

Cir. No. CHE/DP/208/Gen
2023-24

BRIHANMUMBAI MUNICIPAL CORPORATION

Dy. Ch.E. (B.P.) 946 W.S./P&R

26 APR 2023

Sub. : Clarification of the clause for development along the internal road having dead end with length of 50mt as per the provision of Reg. 32(5.4.1) Note (iv).

Ref. : 1. PEATA representation dated 10.10.2022
2. Circular u/no. ChEng / DP / 3310 / Gen dated 31.07.2020
3. Clarification circular u/no. ChEng / DP / 3310 / Gen dated 02.09.2020
4. Clarification circular u/no. ChEng / DP / 28295 / Gen dated 28.03.2022
5. Circular u/no. ChEng / DP / 17124 / Gen dated 18.11.2017
6. Case opinion given by Advocate High Court. Shri Girish S. Godbole dtd. 19.03.2022.

Reference is requested to the representation of PEATA dated 10.10.2022 .

Representation of PEATA -

"However, above mentioned Circulars clarify that utilization of T.D.R. will not be applicable to plots having Layout Road or Roads belonging to Estate Dept. or Collector of Mumbai and to plots which have an abutment which is fully or partly owned by owner or plot owned by more than one owner. Reference is requested as per Reg. 32(5.4.1) Note (iv),

"If a plot is situated on access road having dead end within 50 m from the main road, having minimum width of 9 mt. or more, then such plot shall be treated as fronting on main road for the purpose of utilization of TDR. Similarly, if the plot derives from 9 mts. wide internal road then such plots are also eligible for the purpose of utilization of TDR."

From the above provision, it is clear that even for the internal road having dead end with length of 50mt. the FSI permissible is as per the width of the Main Road the internal road abuts. The same principle can be applied in the case for the land locked properties where the owners obtain right of way from the adjoining plot owner and the right of way abuts to the road width of 9.00 mts. or more then the owner of the plot will be entitled to take FSI / TDR /

premium FSI as per DCPR 2034 as per the width of the Municipal Road to which such plot abuts through the approach road / pipe access of such plot.

It is further to state that in case of Town Planning scheme, the final plots are allotted to the owners after the scheme is sanctioned. In the various T.P. schemes, the plots are deriving an access from the T.P. road having width 3.00 mts. or less. However, these smaller width of the T.P. road abuts to the municipal road having width of 9.00 mt. or more. There are many such types of plots where the existing buildings are more than 40 years of age and requires redevelopment. However, the same cannot be redeveloped due to non-permissible of additional FSI & TDR. As such, all these plots should be considered on par with the regulation 32(5.4.1), Note(iv) and additional FSI & TDR should be permitted which would give viability to the redevelopment project in the public interest at large."

Based on the representation received from PEATA, it was already clarified vide circular dated 21.06.2022 that pipe access policy does not cover plots having approach from Layout road or any plot which was part of layout, estate department's schemes/ collector's schemes which render access to other plots directly/ indirectly abutting any public street.

However, it is necessary to clarify the clause for development along the internal road having dead end with length of 50mt. it is necessary to have a glance through the existing circulars/ clarification/ DCPR provisions issued till date for the same which is as under,

A) Guidelines for TDR utilization on the roads other than Municipal Roads/ Public Roads.

In this case, reference is requested to the guidelines issued vide circular reference at Sr. No. 5 on upon receipt of Government clarification issued under no. TPB- 4317 / 255 / C. No. 59/ 2017/ UD-11 dated 06.11.2017 regarding allowing the utilization of TDR on the roads other than Municipal Roads/ Public Roads.

As per said circular, in case of MCGM approved subdivided layouts/ land locked plot having separate PRC's, the utilization of TDR is permissible as per the width of layout road/ right of way, subject to compliance of conditions stipulated in notification dated 16.11.2016/ clarifications from UDD/ guidelines / circulars as applicable , issued in this respect, from time to time. Similarly, right of way agreement shall be taken on record, while allowing the utilization of TDR on the

plots deriving access from the right of way. AE(Survey) shall take on the record all the layout/ private roads (right of way given to the adjoining property/ within the layout) along with its alignment, width and shall include the same in the Survey remarks.

B) Policy for allowing development of residential plot with smaller width of abutment to Public Street/ road.

In this case, reference is requested to the guidelines issued vide circular reference at Sr. No. 2, 3 & 4 for dealing with proposals having piped access i.e. width of abutment plot to such public street/ road is smaller than 9.00m.

As per said circular at Sr. No. 2, FSI/TDR as per the provision of Reg. 30/ Reg. 32 is reckoned from the width of public street/ road to which plot abuts irrespective of width of abutments of the plot. Thereafter, vide circular at Sr. No. 3, it was clarified that sidelined 'A' of the office note under no. ChE/DP/ 2401/ Gen dated 30.07.2020 duly approved by Hon. MC vide no. MCP/ 3107 dated 31.07.2020 deals only with the FSI admissible to plots which abuts Public Street. However, plots having approach from Layout road or any plot which was part of layout, estate department's schemes/ collector's schemes which render access to other plots directly/ indirectly abutting any public street, are not covered for FSI under this policy.

In this regard, after circulation of clarification policy dated 28.03.2022, UD department vide their letter dated 21.06.2022 (copy enclosed at page C-43 to C-48) raised queries on receipt of complaint to UD Department. Accordingly, suitable reply is submitted to UD department vide letter dated 10.10.2022 (copy Enclosed as at pg. C- 49 to C-53). However, no further communication in this regard received from UD Department.

C) Reg. 32.- Transfer of Development Rights (TDR)- 5.4 Utilization of TDR:

Note- iv) If a plot is situated on access road having dead end within 50 mt. from the main road, having minimum width of 9m or more then such plot shall be treated as fronting on main road for the purpose of utilisation of TDR.

Similarly, if the plot derives from 9m wide internal road then such plots also eligible for the purpose for utilization of TDR.

D)Reg.19. - Public Street and Means of Access

(1) *Every site to have access free of encroachment*: Every site proposed to be developed or redeveloped shall have access from a public street/road as required in these Regulations. Such access shall be kept free of encroachment

E) Opinion given by Advocate High Court, Shri Godbole dated 19.03.2022

As per Sr.No.12, it is mentioned "Apart from this, there is intrinsic evidence in note 4 of DCPR 32 (5.4.1) indicating that the access road need not be owned by the owner of the plot under development. Note 4 uses different terms namely "main road" and "access road" and "internal road". Thus, if there is an access road connecting the plot and the main road and if the access road is having a minimum width of 9 mt. and a length of less than 50 mt.; the plot shall be treated as fronting on main road for the purpose of utilization of TDR. The second sentence of note 4 makes it explicitly clear that it is not necessary for the plot owner to be an owner of land covering such an access road leading to the main road. The second sentence uses the term "Internal Road". The word "access" is absent in the second sentence but that is an obvious error of the draftsman, and the word access must be read between words "derives" and "from 9 mt. wide internal road".(copy enclosed at page C-19 to C-34)

Further as per Sr.No.16 it is mentioned: -

"Based on the aforesaid discussion, on various factual and legal aspects, I proceed to answer the Queries as under:

(1) What is the difference between Access Road as mentioned in Clause No. 32 (5.4.1) Note (iv) and Right of Way or Right of Access?

Ans.: There is no difference. A right of way or right of access is nothing but an access road and all the three terms have same meaning while considering applicability of Note (iv) of DCPR 32(5.4.1)."

F) This office remarks:

In view of above, considering spirit of the DCPR2034 & Government clarification issued under no. TPB- 4317 / 255 / C. No. 59/ 2017/ UD-11 dated 06.11.2017 allowing the utilization of TDR on the roads other than Municipal Roads/ Public Roads and Sr. Counsel's opinion, it is proposed to clarify as under for uniform and smooth implementation of Govt. clarification dated 07.07.2017 subject to AE (Survey) shall take on the record all the layout/TP or Estate schemes Roads or Right of Way registered agreement along with its alignment,

width shall include the same in the Survey remarks and suitable condition shall be incorporated in approval to not to reduce further width of said road in future and it should be developed for full width before asking Commencement Certificate for development.

For the purpose of Reg. 32(5.4.1) note (iv), following categories of access will be considered

1) If the plot is situated on access road i.e. Private layout road / common passages / private access, of minimum 9.00m width having dead end within 50m from main road, then such plot shall be treated as fronting main road for the purpose of utilization of TDR. However, registered document for maintaining such private access in perpetuity shall be insisted.

2) If the width of such minimum 9.00m private layout road / private access reduces at some length, then the length of the same shall be taken from main road to point of reduction of access width for the purpose of Reg. 32(5.4.1) note (iv). However, registered document for maintaining such private access in perpetuity shall be insisted.

3) If the plot is situated on Right of way having dead end within 50m from main road, then such plot shall be treated as fronting main road for the purpose of Reg. 32(5.4.1) note (iv). However, registered document for maintaining such right of way in perpetuity shall be insisted.

In view of above, Ch.E. (D.P.) / Hon. M. C.'s approval is requested to the sidelined portion 'X' as above.

On receipt of approval, same will be circulated to all as a clarification to the regulation 32(5.4.1)(note- iv) of DCPR2034.

Submitted please.

E.E.(B.P.) R.1 WSII

Dy. Ch. Eng. (BP) WS-II

Chief Engineer (D.P.)

Hon'ble M.C.

Sir,

E.E.(B.P.) R.2 WSII

E.E.(B.P.) P WSII

Dy. Ch. Eng. (BP) WS II

म.अ./वि.वि./ 2281 / 4.34 दि. 22 MAY 2023

Sir,
Sr. no 1 to 3 of D.P. WS-II's plan for road having dead end upto 50m. is submitted for Hon. M.C.'s approval.

Hon. M.C.
Sir

Signature
18/5/23

Chief Engineer

बृहन्मुंबई महानगर पालिका	
प्रमुख अभियंता (विकास नियोजन)	
बांधे कार्यालय	
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27 APR 2023	
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क.प्र.अ./वि.नि./	
साधारण	शहर
मा. अधि.	टिडीआर
पूर्व. उप	प. उप
लेखा	आस्था

Sec. No. 142 as proposed..
 Sec. No. 3 shall be
 dealt separately.

बृहन्मुंबई महानगरपालिका	
आयतस्थाने कार्यालय	
22 MAY 2023	
समय	११, १२, १३, १४, १५, १६, १७, १८
क्रमांक	MCP/6350

25/05/23

24/5/23
 Municipal Commissioner
 प्रमुख प्रशासक (वि.नि.)