

MUNICIPAL CORPORATION OF GREATER MUMBAI

No.: CHE/ 18352/DPGen of **24 JUN 2015**

Sub:- Policy guidelines for adjustment of road area against Amenity Space while allowing residential/ Commercial development on land situated in Industrial Zone as per the provision of 56(3)(C) and 57(4)(C) of DCR-1991 amended up to date.

Ref:- 1) Hon M.C.'s Approval u/no. MCP/ 5021 dtd. 17/06/2015.

Reference is requested to this office detailed note u/no. ChE/1727/DPES Dtd. 16/05/2015 on subject matter & the Hon. M.C.'s approval thereon vide no. MCP/ 5021 dtd. 17/06/2015.(Copy enclosed)

In view of above, copy is circulated for information & necessary action for processing the proposal of Residential/ Commercial development on land situated in industrial Zone as per provisions of D.C. regulation 56(3)(C) and 57(4)(C) of DCR-1991 amended up to date.


22.6.15
Dy. Ch.E.(D.P.)-I

Encl. : As above

Dy. Ch.E.(D.P.)-I/II

Dy.ChE(B.P.) City/ WS-I/WS-II /ES

Executive Engineer (D.P.) City/ WS H&K/WS P&R /ES

Assistant Engineer (D.P.) City-I/II/III/H/K/P/R/S&T/M/L&N

All Sub Engineer (D.P.)

MUNICIPAL CORPORATION OF GREATER MUMBAI

No. CHE/18352 /DPES of 30/03/2016

N-43

Sub : Policy guidelines for allowing residential /commercial user on land situated in industrial zone, by adjusting the land affected by D.P.Road /Sanctioned R.L./Set back against the amenity space required to be provided as per provision 56-(3)-(c) & 57-(4)-(c) of DCR-1991

Ref : CHE/1727/DPES of 16/05/2015.

Reference is requested to this office note under reference dated 16.05.2015 in respect of subject matter and Hon'ble M.C's approval thereon, under no. MCP/5021 dated 17.06.2015 for the following,

- 1) To obtain the opinion of Attorney General (GOM) in respect of cases mentioned in Sr. No. B of Table at N-38/39
- 2) To consider the proposals as mentioned in Sr. No. A of Table at N-38 in respect of adjustment / set-off of the lands affected by DP Road / Sanctioned R.L./setback against area of Amenity Space as envisaged under regulation no, 56-(3)-(c) and 56-(4)-(c) of DCR 1991.

The residential / commercial user on lands situated in General & Special Industrial Zone (I2 & I3) are granted as per provision 56(3)(C) & 57(4) (C) of DCR 1991. The provision of amenity in such I to R/C proposals were governed by policy circulars issued from time to time. The extract of the main circular issued in the past u/No. CHE/2847/DPC dated 04.12.1996 in respect of allowing non-industrial user in Industrial Zoned Lands by way of interpretation of 56(3)(C) and 57(4)(C) of DCR 1991 is reproduced below :

Sr. No.	Area of plot under conversion	% age of the land to be set aside
1	For plots up to 5000 sqmts.	NIL
2	For plots having area between 5000 sq.mts. to 20,000 Sqmts.	5%
3	For plots having area 20,000 Sqmts. and above	2.5% + 5% for amenity utilities under D.C. Reg. 27 + 10% of additional recreational space.

The provisions u/s 56 & 57 of DCR-1991, are amended subsequently, vide government notification under No. TPB-4304/2770/CR-312/04/UD-11 dated 14.5.2007. Accordingly 5% Amenity Space is insisted for the net plot area up to 2 Ha, 20%

Amenity Space for net plot area between 2 Ha. to 5 Ha. & 25% Amenity Space for net plot area above 5 Ha.

Govt. in UDD vide no.TPB/4304/2770/CR-312/2004/UD-11 dt.12/11/2008 has given clarification u/s 62(3) of DCR-1991, in respect of above said notification issued under even no.dt.14/07/2015, especially about the layout area under ownership to be considered for I to R/C proposals.

The clarification is reproduced as under:-

In preparation of Development Plan, industrial area is not considered for provision of amenity spaces & therefore certain percentage of land is required to be provided while permitting residential/commercial user in industrial land. Therefore the layout mentioned in the notification dt.14/05/2007 shall be interpreted as only industrial Zone area.

The Hon. High Court in W.P. 651 of 2013 has directed to adjust the area of D.P. road against such amenity space considering the same at par with the D.P. reservations. On basis of order in above said Writ Petition and after considering legal opinions obtained from Sr. Counsels, concurring with the said court order to adjust the area of D.P.Road /Sanctioned R.L./Set back, few such proposals are considered by adjusting D.P.Road /Sanctioned R.L./Set back area against required amenity space with concurrence of legal department.

The subject matter was discussed with the then Hon. M.C., when Hon. M.C. directed to put up the proposal for policy circular in this respect. Accordingly, the policy guidelines are issued u/No. CHE/18352/DP/Gen of 24.6.2015.

As per the said guidelines, all the proposals where area under D.P.Road /Sanctioned R.L./Set back & amenity space are not handed over to MCGM are considered for adjustment of road area against the amenity space, considering road as amenity space as per order dated 13.03.2014 in W.P. 651/2013. The rest of cases were referred to Advocate General, Govt. of Maharashtra for opinion vide letter No. LOP/882 of 28.09.2015 through Legal department.

The learned Advocate General (Govt. of Maharashtra) vide reply dt.18.02.2016, in case for said opinion No. 882 dated 28.09.2015 has opined as under:

- i. In cases where layout is approved and building plans are also approved with C.C. to one or more buildings being granted, it is not necessary to add condition either while sanctioning layout or granting IOD to hand over the Amenity Open Space earmarked in such layout without seeking such adjustment.
- ii. In cases where D.P. Road / Setback has been handed over to MCGM in lieu of FSI benefit, CC for equivalent area is NOT granted and land has NOT been transferred in P.R. Card, the claim of adjustment can be considered.
- iii. In case where D.P. Road / Setback has been handed over to MCGM in lieu of FSI benefit, CC for equivalent area is already granted but land has NOT been

- transferred in the name of MCGM in P.R. Card, the claim for adjustment can be considered.
- iv. In case where D.P. Road / Setback has been taken over by MCGM without any FSI or monetary benefit and the land has NOT been transferred in the P.R. Card in MCGM's name, the claim for adjustment being currently considered and accepted by MCGM is proper and in accordance with law.
- v. In case where amenity area is already handed over but P.R. Card is NOT transferred in name of MCGM and CC for the equivalent built up area has also NOT been granted on remaining land in layout, amenity area can be allowed to be reworked as per adjustment with the area of D.P.Road / Setback area.
- vi. In case amenity area is already handed over but P.R. Card is NOT transferred in name of MCGM and the CC for the FSI benefit of amenity area is already granted, the amenity area can be allowed to be reworked as per adjustment with the area of D.P. Road / Setback area.
- vii. In the cases, the road area handed over and its advantage in lieu of TDR/FSI is already granted, the proposal for adjustment of such road area is required to be considered for the net area of the balanced plot.
- viii. In case amenity area is not handed over, however, P.R. Card is transferred in name of MCGM for the said road area and the CC for the FSI benefit of road area is also granted, the amenity area can be allowed to be reworked as per adjustment with the area of D.P. Road / Setback area.

From above opinion, it is surmised that road area can be adjusted, irrespective of whether the same is handed over/transferred in the name of MCGM in revenue record or not & even when the amenity space area is handed over to MCGM & FSI benefit for the same is granted.

The aforesaid opinion was discussed in detail with Hon'ble M.C. on 02.03.2016 & 16.03.2016, in presence of Dy. L.O (S.C.) Shri. Xavier, Shri. Gaikwad, Shri, Naik, wherein it is directed to,

- i) Prepare and issue policy circular, in terms of the above said opinion of learned Advocate General (GOM).
- ii) Cases where owner has availed and /or utilized the benefits arising out the handover / transfer of amenity plot to MCGM, then in such cases the feasibility of implementing the reversal of such benefits to MCGM in lieu of adjustment be examined & shall be dealt separately on its merits.
- iii) consider the entire area of holding inclusive of reservation & road area for computing the area and percentage of amenity space as mentioned in footnote II - A & II - B in provision of 56(3)(c) & 57(4)(c) of DCR 1991.

In view of above, the following policy guidelines are prepared to follow hereafter for allowing the residential/commercial users on land situated in general Industrial & Special Industrial zoned land as per provision 56-(3)-(c) & 57-(4)-(c) of DCR-1991 :-

iii) consider the entire area of holding inclusive of reservation & road area for computing the area and percentage of amenity space as mentioned in footnote II - A & II - B in provision of 56(3)(c) & 57(4)(c) of DCR 1991.

In view of above, the following policy guidelines shall be followed hereafter for allowing the residential/commercial users on land situated in general Industrial & Special Industrial zoned land as per provision 56-(3)-(c) & 57-(4)-(c) of DCR-1991 :-

Table - A

Sr.No	Particulars	Remarks
1	New proposals of I to R submitted by considering adjustment D.P.Road / Sanctioned R.L./Set back where ownership of D.P.Road / Sanctioned R.L./Set back vest with Owner / Developer.	Road area to be adjusted against the required amenity space as per order of Hon'ble High Court Mumbai, dt.13/03/2014 in W.P. No.651/2013. & in view of opinion of Advocate General (Govt. of Maharashtra), under opinion No.882/18.2.2016. The entire area of holding inclusive of reservation & road area situated in industrial zone shall be considered for computing the area and percentage of amenity space as mentioned in footnote II - A & II - B in provision of 56(3)(c) & 57(4)(c) of DCR 1991.
2	D.P.Road /Sanctioned R.L./Set back area is taken over by MCGM / handed over to MCGM / transferred in the name of MCGM in revenue record & if benefit of road area in lieu of TDR / FSI, etc.is not granted & or utilized & amenity space area is not handed over to MCGM.	As above
3	D.P.Road /Sanctioned R.L./Set back area is taken over by MCGM / handed over to MCGM / transferred in the name of MCGM in revenue record, if benefit of road area in lieu of TDR/FSI, etc. is utilized & amenity space area is not handed over to MCGM.	As above
4	D.P.Road /Sanctioned R.L./Set back area is not handed over to MCGM / transferred in the name of MCGM in revenue record & amenity space area is not handed over to MCGM.	As above.

Table-B

Sr. No	Particulars	Remarks
1	D.P.Road /Sanctioned R.L./Set back area is taken over by MCGM / handed over to MCGM / transferred in the name of MCGM in revenue record & if benefit of road area is not utilized in lieu of TDR/FSI, etc. or road area is not handed over & amenity space area is handed over to MCGM /transferred in the name of MCGM in revenue record, benefit in lieu of TDR/FSI, etc. is	To be processed separately on merits of proposal and adjustment of road area against amenity space be granted after considering the feasibility of reversal of the benefit if any, granted, utilized in lieu of handing over of amenity space to MCGM. The entire area of holding inclusive of reservation & road area situated in industrial zone shall be considered for computing the area and percentage of amenity space as mentioned in footnote II - A & II - B in provision of 56(3)(c) & 57(4)(c) of DCR 1991.

2	D.P.Road /Sanctioned R.L./Set back area is not, handed over to MCGM / transferred in the name of MCGM in revenue record, benefit of road area is utilized in lieu of TDR/FSI & amenity space area is handed over to MCGM /transferred in the name of MCGM in revenue record, benefit in lieu of TDR/FSI, etc. is neither taken & nor utilized.	To be processed separately on merits of proposal and adjustment of road area against amenity space, be granted after considering the feasibility of reversal of the benefit granted, in lieu of handing over of amenity space to MCGM. The entire area of holding inclusive of reservation & road area situated in industrial zone shall be considered for computing the area and percentage of amenity space as mentioned in footnote II - A & II - B in provision of 56(3)(c) & 57(4)(c) of DCR 1991.
3	Cases not covered above & where amenity space area is handed over to MCGM / transferred in name of MCGM.	To be processed separately for adjustment of road area against amenity space, depending on the merits of proposal. The entire area of holding inclusive of reservation & road area in industrial zone shall be considered for computing the area and percentage of amenity space as mentioned in footnote II - A & II - B in provision of 56(3)(c) & 57(4)(c) of DCR 1991.

The earlier circular issued in respect of subject matter issued u/no.

- 1) CHE/2847/DPC dated 4.12.1996,
- 2) CHE/2847/DPC/Gen dated 19.09.1997,
- 3) CHE/GEN/308/DPC dated 10.03.2004,
- 4) CHE/1727/DPES dated 16.05.2015 will stand cancelled in view of above policy guidelines.

C/605
C/607
C/609

In view of above, Hon. M.C.'s approval is requested:

- 1) To consider the proposals for allowing residential/commercial users in Industrial zoned land, as mentioned in Table-A & B above at N-45 to N-47 , by adjusting D.P.Road /Sanctioned R.L./Set back area against the amenity space required as per provision 56-(3)-(c) & 57-(4)-(c) of DCR-1991 in view of the opinion of the learned Advocate General (Govt. of Maharashtra) vide opinion No.882 dt.18.2.2016.
- 2) To self-explanatory draft circular in respect of subject matter & as stated in sr.No.1 above.

C/17-619

On receipt of approval the circular will be issued with the signature of CH.E.(D.P.).
Submitted please.

[Signature]
Dy.CH.E.(D.P.)II

[Signature]
Dy.Ch.E.(D.P.)I

[Signature]
Chief Engineer (D.P.)

Hon. M.C.
Sir,

बृहन्मुंबई महानगरपालिका
आयुक्तांचे कार्यालय
30 MAR 2016
समय ११, १२, १३, १४
१५, १६, १७, १८
क्रमांक MCP/1747

[Signature]
31/3/16
Municipal Commissioner

CH.E. (D.P.)

(Acc 1 book 113) (Acc 1 NastiHB)