

**ISSUED**

**BRIHANMUMBAI MUNICIPAL CORPORATION**

No. Dy.Ch.E./B.P./010950/W.S.-II/P&R, dt. **10 JUN 2024**

Office of Dy.Ch.E.(B.P.) WS-II  
Municipal office Building, "C" wing,  
1<sup>st</sup> Floor, New Sanskruti Complex,  
90 Ft. D.P. Road, Thakur Complex,  
Kandivali (E), Mumbai- 400 101.

To,

**Shri. SK Jaini, Brigadier**

(Station Commander)

HQ MG & G Area (Station Cell)

25 Assaye Building, SBS Road,

Colaba, Mumbai-400005.

**Subject:** - Review of NOC Guidelines for Building construction in vicinity of Defence establishment at Malad and Kandivali Complex of Central Ordnance Depot and Mumbai District & Mumbai Suburban.

**Reference:** - 1) Interim Instructions issued under guidelines u/No.11026 /2 /2011/ D (Lands) Government of India, Ministry of Defence, New Delhi dt. 18.05.2011.  
2) Guidelines No. P.11026/2/2011/D (Lands) Govt. of India, MoD, dt.21.10.2016.  
3) UDD Circular No. CRZ-1215/1093/S.N.40/15/UD-12, dt. 07.11.2016.  
4) Hon. M.C.'s Letter U/No. MCP/6085 dt. 20.07.2019  
5) U.D. Dept. Clarification U/No. TPB-4319/S.N.-124/019/UD-11 dt. 19.08.2019.  
6) Dy.Ch.E.(B.P.)/3989/WS P&R dt. 08.10.2021  
7) Hon. M.C.'s Directions u/No. MCP/2112 dt. 02.01.2021  
8) CHE/17109/DP/WS dt. 09.11.2021  
9) CHE/17110/DP/WS dt. 10.11.2021  
10) Letter from Dy. Comdt. COD Kandivali dt.18.01.2023, received in this office on 23.01.2023 along with MoD's Fresh Guidelines U/No. F. 11026 / 20 / 2011 /D(Lands) dt. 23.12.2022.  
11) Representation submitted to UDD for further order vide No. CHE/DP/ 28611 dt. 14.02.2023  
12) MoD's Letter for abeyance of Guidelines dt. 23.02.2023  
13) UDD's Clarification regarding revised guidelines dt. 23.12.2022 vide No. टीपीबी-२०१९/ प्र. क्र. १२४/२०१९/नवि-११ दि. १९.०४.२०२३  
14) Several correspondences received from Major, OIC Land & Legal requesting to issue Stop Work Notices to ongoing Constructions in Vicinity of COD, Kandivali  
15) Several correspondences received from Col, SO (Land & Legal) requesting to issue Stop Work Notices to ongoing Constructions in Vicinity of COD, Kandivali and Malad  
16) Letter of Maj, OIC Land & Legal informing this office regarding the Stop Work Notice issued by SRA to the

- Development Project situated in the vicinity of COD, Kandivali  
dt. 09.09.2023 and received in this office on 13.09.2023.
- 17) Hon'ble High Court order in WP 2724 of 2021 dt. 27.09.2023
- 18) Clarification of UDD with respect to Hon'ble High Court order  
dt. 27.09.2023 U/No. TPB-4323/UOR40/ Pr.Kr.125/  
2023/UD-11 dt. 03.11.2023.
- 19) Hon'ble Supreme Court's Order dt. 22.01.2024
- 20) Your Letter U/No. 3271/Policy/Legal dt. 09.02.2024

Gentlemen,

Reference is requested to your letter vide reference No. 20 above, wherein it is informed to follow and uphold the judgement passed by Hon'ble Supreme Court in Civil appeal No. 000869 of 2024 (Arising out of SLP(C) No. 28519/2023) dt. 22.01.2024.

In this context it is pertinent to mention here that, by guidelines dated 18.05.2011 referred to at Ref. No. 1, interim instructions were issued to regulate the grant of NOC for construction within the outer periphery of 500 Metres of radius of Defence Establishment. The interim instructions were forwarded to MCGM on 10.02.2012. The said interim instructions were modified by Circular dated 18.03.2015 and 17.11.2015. As difficulties were being faced by public in constructing building on their own land and, in view of large number of representations of elected representatives, pending finalization to the Works of Defence Act 1903, in consultation with the services, the Ministry of Defence vide reference No.2 above had issued guidelines for granting No objection certificate (NOC) to developments in the vicinity of Defence Establishments on 21.10.2016, amending the interim instructions dt. 18.05.2011, wherein the requisition to procure No Objection Certificate was reduced from 500 meters to 10 meters. In lieu of and pursuant to the amended guidelines issued by the Ministry of Defence, Government of India, the Government of Maharashtra issued a circular vide reference No. 3 above on 07.11.2016 directing that, proposals for approval of construction, outside the 10 meters distance from periphery of the Defence Establishment, are to be approved and that the effect of the directions are to be implemented with immediate effect.

Accordingly, this office started processing proposals for permissions to constructions falling beyond 10 Mtr distance from periphery of COD Kandivali and COD Malad.



Thereafter, Urban Development Department of Govt of Maharashtra has issued clarification on 19.08.2019 with respect to implementation of MoD's Guidelines dt. 21.10.2016 and same is reproduced as below,

" केंद्र शासन, संरक्षण मंत्रालयाने त्यांचेकडील पूर्वीची दि.18.05.2011 रोजीची मार्गदर्शक तत्वे सुधारित करून दि. २१.१०.२०१६ रोजी निर्गमित केलेली आहेत. तसेच त्याअनुषंगाने नगर विकास विभागाने दि. ०७.११.२०१६ रोजी परिपत्रक निर्गमित केलेले आहे. केंद्र शासन, संरक्षण मंत्रालयाकडील दि. २१.१०.२०१६ चे मार्गदर्शक तत्वांचे पुनर्विलोकन (Review) झाले नसल्याने दि.२१.१०.२०१६ रोजीची मार्गदर्शक तत्वे व त्याअनुषंगाने शासन नगर विकास विभागाने निर्गमित केलेले दि. ०७.११.२०१६ रोजीचे परिपत्रक सद्यस्थितीत लागू असल्यामुळे ते विचारात घेऊन महापालिकेने प्राप्त होणाऱ्या प्रस्तावांवर कार्यवाही करावी."

However, on receipt of several correspondences from COD Kandivali and Malad, this office had submitted report to Hon. M. C. vide reference No. 6 above. Wherein, vide reference No. 7 above Hon. M. C. endorsed that, "*We had referred the matter to UDD earlier. UDD has clarified twice on 19.08.2019 and 22.06.2020 that circular issued by UDD, GoM dated 07.11.2016 is applicable at present. Hence, Defence authorities shall be replied mentioning above and that they should approach UDD, GoM. MCGM Shall follow UDD directions. The copy of letter to be written to Defence Authorities shall be forwarded by Ch.E.(D.P.) to U.D. Dept. for perusal and further directions if any.*"

Accordingly, vide reference No. 8 above Ch.E.(D.P.) informed Major Chhetri, OIC Land & Legal for Comdt., COD Kandivali to approach U.D.D., GoM for further directions and also vide reference No. 9 above has forwarded the copy of the same to Under Secretary, UDD vide letter dt. 10.11.2021.

Further, Ministry of Defence (MoD), Government of India has issued fresh guidelines dt. 23.12.2022, which mentions that the said guidelines are in supersession to the circular dt. 18.05.2011, amendments circular dt. 18.03.2015, 17.11.2015 & NOC guidelines dt. 21.10.2016. The reference of the Defence Establishments of Army situated in Mumbai is mentioned at serial No. 108 of the Annexure "A" of the said guidelines dt. 23.12.2022 as "Mumbai Less Ordnance Depot"

The relevant applicable content of the Circular dated 23.12.2022 as regards to the Central Ordnance Depot of Kandivali and Malad is reproduced under: -

*"In such defence establishments not listed at Annexure A wherever buildings/ structure of four storeys or more already exist within 500 metres of the periphery of any defence establishment and the construction proposed is in the line with or behind i.e. in the shadow or shield of such building / structure, the State Government / Municipal Corporation may, after obtaining comments from the LMA and giving due consideration to the same, decide whether to approve such proposals or not. LMA shall give his comments within a period of 30-days from the date of receipt of a reference from the State Government / Municipal Corporation."*

Accordingly, letter to seek further directions with reference to fresh guidelines issued by MoD dt. 23.12.2022 was sent to UDD vide reference No.11 above.

Meanwhile, Ministry of Defence Vide reference No. 12 above has issued circular stating that Guidelines dt. 23.12.2022 are kept in abeyance till further orders.

Thereafter, U.D. Dept vide letter cited at reference No. 13 above issued clarification with regards to MoD guidelines dt. 23.12.2022 and Circular dt. 23.02.2023. Content of the same are reproduced as under,

“केंद्र शासन संरक्षण मंत्रालयाने दि. २९.१०.२०१६ रोजी निर्गमित केलेल्या मार्गदर्शक तत्वांची अंमलबजावणी करण्याचे अनुषंगाने शासन नगर विकास विभागाने संदर्भ क्र. १ मधील नमूद परिपत्रक निर्गमित केले आहे. तसेच त्यानंतर बृहन्मुंबई महानगरपालिकेने केलेल्या संदर्भाचे अनुषंगाने संदर्भ क्र. २ चे पत्र महापालिकेस पाठवविलेले आहे. त्यानंतर आता केंद्र शासन संरक्षण मंत्रालयाने सुधारित मार्गदर्शक तत्वे दि. २३/१२/२०२२ रोजी निर्गमित केली आहेत. तथापि, त्यानंतर संदर्भ क्र. ५ मधील नमूद केंद्र शासन संरक्षण मंत्रालयांकडील दि. २३/०२/२०२३ चे पत्राद्वारे सदरहू दि. २३/१२/२०२२ रोजीची मार्गदर्शक तत्वे पुढील आदेशांपर्यंत संस्थगित (kept in abeyance) ठेवली आहेत.

प्रमुख अभियंता (वि. नि.), बृहन्मुंबई महानगरपालिका व मुख्य कार्यकारी अधिकारी, झो. पू. प्रा. यांचे उपरोक्त संदर्भ क्र. ४ व ६ नुसार शासनास केलेल्या संदर्भाच्या अनुषंगाने उपरोक्त नमूद वस्तुस्थिती विचारात घेऊन पुढील योग्य ती कार्यवाही करणे आवश्यक आहे, असे कळविण्यात येत आहे.”

Accordingly, on receipt of aforesaid clarification this office has processed the proposal received in this office on the grounds of UDD guidelines dated 07.11.2016 and further clarification dated 19.08.2019.



Further, vide letter dated 09.09.2023 Maj, OIC Land & Legal COD Kandivali has informed this office that SRA has issued Stop Work Notice to the concerned construction firm for violating the MoD Guidelines dated 18.05.2011 and requested this office to comply with the Govt of India, Min of Defence guidelines dated 18 May 2011.

In light of the above facts and considering the UDD Guidelines dt. 07.11.2016, further clarifications dt. 19.08.2019 & 19.04.2023 and then Hon. M.C.'s Directions dt. 01.11.2021 this office was processing the proposals as per the Guidelines of UDD dt. 07.11.2016 and Mod NOC Guidelines dt. 21.10.2016.

Also, it is to mention here that, Ministry of Defence Govt of India itself while issuing Revised Guidelines on 23.12.2022 has mentioned that, "*Reference circular of even number dated 18.05.2011 read with amendments issued vide circular of even number dated 18.03.2015 & 17.11.2015 and NoC guidelines issued vide MoD letter dated 21.10.2016 regarding grant of No Objection Certificate (NOC) from the Local Military Authority (LMA) for construction of buildings in vicinity of defence establishments.*" Wherein it is well clarified that, Ministry of Defence has issued NOC guidelines vide its letter dt. 21.10.2016.

Further it is also to state here that, revocation of permissions already granted by this office may result in litigations and loss of revenue as per the regulation 51 of Maharashtra Regional and Town Planning Act 1966. Reg. 51 of M.R.&T.P. Act-1966 is reproduced as below;

*"51. (1) If it appears to a Planning Authority that it is expedient, having regard to the Development plan prepared or under preparation that any permission to develop land granted or deemed to be granted under this Act or any other law, should be revoked or modified, the Planning Authority may, after giving the person concerned an opportunity of being heard against such revocation or modification, by order, revoke or modify the permission to such extent as appears to it to be necessary:*

*Provided that—*

*(a) where the development relates to the carrying out of any building or other operation, no such order shall affect such of the operations as have been previously carried out; or shall be passed after these operations have substantially progressed or have been completed;*

*(b) where the development relates to a change of use of land, no such order shall be passed at any time after the change has taken place.*

*(2) Where permission is revoked or modified by an order made under sub-section (1) and any owner claims within the time and in the manner prescribed, compensation for the expenditure incurred in carrying out the development in accordance with such permission which has been rendered abortive by the revocation or modification, the Planning Authority shall, after giving the owner reasonable opportunity of being heard by the Town Planning Officer, and after considering his report, assess and offer, subject to the provisions of section 19, such compensation to the owner as it thinks fit.*

*(3) If the owner does not accept the compensation and gives notice, within such time as may be prescribed, of his refusal to accept, the Planning Authority shall refer the matter for the adjudication of the court; and the decision of the court shall be final and be binding on the owner and Planning Authority."*

Your communication under reply also refers to the order passed by the Hon'ble Supreme Court of India in SLP (C) No. 28519/2023 dated 22.01.2024. A perusal of the order would reveal that the judgment of the Hon'ble High Court in Writ Petition No. 2724 of 2021 has been interfered with to the limited extent it quashed the circular dated 18.05.2011. It is pertinent to note that the circular dated 21.10.2016 was never a subject matter of dispute before Hon'ble Supreme Court of India, thus, by no stretch it could be said that the Hon'ble Supreme Court interfered with the circular dated 21.10.2016 but in view of the order dated 22.01.2024 passed by the Hon'ble Supreme Court of India, the existence or the operation of the circular dated 18.05.2011 cannot and is not disputed.

However, in respect of lands following in the vicinity of the Defence Establishments mentioned in Part A and Part B of the annexure to the circular dated 21.10.2016, the distance required for restrictions under the Act to apply is 10 meters and 100 meters respectively.

The construction being undertaken is permissible under the provisions of Maharashtra Regional Town Planning Act, 1966 and Development Plan, 2034 which is formulated after considering all aspect of safety and security. We have not received any suggestion / objection while making Development Plan, 2034 and there is vast existing urban settlement and construction in the vicinity.



At present there are approximately 100 ongoing Developments in the vicinity of COD Kandivali and Malad. Admittedly, the distance of the aforesaid projects being beyond 10 m from the defence establishments, the same are permitted in accordance with the circular dated 21.10.2016. Therefore, it shall not be in accordance with law to issue stop work notices to such projects.

Yours Faithfully,

**ISSUED**

Dy. Ch.E. (B.P.) 10950 W.S./P&R 10 JUN 2024 ok

*10 Jun 2024*  
Deputy Chief Engineer  
(Building Proposal) WS-II

Copy:

Ch.E.(D.P.)

Sir,

Submitted for information please.

**ISSUED**

Dy. Ch.E. (B.P.) 10950 W.S./P&R 10 JUN 2024 ok

*10 Jun 2024*  
Dy. Ch. E. (B.P.) WS-II

Hon. M.C.

Sir,

Submitted for information please.

*10 Jun 2024*  
Dy. Ch. E. (B.P.) WS-II

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EE(BP) WS-II 'R-1'

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EE(BP) WS-II 'P'

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AE (BP) 'P' Ward

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