

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TK/679

<u>Applicant</u>	South Continental Limited represented by Landbase Surveyors Limited
<u>Site</u>	Lots 210 and 211 in D.D. 28, Ting Kok, Tai Po, New Territories
<u>Site Area</u>	About 110 m ²
<u>Lease</u>	Block Government Lease (demised for agricultural purpose)
<u>Plan</u>	Approved Ting Kok Outline Zoning Plan (OZP) No. S/NE-TK/19
<u>Zoning</u>	“Village Type Development” (“V”)
<u>Application</u>	Proposed Temporary Shop and Services (Retail Shop) for a Period of 3 Years

1. The Proposal

- 1.1 The applicant seeks planning permission for proposed temporary shop and services (retail shop) at the application site (the Site) (**Plan A-1**) for a period of three years. According to the Notes of the OZP, ‘Shop and Services’ use within “V” zone is a Column 2 use requiring planning permission from the Town Planning Board (the Board). The Site is currently used as a restaurant without valid planning permission.
- 1.2 The proposed use will be accommodated in a single-storey temporary structure (about 5m high) with a total floor area of about 110m² (**Drawing A-1**). It would be operated from 8:00 am to 11:00 pm daily. The applicant claims that no neon sign will be used.
- 1.3 The Site forms part of a previous planning application (No. A/NE-TK/107) for restaurant (cafe) use, submitted by a different applicant, which was approved on review by the Board for a period of 2 years on 23.4.1999. The planning permission has lapsed on 23.4.2001.
- 1.4 The Site is accessible via Tai Po Lung Mei Road branching off Ting Kok Road. The proposed layout plan submitted by the applicant is at **Drawing A-1**.
- 1.5 In support of the application, the applicant has submitted the following documents:

- (a) an application form with attachments (Appendix I)
- (b) Supplementary Planning Statement (Appendix Ia)
- (c) further information received on 14.2.2020 rectifying typos in the Supplementary Planning Statement[^] (Appendix Ib)
- (d) further information received on 18.2.2020 clarifying the type and details of the proposed use[^] (Appendix Ic)

[^] *accepted and exempted from the publication*

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the Supplementary Planning Statement and further information at **Appendices I, Ia, Ib and Ic**. They can be summarized as follows:

- (a) the proposed use is to serve the large number of residents and villagers in the local community;
- (b) the proposed use is similar to that under the previous planning permission (Application No. A/NE-TK/107) granted for restaurant (cafe) use;
- (c) the proposed use will serve the local needs and would not adversely affect the character of the nearby villages. It is thus compatible with the planning intention of “V” zone;
- (d) the proposed single-storey temporary structure would not generate nuisance to the locality and the proposed use is compatible with the surrounding environment;
- (e) planning approvals have also been granted in recent years for similar uses, including one temporary shop and services (real estate agency) and seven temporary eating place (outside seating accommodation of a restaurant), in the “V” zones in surrounding areas; and
- (f) it is anticipated that the local villagers and residents in the neighbourhood area would visit the Site on foot rather than by motor vehicles. Therefore, the proposed development would not generate any adverse traffic impact on the surrounding area.

3. **Compliance with the “Owner’s Consent/Notification” Requirements**

The applicant is the sole “current land owner”. Detailed information would be deposited at the meeting for Members’ inspection.

4. Previous Application

- 4.1 The Site forms part of a previous planning application (No. A/NE-TK/107) for restaurant (cafe) use, submitted by a different applicant, which was approved on review by the Board for a period of 2 years on 23.4.1999 mainly on considerations that the concerns on the potential nuisance/inconvenience caused by the proposed use to the residents nearby had been duly addressed by the applicant in his submission. The planning permission has lapsed on 23.4.2001.
- 4.2 Details of the previous application is summarized at **Appendix II** and its location is shown on **Plans A-1** and **A-2**.

5. Similar Application

There is no similar application within the same “V” zone on the OZP.

6. The Site and Its Surrounding Areas (Plans A-1 to A-3 and photos on Plan A-4)

- 6.1 The Site is :
- (a) currently occupied by a single-storey temporary structure for restaurant without valid planning permission; and
 - (b) accessible via Tai Po Lung Mei Road branching off Ting Kok Road.
- 6.2 The surrounding areas are predominantly rural in character. To the east and west are the village proper of Wong Chuk Tsuen and Lung Mei respectively.

7. Planning Intention

The planning intention of the “V” zone is to designate both existing recognized villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always permitted on the ground floor of a New Territories Exempted House. Other commercial, community and recreational uses may be permitted on application to the Board.

8. Comments from Relevant Government Departments

- 8.1 The following Government departments have been consulted and their views on the application are summarized as follows:

Land Administration

8.1.1 Comments of District Lands Officer/Tai Po, Lands Department (DLO/TP, LandsD):

- (a) no objection to the application;
- (b) the Site consists of 2 private lots, namely, Lot Nos. 210 and 211 in D.D. 28, Ting Kok, which are held under Block Government Lease demised for agricultural purpose. No structure shall be erected on the lots without the prior approval from LandsD;
- (c) a recent inspection revealed that a temporary structure was found erected on Lot Nos. 209 RP, 210, 211 and 213 RP, and the adjoining Government Land, all in D.D. 28 without the prior approval from LandsD;
- (d) the applicant is required to clear any existing structures on the Site immediately unless they are covered by valid approval. Otherwise, appropriate lease enforcement action and land control action will be taken in due course;
- (e) should the application be approved by the Board, the lots owners are required to submit application for Short Term Waiver (STW) to LandsD should they wish to erect any structure on the lots. However, there is no guarantee at this stage that the STW application would be approved. If the STW application is approved by LandsD acting in the capacity as landlord at its sole discretion, such approval will be subject to such terms and conditions as may be imposed by LandsD including payment of waiver fees and administrative fees as considered appropriate;
- (f) there is no guarantee to the grant of a right of way to the Site or approval of the emergency vehicular access thereto; and
- (g) no Small House application has been received in respect of the Site.

Environment

8.1.2 Comments of the Director of Environmental Protection (DEP):

- (a) no objection to the application; and
- (b) should the application be approved, the applicant is advised to follow the relevant mitigation measures and requirements of “Revised Code of Practice on Handling Environmental Aspects of Open Storage and other Temporary Uses (the CoP)” to minimize any potential environmental nuisances.

Drainage

8.1.3 Comments of the Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD):

- (a) no in-principle objection to the application from public drainage viewpoint;
- (b) if the application is approved, an approval condition on submission and implementation of drainage proposal for the Site is recommended to ensure that it will not cause adverse drainage impact to the adjacent areas;
- (c) while there are DSD's public stormwater drains in this area, the proposed development should have its own stormwater collection and discharge system to cater for the runoff generated within the Site and overland flow from the surrounding of the Site, e.g. surface channel of sufficient size along the perimeter of the Site; sufficient openings should be provided at the bottom of the boundary wall/fence to allow surface runoff to pass through the Site if any boundary wall/fence are to be erected. Any existing flow path affected should be re-provided. The proposed development should neither obstruct overland flow nor adversely affect the existing natural streams, village drains, ditches and the adjacent areas. The applicant is required to maintain the drainage systems properly and rectify the systems if they are found to be inadequate or ineffective during operation. The applicant shall also be liable for and shall indemnify claims and demands arising out of damage or nuisance caused by failure of the systems;
- (d) there is existing public sewers in the vicinity of the Site. No stud pipe is reserved for the proposed development; and
- (e) for works to be undertaken outside the lot boundary, prior consent and agreement from LandsD and/or relevant private lot owners should be sought.

Water Supply

8.1.4 Comments of the Chief Engineer/Construction, Water Supplies Department (CE/C, WSD):

- (a) no objection to the application; and
- (b) for the provision of water supply to the development, the applicant may need to extend the inside services to the nearest suitable Government water mains for connection. The applicant shall resolve any land matter (such as private lots) associated with provision of water supply and shall be responsible for the construction, operation and maintenance of the inside services

within the private lots to WSD's standards.

Fire Safety

8.1.5 Comments of the Director of Fire Services (D of FS):

- (a) no in-principle objection to the application subject to fire service installations (FSIs) and water supplies for fire-fighting being provided to the satisfaction of Fire Services Department (FSD);
- (b) in consideration of the design/nature of the proposal, FSIs are anticipated to be required. Therefore, the applicant is advised to submit relevant layout plans incorporated with the proposed FSIs to FSD for approval. The applicant should also be advised that the layout plans should be drawn to scale and depicted with dimensions and nature of occupancy; and the locations of the proposed FSIs to be installed should be clearly marked on the layout plans; and
- (c) the applicant is reminded that if the proposed structure(s) is required to comply with the Buildings Ordinance (Cap. 123), detailed fire service requirements will be formulated upon receipt of formal submission of general building plans.

Landscape

8.1.6 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):

- (a) in view that the application does not involve any landscape issue and there is no significant landscape resources within the Site, no significant landscape impact is envisaged; and
- (b) since the proposed development is unlikely to create any adverse visual and landscape impact, it is considered not necessary to impose any landscape-related condition should the application be approved by the Board.

Building Matter

8.1.7 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):

- (a) there is no record of submission of the proposed structure to the Building Authority (BA) for approval; and
- (b) the applicant should note the followings:
 - (i) before any new building works are to be carried out on the Site, prior approval and consent of the BA should be

obtained, otherwise they are Unauthorized Building Works (UBW). An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the Buildings Ordinance (BO);

- (ii) for UBW erected on leased land, enforcement action may be taken by the BA to effect their removal in accordance with BD's enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the Site under the BO;
- (iii) any temporary shelters or converted containers for storage or washroom or workshop or other uses are considered as temporary buildings and subject to the control of Part VII of the Building (Planning) Regulations;
- (iv) the Site shall be provided with means of obtaining access thereto from a street under the Building (Planning) Regulation 5 and emergency vehicular access shall be provided under the Building (Planning) Regulation 41D;
- (v) if the Site is not abutting on a specified street having a width not less than 4.5m, the development intensity shall be determined by the BA under Building (Planning) Regulation 19(3) at building plan submission stage; and
- (vi) formal submission under the BO is required for any proposed new works, including any temporary structures. Detailed comments under BO will be provided at the building plan submission stage.

Environmental Hygiene

8.1.8 Comments of the Director of Food and Environmental Hygiene (DFEH):

- (i) proper licence/ permit issued by his Department is required if there is any food business/ catering service/ activities regulated by DFEH under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public. Under the Food Business Regulation, Cap. 132X, a food business licence is required for the operation of the relevant type of food business listed in the Regulation. For any premises intended to be used for food business (e.g. a restaurant, a food factory, a fresh provision shop), a food business licence from the FEHD in accordance with the Public Health and Municipal Services Ordinance (Cap. 132) shall be obtained. The application for licence, if acceptable by the FEHD, will be referred to relevant Government departments such as the Buildings Department, Fire Services Department and Planning Department for comment. If there is no objection from the departments concerned, a letter of requirements will be issued to the applicant

for compliance and the licence will be issued upon compliance of all the requirements;

- (ii) depending on the mode of operation, generally there are several types of food business licence/ permits that the operator of a store may apply for under the Food Business Regulation:
 - (i) if food is sold to customers for consumption on the premises, a restaurant licence should be obtained;
 - (ii) if food is only prepared for sale for consumption off the premises, a food factory licence should be obtained;
 - (iii) if fresh, chilled or frozen meat is sold, a fresh provision shop licence should be obtained; and
 - (iv) if milk, frozen confection, non-bottled drinks, cut fruit etc. are to be sold, relevant restricted food permits should be obtained; and
- (iii) the operators of related shop or store should take measures to prevent the existence of nuisance such as noise nuisance, pest nuisance and accumulation of refuse at the Site. The refuse generated by the proposed shop or store are regarded as trade refuse. The management or owner of the Site is responsible for its removal and disposal at their expenses. The operation of any business should not cause any obstruction or environmental nuisance in the vicinity.

Electricity Safety

8.1.9 Comments of the Director of Electrical and Mechanical Services (DEMS):

- (i) no particular comment on the application from electricity supply safety aspect; and
- (ii) in the interests of public safety and ensuring the continuity of electricity supply, the parties concerned with planning, designing, organizing and supervising any activity near the underground cable or overhead line under the application should approach the electricity supplier (i.e. CLP Power) for the requisition of cable plans (and overhead line alignment drawings, where applicable) to find out whether there is any underground cable and/or overhead line within and/or in the vicinity of the concerned site. They should also be reminded to observe the Electricity Supply Lines (Protection) Regulation and the “Code of Practice on Working near Electricity Supply Lines” established under the Regulation when carrying out works in the vicinity of the electricity supply lines.

8.2 The following Government departments have no objection to or no comment on the application:

- (a) Commissioner of Police;
- (b) Commissioner for Transport;
- (c) Chief Highway Engineer/New Territories East, Highways Department;
- (d) Director of Electrical and Mechanical Services;
- (e) Head of Geotechnical Engineering Office, Civil Engineering and Development Department;
- (f) Project Manager/New Territories East, Civil Engineering and Development Department; and
- (g) District Officer/Tai Po, Home Affairs Department.

9. Public Comments Received During Statutory Publication Period

On 17.1.2020, the application was published for public inspection. During the statutory public inspection period, no public comment was received.

10. Planning Considerations and Assessments

10.1 The application is for a temporary retail shop for a period of three years in an area zoned “V” on the OZP. According to DLO/TP of LandsD, there is at present no Small House application at the Site. The applicant claims that the proposed use is to provide a retail shop to serve the villagers in the local community. It is considered generally in line with the planning intention of the “V” zone to provide commercial uses serving the needs of the villagers.

10.2 The Site is accessible via Tai Po Lung Mei Road from Ting Kok Road. The proposed temporary use, which involves one single-storey structure (about 5m in height) with a total floor area of about 110m², is small in scale. The proposed use is considered not incompatible with the surrounding environment which is rural in character predominantly occupied by village houses. According to the applicant, the opening hours of the proposed use are from 8:00 a.m. to 11:00 p.m. daily, and no neon sign will be used. It is anticipated that the proposed development would not cause significant adverse traffic, environmental, drainage, visual and landscape impacts on the surrounding areas. Concerned Government departments, including C for T, DEP, CTP/UD&L of PlanD, CE/MN of DSD, CE/C of WSD, DFEH, C of P, CHE/NTE of HyD, CBS/NTW of BD, D of FS and DO/TP of HAD have no objection to or no adverse comment on the application.

10.3 The Site forms part of a previous application (No. A/NE-TK/107) for restaurant (cafe) use, submitted by a different applicant, which was approved on review by the Board for a period of 2 years on 23.4.1999 mainly on considerations that the concerns on the potential nuisance/inconvenience caused by the proposed use to the residents nearby had been duly addressed by the applicant in his submission. The planning permission has lapsed on 23.4.2001.

10.4 The Site is currently used as a restaurant in a single-storey temporary structure

(**Plan A-4**). Should the application be approved, an advisory clause is recommended to remind the applicant that the approval is given only to the proposed use under application and does not condone any other development/use which currently exists on the Site and not covered by the application.

10.5 No public comment on the application was received.

11. Planning Department's Views

11.1 Based on the assessment made in paragraph 10, the Planning Department has no objection to the application.

11.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years until 6.3.2023. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval Conditions

- (a) no night time operation between 11:00 p.m. and 8:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) the submission of a drainage proposal within 6 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 6.9.2020;
- (c) in relation to (b) above, the implementation of a drainage proposal within 9 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 6.12.2020;
- (d) the submission of fire service installations and water supplies for fire-fighting proposal within 6 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 6.9.2020;
- (e) in relation to (d) above, the implementation of fire service installations and water supplies for fire-fighting proposal within 9 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 6.12.2020;
- (f) if the above planning condition (a) is not complied with during the planning approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and
- (g) if any of the above planning conditions (b), (c), (d) or (e) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.

Advisory Clauses

The recommended advisory clauses are attached at **Appendix III**.

11.3 There is no strong reason to recommend rejection of the application.

12. Decision Sought

12.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.

12.2 Should the Committee decide to approve the application, Members are invited to consider the approval conditions and advisory clauses to be attached to the permission, and the period of which the permission should be valid on a temporary basis.

12.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

13. Attachments

Appendix I	Application form and attachments dated 10.1.2020
Appendix Ia	Supplementary Planning Statement
Appendix Ib	Further information received on 14.2.2020
Appendix Ic	Further information received on 18.2.2020
Appendix II	Previous application
Appendix III	Recommended advisory clauses
Drawing A-1	Proposed layout plan submitted by the applicant
Plan A-1	Location plan
Plan A-2	Site plan
Plan A-3	Aerial photo
Plan A-4	Site photos

**PLANNING DEPARTMENT
MARCH 2020**

