial application for either permit you should engage a qualified town planner experienced in your local area. You don't know what you don't know, so you need to get advice from a professional who does know.

You need to find out why the decision was made. Most councils have online portals where you can access all information submitted about your application. Reasons can include:

- The new building or renovation did not comply with the local council rules.
- A neighbour had a valid objection to the works you proposed.
- There may be certain extra conditions applying to your property. For instance, many inner-city suburbs have small lot codes or local neighbourhood plans that may affect what you can or cannot do on the property.

Once you know why your application was rejected, you can get advice on what you do next.

What are your rights?

While the decision to reject either permit or impose conditions is made by the local council, all states provide mechanisms that allow you to appeal or review that decision. Each state has a different process. At the end of the process a court has the ability to substitute a new decision or impose different conditions. Importantly, the court that is hearing the appeal can either start afresh and reconsider the entire application or consider different aspects of the decision itself.

Generally, the appeal or review sets out the specifics of the process which vary as follows:

- The format and timing for lodging the appeal – strict limits apply to the time frame for lodging an appeal.
- The steps that need to happen before any hearing takes place to mediate and attempt to resolve the dispute with an alternative resolution.
- The actual conduct of the appeal hearing before the court – there are different rules of procedure and ways to put evidence to each court that must be strictly followed.

You can proceed with this type of appeal on your own but it is recommended that you engage a lawyer who specialises in this area. They will save you time and money, ensuring that the whole process is handled properly and professionally.

Do you proceed anyway?

You may be tempted to just do the work anyway without either or one of the permits. This is not a good idea.

You cannot consider just going ahead and asking for forgiveness later. Councils and local authorities have strict rules that are designed to ensure that any works you do are safe, healthy, structurally stable and in line with the local area. If you do not follow these rules then your local authority has a broad range of powers to punish you. These can vary from:

- A fine for not having the right permit. The amount will depend on the works, your knowledge that what you were doing was wrong and the extent of rectification works required. Usually you will also be required to obtain a permit for the works that were done.
- In extreme cases the local authority can also require you to pull down the works. If they are completely against the council rules or are dangerous, then this can be the outcome.

The consequences of just proceeding anyway actually go further. Many people think that they will be able to do the work and no one will ever find out. That may be true in the short term but it could cause you problems when you sell your house in the future. A buyer will often require paperwork showing that the work that has been done to the property is properly approved and certified.

The buyer should undertake searches of the local authority records to determine what approvals are recorded. And you can find past images of houses through a simple internet search, so it is easy to discover works that have not been approved. Depending on the terms of the contract with the buyer, you may be required to have the works approved or the buyer may be able to get out of the contract completely.

If you are knocked back for either a planning or building permit, you have rights that you can utilise to appeal or review that decision. You need to get advice from professionals who do this every day and understand the rules as they apply to your property or house. Getting the right advice is important and making sure that you comply with the requirements of the local authority will minimise your risk of being knocked back. **M**

Jeremy Streten is a lawyer and the author of the Amazon bestseller *The Business Legal Lifecycle* (businesslegallifecycle.com), which is designed to help business owners understand what they are doing from a legal perspective and give them a plan for the future.

5 TIPS FOR SUCCESS

- Before you do any work make sure you determine whether you need a planning and building permit.
- Engage a builder who knows what they are doing.
- Talk to your neighbours, and if they have an objection ask what you can do to satisfy their concerns.
- If you are knocked back don't just do the work anyway – you are opening yourself up to fines and the possibility of paying to have the works removed.
- You don't know what you don't know, so get advice.

