

Bowden

Town Planning

27 May 2026

Statutory Planning
City of Port Phillip
Private Bag 3
ST KILDA VIC 3182

Dear Sir/Madam,

222-224 BAY STREET, PORT MELBOURNE VIC 3207
PLANNING PERMIT APPLICATION 1011/2016/B
EXTENSION OF TIME REQUEST

We act for *Old Bay Cinema Pty Ltd*, the permit holder for the above planning permit.

On behalf of our client, we hereby request an extension of time for Planning Permit **1011/2016/B** for the land at 222-224 Bay Street, Port Melbourne.

The original permit was issued by Council in 30 May 2018 and allows for partial demolition, construction of alterations and additions to the existing building, sale and consumption of liquor (on-premises licence in association with the use of the land as a Tavern (as of right use) and an associated reduction in the standard car parking requirements generally in accordance with the endorsed plans and subject to the following conditions.

The permit has been previously extended in 2020, 2022 and most recently an extension of time application was granted by Council on 16 December 2024, extending the date by which the development must commence by two years, from 30 May 2024 to 30 May 2026.

Notably, the subject site is not affected by any significant changes to relevant planning policy and controls due to planning scheme amendments since the previous extension in 2024. The subject site is located within the Commercial 1 Zone. The proposed works associated with the use of Tavern is complied with the requirements of the Commercial 1 Zone at the time of the original approval in 2018 and continues to comply with the current requirements of Clause 37.08 under the 2026 planning scheme. The proposed Tavern continues to support the purposes of the zone by supporting commercial centres for retail and entertainment. The Heritage Overlay and Environmental Audit Overlay also continue to apply to the land, and there have been no relevant changes to these overlay controls that would materially affect the approved development.

A recent change has been the removal of liquor licence requirements from the planning permit process. From 1 July 2025, a planning permit is no longer required for the sale and consumption of liquor. The removal of this planning consideration does not preclude the issue of a further extension of time.

Given the proposal's consistency with the current planning scheme, it is considered that a new application for the same development would likely receive support and approval.

As such, the permitted development remains an appropriate design response to the site.

Under Section 69 of the *Planning and Environment Act 1987* ("the Act"), the Responsible Authority has the power to extend the time within which the use or development is to be started or the development to be completed within.

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Having regard to the relevant case law in determining such matters we refer Council to *AMV Homes Pty Ltd v Moreland CC (Red Dot)* [2015] VCAT 1699 where the Tribunal noted at paragraph 7:

7. It is important to appreciate some additional relevant principles:

- *An applicant should advance good reasons as to why an extension should be granted; a request should not be approved simply because it has been asked for.*
- *The Kantor "tests" are not mandatory nor exhaustive.*
- *There may be other relevant considerations to those articulated in Kantor, including matters of natural justice and equity.*
- *That the approved development is now prohibited does not mandate a decision refusing to extend the time to commence a development. However, it is something that would usually be expected to be one factor weighing against an extension of time.*
- *Each case needs to be decided on its own facts and circumstances including whether and how the development in question would undermine or offend the changed policy or planning control regime.*

We say that any balanced assessment of the facts in this case weigh in favour of the granting of the extension sought. Those facts are:

- The current planning controls would continue to support the proposed use. The delay in progressing the development has primarily resulted from the previous owner, Des Kapogiannis, experiencing a prolonged illness prior to her passing. Her son, Philip Kapogiannis, has since inherited control of the site and has actively engaged a consultant team to review the approved development and progress the project.
- The current owner is working with Council to facilitate demolition of the existing façade, retain the relevant heritage components, and proceed with the redevelopment of the site as promptly as possible. This demonstrates a clear and ongoing intention to act on the permit. It is also submitted that no prejudice would arise from the granting of a further extension of time, as there have been no relevant changes to the planning controls or policy framework that would materially affect the acceptability of the approved development.
- As outlined above, the primary change affecting this planning permit is the removal of the liquor licence requirements. This change does not preclude the granting of a further extension of time. Together with the limited changes to the other relevant planning policy framework, the approved design and proposed use remain appropriate for the site.

Our client requests to extend the buildings and works completion date by the same time frame of 2-years, to ensure construction is completed within the permitted timeframe. They would extend the date of commencement from 30 May 2026 to 30 May 2028.

To reiterate, we are seeking an additional two (2) year extension to:

- The construction commencement date of the permit, from 30 May 2026 to 30 May 2028.
- The construction completion date of the permit, from 30 May 2028 to 30 May 2030.
- The use commencement date will remain within two (2) years of the new construction completion date of the development.

Please contact our office if you have any questions or require further information.

Yours Faithfully,
Bowden Town Planning

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