



6.3 **222-224 BAY STREET PORT MELBOURNE - PLANNING
PERMIT EXTENSION OF TIME REQUEST -
PDPX/00066/2026**

LOCATION/ADDRESS: 222-224 BAY STREET PORT MELBOURNE
EXECUTIVE MEMBER: BRIAN TEE, GENERAL MANAGER, CITY DEVELOPMENT
PREPARED BY: SCOTT PARKINSON, COORDINATOR STATUTORY PLANNING
GATEWAY WARD

1. PURPOSE

- 1.1 To consider and determine an extension of time request PDPX/00066/2026 which seeks approval for two additional years to commence the development for a commercial development approved by planning permit 1011/2016/B.

2. EXECUTIVE SUMMARY

WARD:	Port Melbourne
APPLICATION NO:	PDPX/00066/2026
APPLICANT:	Bowden Town Planning
EXISTING USE:	Vacant
ABUTTING USES:	Shops, Office and Residential
ZONING:	Commercial 1 Zone (C1Z)
OVERLAYS:	Heritage Overlay, Schedule 1 (HO1), Environmental Audit Overlay (EAO)

- 2.1 This report assesses an Extension of Time (EOT) request which seeks an additional two years to commence development approved by planning permit 1011/2016/B. This is the fourth extension of time application with previous approvals in 2020, 2022 and 2024.
- 2.2 As it currently stands, the planning permit expired on 30 May 2026 however the planning framework allows for an extension to be made before the permit expires or within 6 months afterwards.
- 2.3 Should the EOT be approved the development will need to commence before 30 May 2028. No extension is required for the completion of the development where the planning permit includes a requirement that development must be completed within two years of commencement. An extension is also not required for the use which still must commence within two years of the completion of the development.
- 2.4 Planning permit 1011/2016 was approved on 30 May 2018 under delegation. The planning permit approved the 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.
- 2.5 The approved development involved restoring a fire-damaged heritage building and adjoining building, retaining the primary façades to Bay Street and Liardet Street. Internal alterations were undertaken to accommodate a mixed-use development



comprising four ground-floor shops, first-floor office space and a private tavern, and a main tavern on the second floor with an outdoor terrace fronting Bay Street and Liardet Street.

- 2.6 Since the original approval there have been two amendments approved. Amendment A was approved 15 October 2020 which allowed modifications to the ground, level one and the roof top bar including level one to be solely used as an office and changes to the roof design. Amendment B was approved 16 December 2022. This amendment allowed a revised ground floor design including changes to add a substation and car stackers and additions to awnings, windows, revised eave and glass to the roof terrace.
- 2.7 The applicant has indicated that the extension of time is required due to delays in progressing the development due to the previous owner's prolonged illness and passing. The site is now under the control of her son who has engaged a consultant team to review the approved plans and advance the project. The current owner is also working with Council to facilitate demolition works, retain key heritage elements, and progress redevelopment of the site as soon as practicable.
- 2.8 On balance, it is considered fair and reasonable to support the extension of time. The request is consistent with the relevant planning principles, as the delays have arisen from genuine and exceptional circumstances, and there has been no material change to the planning policy framework or the surrounding context since the permit was originally issued. The applicant has demonstrated an ongoing commitment to progressing the redevelopment through continued engagement with Council and the lodgement of planning applications aimed at advancing the project.
- 2.9 Retaining an active permit also provides a practical and orderly pathway for redevelopment to proceed and offers greater certainty that the approved public benefits, including heritage retention and other key outcomes, will be delivered.

3. RECOMMENDATION

- 3.1 That Council approve extension of time application PDPX/00066/2026 which would extend planning permit 1011/2016/B for a further two years, providing that:
 - The development must now be commenced by 30 May 2028

4. RELEVANT BACKGROUND

The following relevant applications have previously been considered for the subject site:

Planning Applications

Application No.	Proposal	Decision	Date of Decision
1011/2016	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	Delegation	30 May 2018



	land as a Tavern (as of right use) and an associated reduction in the standard car parking requirements		
1011/2016/A	S72 Amendment for modifications to the ground, level one and the roof top bar including level one to be solely used as an office and changes to the roof design.	Delegation	15 October 2020
1011/2016/B	S72 Amendment for a revised ground floor design including changes to add a substation and car stackers and additions to awnings, windows, revised eave and glass to the roof terrace	Delegation	16 December 2022

Previous Extension of Time Approvals

Application No.	Proposal	Decision	Date of Decision
----	Extension of Time for commencement of works. The extension approved an additional two years to commence works to 30 May 2022	Delegation	16 April 2020
PDPX/00096/2022	Extension of Time for commencement of works. The extension approved an additional two years to commence works to 30 May 2024	Delegation	11 August 2022

PDPX/00193/2024	Extension of Time for commencement of works The extension approved an additional two years to commence works to 30 May 2026	Delegation	16 December 2024
-----------------	---	------------	------------------

5. PROPOSAL

- 5.1 The application seeks an extension of time approval to commence the development for approved by planning permit 1011/2016/B.
- 5.2 As it currently stands, the planning permit will expire on 30 May 2026. Should the EOT be approved the development will need to commence before 30 May 2028. No extension is required for the completion of the development where the planning permit includes a requirement that development must be completed within two years of commencement. An extension is also not required for the use which must commence within two years of the completion of the development.
- 5.3 The extension of time is for a planning permit that allowed the restoration an existing fire damaged heritage building and an adjoining building on site. The main façade of the buildings to Bay Street and Liardet Street were restored with internal modifications to the building to facilitate a multi-use development. The original approval included four shops at ground level, office space and a separate private bar (Tavern) at first floor level and a main Tavern at second floor level including an external terrace facing both Bay Street and Liardet Street.
- 5.4 The planning permit has been amended twice in 2020 and 2022 (details provided in the table earlier in this report).
- 5.5 The current approval is for a three-storey commercial building for shops (4 tenancies with a combined area of 260sqm) on the ground floor, a 338sqm office on the first floor and restaurant / bar (212sqm and 200 patrons) on the second floor. 14 car parking spaces are provided within car stackers in the southeastern portion of the building accessed from Kyme Place. The current approval would redevelop the site around the retained façade that remains following the fire that destroyed the site on 30 August 2015.

6. SUBJECT SITE AND SURROUNDS

Description of Site and Surrounds	
Site Area	672sqm
Existing building & site conditions	The subject site is located on the south-eastern corner of Bay Street and Liardet Street, centrally located within the Bay Street Activity Centre. The site has a frontage of 22.12m and depth of 30.48, with a rear boundary of 22.42m. The site includes the remains of a double storey commercial building affected by fire in 2015, and a

	separate single fronted post-war double storey brick commercial building connected to the immediate south side of the main building which is also contained within the heritage overlay affecting the site. The buildings extend to the perimeter of the title boundaries, and no on-site parking exists. The outer brickwork and rendered shell of the main building facing the Bay and Liardet Street frontages remain (but in a significant state of deterioration since the fire). The internal portion of the building and roof were destroyed by the fire with the exception of some roof framing. Part of the rear wall of the main building was also destroyed. The main building was originally used as the Port Melbourne Theatre and was constructed in 1912-13. Prior to the fire it had been split into a number of different commercial tenancies and occupied by various businesses. Similarly, the smaller post war building was used for various commercial purposes.
Surrounds/neighbourhood character	The site abuts Bay Street to the west, Liardet Street to the north and Kyme place to the rear (east). To the south is a single-storey commercial premises known as 210 Bay Street. This site includes construction to the common boundary with the subject site, with vehicular access provided to Kyme Place at the southern side of the rear portion of the site. Kyme Place to the east is a no through road that terminates adjacent to the rear of 196-204 Bay Street, four properties to the south of the site. On the opposite side of Kyme Place is a multi-storey residential building with community housing, approved in October 2009 via planning permit 1043/2008 The Bay Street Activity Centre continues further north along Bay Street beyond Liardet Street, and south of the site along Bay Street as far as Beach Road. Further east of the site along Liardet Street are residential zoned properties typically containing dwellings of single or double storey scale.

7. LEGISLATIVE REQUIREMENTS

7.1 Section 69 of the Planning and Environment Act 1987 provides:

- (1) *Before the permit expires or within 6 months afterwards, the owner or the occupier of the land to which it applies, or another person with the written consent of the owner, may ask the responsible authority for an extension of time.*



- (1A) *The owner or occupier of land to which a permit for a development applies may ask the responsible authority for an extension of time to complete the development or a stage of the development if—*
- (a) *the request for an extension of time is made within 12 months after the permit expires; and*
 - (b) *the development or stage started lawfully before the permit expired.*
- (2) *The responsible authority may extend the time within which the use or development or any stage of it is to be started or the development or any stage of it is to be completed or within which a plan under the Subdivision Act 1988 is to be certified.*
- (3) *If the time is extended after the permit has expired the extension operates from the day the permit expired.*

8. MATTERS FOR CONSIDERATION

- 8.1 There are a number of considerations for an extension of time request that have been drawn from planning precedent. The relevant considerations include long-standing principles that derive from *Kantor v Murrindindi Shire Council (1997) 18 AATR 285*. The seven Kantor principles are:
- *Whether there has been a change in planning policy.*
 - *Whether the landowner is seeking to warehouse the permit.*
 - *Intervening circumstances which bear on the grant or refusal of the extension requests.*
 - *The total elapsed time.*
 - *Whether the time limit originally imposed was adequate.*
 - *The economic burden imposed on the landowner by the permit; and*
 - *The probability of a permit issuing should a fresh application be made.*
- 8.2 There is also a more recent decision of VCAT in *52 Bay Road Pty Ltd v Moonee Valley CC [2018] VCAT 39*, that builds on these considerations, as follows:
- *An applicant should provide good reasons for a request for an extension of time and a request should not be approved simply because it has been requested.*
 - *The Kantor tests are not mandatory or exhaustive.*
 - *There may be other relevant considerations to those contained in the Kantor tests, such as matters of natural justice and equity.*
 - *That a development would now be prohibited does not make the refusal of a request mandatory but, in many cases, it would be a very important factor; and*
 - *Each case must be considered on its own merits as to whether and how the development would undermine changes to planning policy or planning controls*

9. PUBLIC NOTIFICATION/OBJECTIONS

- 9.1 There is no statutory requirement or mechanism to notify extension of time applications.

10. OFFICER'S ASSESSMENT

- 10.1 As set out above there is a specific set of considerations for the assessment of an extension of time request drawn from planning precedent. The following provides an assessment against these principles.

Has there been a change in planning policy

- 10.2 There has been no significant change in planning policy since the last extension of time approval. The only relevant change in policy is the changes to car parking approved under Planning Scheme amendment VC277. Consideration against these changes is provided below.

Amendment VC277

- 10.3 Planning scheme amendment VC277 came into operation on 18 December 2025 and amended the car parking provisions at Clause 52.06. This amendment altered car parking requirements and generally reduced car parking requirements in well located areas. The site is in the car parking requirement maps Category 2. Under the new parking provisions, 5 spaces would be required for the shops (2 spaces per 100sqm of leasable area), 1 space for the office (0.45 spaces per 100sqm of net floor area) and 8 spaces for the Food and Drink Premises (4 spaces to each 100sqm of net floor area). This would equal a total parking requirement of 14 spaces.
- 10.4 14 car parking spaces are provided as part of the proposed development which would satisfy the statutory parking requirement under the new parking provisions. Moreover, it is noted that the site is in an area with ample public transport access, and the current permit required a reduction in car parking requirements. This amendment would likely bear in favour of the application if it were lodged again today as the application would no longer trigger a planning permit for a reduction in car parking requirements.

Is the landowner seeking to warehouse the permit

- 10.5 There is no evidence that the applicant is seeking to warehouse the permit.
- 10.6 The applicant has indicated that delays in progressing the development due to the previous owner's prolonged illness and passing. The site is now under the control of her son who has engaged a consultant team to review the approved plans and advance the project. The applicant has also indicated that the current owner is working with Council to facilitate demolition works, retain key heritage elements, and progress redevelopment of the site as soon as practicable.
- 10.7 These are considered valid reasons that have affected the timely redevelopment of the site. It is further noted that several planning permit applications have been submitted with the aim of progressing the redevelopment and refining the approved planning outcome in response to changing market conditions. This demonstrates that the applicant has not allowed the site to remain dormant but has actively pursued opportunities to facilitate and advance its redevelopment.

Have there been intervening circumstances which bear on the grant or refusal of the extension request?

- 10.8 The applicant has not identified any additional intervening circumstances.

What is the total elapse of time since the original issue of permit

- 10.9 It has been 8 years 1 month and 4 days since the original permit issue.

Was the time limit originally imposed adequate

10.10 The time originally imposed was adequate at the time of consideration of the application.

Has there been any economic burden imposed on the landowner of the permit

10.11 The applicant has not indicated any details of economic burden to justify the extension of time request.

What is the probability of a permit issuing should a fresh application be made?

10.12 Given the relevant controls are mostly unchanged, it is considered there would be a high chance of a permit issuing should a fresh application be made.

Are there any other matters that need to be considered including natural justice and equity?

10.13 There are no matters of natural justice and equity to be considered.

10.14 As detailed above, it is considered fair and reasonable in relation to the various planning principles that need to be considered for an extension of time request. On balance, given that there has been no material change in planning policies or the surrounding context since the issue of the original permit, it is considered reasonable to allow an extension of time.

10.15 Beyond the assessment against the relative principles that need to be considered for an extension of time request, it is relevant that a substantive planning approval already exists for the site and has been subject to a comprehensive assessment process. Retaining an active permit provides a clear and practical framework for future redevelopment proposals to build upon and refine as market conditions evolve. In contrast, if the extension of time is not supported, the site would effectively return to the beginning of the planning process, creating uncertainty regarding its future redevelopment and potentially resulting in a vacant site with no approved pathway forward.

10.16 Furthermore, maintaining the permit assists in preserving important elements of the approved outcome, including heritage retention and replacement heritage features if required, where these form a key component of the approved development. Retention of the permit therefore provides greater certainty that these outcomes can be achieved, whereas a new application process may result in delays or a different development outcome altogether. In this respect, extending the permit serves both the orderly planning of the site and the delivery of the broader public benefits embedded within the existing approval.

11. OFFICER MATERIAL OR GENERAL INTEREST

11.1 No officers involved in the preparation of this report has declared a material or general interest in the matter.

12. CONCLUSION

12.1 On balance, it is considered fair and reasonable to support the extension of time. The delays experienced have arisen from genuine and exceptional circumstances, and the applicant has demonstrated an ongoing commitment to progressing the redevelopment through the submission of planning applications and engagement with Council.



- 12.2 Given there has been no material change to the planning policy framework or the surrounding context since the permit was issued, retaining an active permit provides a practical and orderly pathway for redevelopment to occur. It also offers greater certainty that the approved public benefits, including heritage retention and other key outcomes, will be delivered. Accordingly, the extension of time is considered an appropriate planning outcome.

ATTACHMENTS

1. Locality Map  [Download](#)
2. Planning Permit  [Download](#)
3. Endorsed Plans  [Download](#)
4. Applicant Cover Letter  [Download](#)