

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-TK/789

<u>Applicant</u>	: South Continental Limited represented by Tang K.F. Associates Limited
<u>Site</u>	: Lots 210 (Part), 211 (Part) and 213 RP (Part) in D.D. 28, Lung Mei, Tai Po, New Territories
<u>Site Area</u>	: About 160.4m ²
<u>Land Status</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>	: Temporary Eating Place (Outside Seating Accommodation (OSA) of a Restaurant) for a Period of Three Years

1. The Proposal

- 1.1 The applicant seeks planning permission for temporary eating place (OSA of a restaurant) for a period of three years at the application site (the Site). The Site falls within an area zoned “V” on the OZP (**Plan A-1**). According to the Notes of the OZP, while ‘Eating Place’ on the ground floor of a New Territories Exempted House (NTEH) within the “V” zone is always permitted, such use elsewhere within the “V” zone requires planning permission from the Town Planning Board (the Board). The Site is currently partly occupied by the applied use and partly used for storage of food and kitchen tools without any valid planning permission.
- 1.2 The Site is an extension of an existing restaurant located on the ground floor of the adjoining village house on Lot 213 RP in D.D. 28 (i.e. 60 Lung Mei) (**Drawing A-1** and **Plan A-2**). According to the applicant, the OSA mainly includes a canopy-covered area¹ with a total floor area of about 88.5m² and a height not exceeding 5.3m (one storey), which provides about 24 seats (**Drawing A-2**). The operating hours of the OSA are from 10:30 a.m. to 10:30 p.m. daily (including public holidays). The Site is accessible through Ting Kok Road via Tai Po Lung Mei Road. Site plan and layout plan submitted by the applicant are at **Drawings A-1** and **A-2**.

¹ According to the applicant, the canopy is removable and used as a sun and rain shelter.

- 1.3 The Site is part of the subject of a previously approved application² (No. A/NE-TK/107) submitted by a different applicant for restaurant (café) use (**Plan A-2**). Details of the previous application are set out in paragraph 6 below.
- 1.4 In support of the application, the applicant submitted the following documents:
- (a) Application Form and Supplementary Information (SI) (**Appendix I**)
received on 22.11.2023 and 23.11.2023
 - (b) Further Information (FI) received on 14.12.2023 (**Appendix Ia**)
 - (c) FI received on 17.1.2024* (**Appendix Ib**)

**accepted and exempted from publication and recounting requirements*

2. Justifications from the Applicant

The justifications put forth by the applicant in support of the application are detailed in Application Form, SI and FI at **Appendices I** and **Ia**, as summarized below:

- (a) the applied use is in line with the planning intention of the “V” zone;
- (b) the applied use will not cause adverse drainage, traffic, visual, landscape and environmental impacts on the surrounding areas;
- (c) the applied use will operate at reasonable hours (i.e. 10:30 a.m. to 10:30 p.m. daily (including public holidays)) and no environmental complaint has been received; and
- (d) should the application be approved, the applicant will rearrange the canopy and furniture currently found on the Site to tally with the layout plan submitted under the current application (**Drawing A-2**). Temporary storage of food and kitchen tools will be removed.

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. Town Planning Board Guidelines

The Town Planning Board Guidelines for ‘Application for Eating Place within “Village Type Development” Zone in Rural Areas under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 15A) is relevant to the application. The relevant planning criteria are summarized at **Appendix II**.

² The Site is also the subject of a previous application (No. A/NE-TK/679) for temporary shop and services (retail shop) use. This previous application is irrelevant to the current application.

5. **Background**

The Site is part of the subject of a planning enforcement case (No. E/NE-TK/177) against unauthorized development (UD) involving eating place use (**Plan A-2**). Enforcement notice (EN) requiring discontinuation of the UD was issued on 11.9.2023. A recent site inspection revealed that the UD still continues upon expiry of the EN on 11.12.2023. Prosecution action may be followed.

6. **Previous Application**

- 6.1 The Site forms part of the subject of a previous application (No. A/NE-TK/107) (**Plan A-2**) submitted by a different applicant for restaurant (café) use with outside seating area. The application was approved by the Board on review for a period of two years on 23.4.1999, mainly on considerations of complying with TPB-PG No. 15 which was in force at the time of consideration of the application; and not creating significant environmental nuisance to residents nearby. As compared with this previous application, the current one involves a smaller site area (reduced from 435m² to 160.4m²).
- 6.2 Details of the previous application are at **Appendix III** and its location is shown on **Plans A-1** and **A-2**.

7. **Similar Applications**

- 7.1 There have been five similar applications (No. A/NE-TK/672, 695, 746, 763 and 784) covering three sites for temporary eating place (OSA of a restaurant) within the same “V” zone over the past five years (**Plan A-1**). All of them were approved with conditions by the Rural and New Town Planning Committee (the Committee) between 2019 and 2023, mainly on considerations of not frustrating the long-term planning intention of the “V” zone nor adversely affecting the land availability for Small House development; complying with TPB PG-No. 15A; being relatively small in scale; and not causing significant adverse impacts on the surrounding areas.
- 7.2 Details of the similar applications are at **Appendix IV** and their locations are shown on **Plan A-1**.

8. **The Site and Its Surrounding Areas** (**Plans A-1** to **A-4b**)

- 8.1 The Site is:
- (a) located outside the ground floor of the adjoining village house at 60 Lung Mei;
 - (b) situated at the southern fringe of Lung Mei;
 - (c) accessible through Ting Kok Road via Tai Po Lung Mei Road; and

- (d) currently partly occupied by the applied use and partly used for storage of food and kitchen tools.

8.2 The surrounding areas are predominantly rural in character with village houses, some of which are occupied by restaurant on the ground floor with/without OSA. About 30m to the south and 90m to the southeast are a cycle track and a number of bicycle renting shops (**Plans A-2 and A-3**). About 240m to the southwest on the opposite side of Ting Kok Road is Tai Po Lung Mei Beach (**Plan A-3**).

9. 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 NTEH. Other commercial, community and recreational uses may be permitted on application to the Board.

10. Comments from Relevant Government Departments

10.1 Apart from the government department as set out in paragraph 10.2 below, other departments consulted have no objection to or no comment on the application. Their general comments on the application and recommended advisory clauses are provided at **Appendices V and VI** respectively.

10.2 The following government department does not support the application:

Land Administration

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

- (a) has reservation on the application;
- (b) the Site comprises Lots 210, 211 and 213 RP all in D.D. 28 held under the Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government. Under the Building Licence No. 7/82 governing the use and structure of Lot 213 RP in D.D. 28, the portion of Lot No. 213 RP within the Site shall not be built upon and shall be used for agricultural or garden purposes;
- (c) there is no guarantee to the grant of a right of way to the Site or approval of the emergency vehicular access (EVA) thereto; and
- (d) his recent inspection revealed that unauthorized structures were

erected on the Site and adjoining Government land (GL) without prior approval from LandsD. No permission is given for occupation of GL. Regularization of illegal occupation of GL on or after 28.3.2017 will not be considered according to prevailing land policy. Also, the agricultural/garden portion of Lot 213 RP was being used as “storage and back-of-house” for the restaurant, which is in breach of the condition stipulated in the said Building Licence. The lot owner should rectify/regularize the lease breaches within private land as demanded by LandsD and cease illegal occupation of GL.

11. Public Comment Received During Statutory Publication Period

On 1.12.2023 and 22.12.2023, the application was published for inspection. During the statutory public inspection period, no public comment was received.

12. Planning Considerations and Assessment

- 12.1 The application is for temporary eating place use (OSA of a restaurant) for a period of three years at the Site zoned “V” on the OZP (**Plan A-1**). The applied use is not entirely in line with the planning intention of the “V” zone which is primarily intended for development of Small Houses by indigenous villagers. Nevertheless, the applied use could serve the local residents and visitors to Tai Po Lung Mei Beach and recreational facilities in the vicinity. As the applied use is on a temporary basis for three years, approval of the application on a temporary basis would not jeopardize the long-term planning intention of the “V” zone, nor adversely affect the land availability for Small House development.
- 12.2 The Site is located at the southern fringe of Lung Mei adjacent to Tai Po Lung Mei Road. The applied use is considered not incompatible with its surrounding areas predominated by village houses, some of which are occupied by restaurant on the ground floor with/without OSA. The applied use will provide about 24 seats and is not anticipated to cause significant adverse environmental, traffic and drainage impacts on the surrounding areas. According to the Director of Environmental Protection, there has been no substantiated environmental complaint related to the Site in the past three years. Other government departments consulted including Commissioner for Transport and Chief Engineer/Mainland North of Drainage Services Department have no objection to or no adverse comment on the application. In view of the above, the OSA under application is generally in line with the TPB PG-No. 15A. While DLO/TP, LandsD has adverse comment on the application due to possible illegal occupation of GL, the issue on land should be dealt with separately under the land regime. The applicant will be advised to follow up with DLO/TP, LandsD on their concerns.
- 12.3 The Site is part of the subject of a previous application for restaurant (café) use submitted by a different applicant (**Plans A-1 and A-2**), which was approved by the Committee in 1999 mainly on considerations of complying with TPB-PG No. 15 which was in force at the time of consideration of the application; and

not creating significant environmental nuisance to residents nearby. Five similar applications covering three sites for temporary eating place (OSA of a restaurant) within the same “V” zone in the vicinity of the Site have been approved over the past five years mainly on considerations of not frustrating the long-term planning intention of the “V” zone nor adversely affecting the land availability for Small House development; complying with TPB PG-No. 15A; being relatively small in scale; and not causing significant adverse impacts on the surrounding areas. The planning circumstances of approving these applications are applicable to the current one.

13. Planning Department’s Views

- 13.1 Based on the assessment made in paragraph 12 above, Planning Department has no objection to the application.
- 13.2 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 three years until 26.1.2027. The following approval conditions and advisory clauses are also suggested for Members’ reference:

Approval Conditions

- (a) 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 26.7.2024;
- (b) in relation to (a) above, the implementation of the 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 26.10.2024;
- (c) in relation to (b) above, the implemented drainage facilities on the site shall be maintained at all times during the planning approval period;
- (d) the submission of a proposal for fire service installations (FSIs) and water supplies for fire-fighting 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 26.7.2024;
- (e) in relation to (d) above, the implementation of the FSIs and water supplies for fire-fighting 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 26.10.2024;
- (f) if any of the above planning condition (a), (b), (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;
- (g) if the above planning condition (c) 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.

Advisory Clauses

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

13.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members' reference:

- the applied use is not in line with the planning intention of "V" zone which 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. There is no strong justification in the submission for a departure from the planning intention, even on a temporary basis.

14. Decision Sought

- 14.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 14.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s) to be attached to the permission, and the period of which the permission should be valid on a temporary basis.
- 14.3 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.

15. Attachments

Appendix I	Application Form and SI received on 22.11.2023 and 23.11.2023
Appendix Ia	FI received on 14.12.2023
Appendix Ib	FI received on 17.1.2024
Appendix II	Relevant extracts of TPB Guidelines for 'Application for Eating Place within "Village Type Development" Zone in Rural Areas under Section 16 of the Town Planning Ordinance'
Appendix III	Previous application
Appendix IV	Similar applications
Appendix V	Government departments' general comments
Appendix VI	Recommended advisory clauses
Drawing A-1	Site plan submitted by the applicant
Drawing A-2	Layout plan submitted by the applicant
Plan A-1	Location plan
Plan A-2	Site plan
Plan A-3	Aerial photo

Plan A-4a and A-4b Site photos

**PLANNING DEPARTMENT
JANUARY 2024**