



## Advocacy - Governance - Renewal

To,  
Mr. Ajoy Mehta,  
The Municipal Commissioner, MCGM  
MCGM Head Office,  
Mahapalika Marg,  
Mumbai - 400001



November 23, 2018

**Subject: Objection to Proposal for Basement Parking at Patwardhan Park, Bandra and Underground Parking at Jhula Maidan, Byculla**

Dear Sir,

As an organization determined to ensure improvement of civic life in Mumbai, NAGAR has reiterated across multiple occasions, including during the Development Plan deliberations, on public portals as well as through correspondence with you and numerous concerned governmental authorities, the immense importance of preserving and protecting all public open spaces (parks, gardens, playgrounds and recreational grounds) in this city.

We are writing with regard to the BMC proposals for an underground/basement parking facility at Raosaheb Patwardhan Garden, adjacent to Linking Road in Bandra, and at Jhula Maidan, Byculla. **We are astonished that in the name of lack of parking space such a destructive plan is being contemplated while simultaneously deleting Existing Public Parking Lots, created to give Additional FSI to developers!**

As per the article 'As Parking under Bandra Green Cover gets Push, Locals See Red', published in the Times of India, dated November 10, 2018 (enclosed for reference), the Municipal Corporation has invited tenders for the proposal, and the project cost is estimated at ₹ 88 crore, and it has also been noted that due to multiple factors, the local citizens are displeased with this proposal.

We would like to bring to your notice, that on July 21, 2017, NAGAR had written a letter to you, entitled 'Objection to MCGM's first underground pay-and-park facility at Byculla' (enclosed for reference), wherein we listed several reasons for our objection. However, the progress of these proposals, at Patwardhan Park and Jhula Maidan, indicates that our words, motivated from our concern for Mumbai, were not given due consideration.

### **Recommended Guidelines for Per Capita Open Space:**

We would like to once again bring to your notice, that the Urban and Regional Development Plans Formulation and Implementation (URDFPI) Guidelines, gives the following directive regarding Open Spaces –

*"The open spaces can include the following three categories, namely:*

- a) Recreational space*
- b) Organized green*



c) *Other common open spaces (such as vacant lands/open spaces including flood plains, forest cover, etc. in plain areas.*

*Considering open spaces, including all the above-mentioned categories, provision be 10-12 sqm per person may be desirable.*

Contrary to this, the proposed per capita open space, subject to the implementation of the Development Plan 2034, and as given by the recommendations of the Planning Authority in its Report on RDDP 2034, will translate into 3.70 sqm per person. Moreover, the current per capita public open space, which is accessible by all, in Mumbai is a meagre 1.28 sqm.

#### **Reference to Supreme Court Verdict, Relating Public Open Spaces to Article 21**

We would also like to refer to the Supreme Court Order on Civil No. 11150 of 2013; MCGM & Others v/s Kohinoor CTNL Infrastructure Co Pvt. Ltd. and another, dated 17.12.2013, where paragraphs 24 to 28 of the Order clearly acknowledge the dearth of public open spaces in Mumbai and observe that accessibility and permeability are both essential components of an open space, which cannot be shirked by the introduction of a Development Control Regulation stating otherwise. Public open spaces are imperative in realizing the fullest potential of citizens, and therefore, the Supreme Court, through this judgment, has layered enjoyment of public open space under the ambit of Article 21, the Right to Life.

**Therefore, it needs to be understood that a public open space needs to be 'Open to Sky', 'Non-Buildable', 'Accessible to All' and 'Permeable'. By proposing to build these multi-level underground/basement parking lots, which will involve construction on the ground as well as elevation of the level of the ground, thereby essentially and irreversibly compromising the inherent values of a public open space.**

#### **Regulations for Public Open Spaces in DCPR 2034**

With the notification of the Development Plan 2034, Sanctioned Modifications and Excluded Parts as well as of the Development Control and Promotion Regulations 2034, it has been observed that the DCPR 53 (Under Ground Public Utility/Conveniences/Amenity Provision) has been modified in the latest revision of the DCPR 2034, as notified by the Government of Maharashtra, the addition made by the Planning Authority, after the suggestions and objections given by the citizens, for the protection of those POS which are included in the list of heritage sites from such compromise has been deleted. Since such proposals were in consideration for Jhulla Maidan at Byculla and Patwardhan Park in Bandra, which are both included in the list of heritage sites, it can only be assumed that the authorities have duly used their power to circumvent the fair process and ignore the voice of its citizens. (Reference: *Enclosed Article in Mumbai Mirror, dated September 15, 2018 - 'After Byculla's Jhula Maidan, BMC might raid other ground under some of Mumbai's heritage maidans'*).

#### **Deletion of Existing Public Parking Lots, Created to Give Additional FSI to Developers**

With further reference to the notified DCPR 2034 and DP 2034 sheets, we would like to express our shock at noting that the Public Parking Lots reserved on partial land, especially in case of high-rise buildings, where developers were given additional FSI as extra incentive have been deleted. This is with reference to the following, in the preamble of the notification to the DCPR 2034, dated May 8, 2018.



*"4. Where Public Parking Lots (PPL) has been proposed or developed on Partial land or on some floors of Residential/Commercial buildings and on such lands, under the provisions of regulations, Where the proposed reservation/designation of Public Parking Lot (PPL) is shown in Development plan, then all such reservation/designation shall deemed to be deleted and land under such reservation/designation shall be included in the adjoining pre-dominant land use."*

It is unfathomable, that the government which had once ensured the development of public parking lots by giving additional FSI solely for this purpose, giving rise to concerns of urban density, is not only deleting the public amenity, but is also proposing to introduce the same public amenity by now compromising another public amenity, which is also recognized by the Planning Authority, as per their DP 2034 report, as *'the most important of the amenities'*.

We would like to assert that MCGM ensure utilization of these Public Parking Lots, as originally intended and partially executed.

#### Utilization of Existing Parking Premises

We would also like to express our concern and direct your attention towards the existence and potential of other such underutilised or neglected yet available parking spaces. As per the news article published in The Indian Express, 'Mumbai: BMC failed to utilise parking lots in Khar, Bandra, say residents', dated 13.11.2018, seven parking lots on private premises are presently available and underutilized. In response to this statement, the Assistant Municipal Corporation, H-West, Mr. Sharad Ughade, has said that, "We will have to examine what kind of parking spaces these are. If they are on private premises then there will be very limited access. There must be some issue because of which they are not used. The Patwardhan Park parking lot can be used by anybody." While we take cognizance of the fact that these are private premises, we urge you to examine them, as stated by the AMC, in order to pursue more feasible and viable approaches, which do not compromise the accessibility of an actively used public open space for the duration of the project, and violate its permeability permanently.

We reiterate the importance of preserving public open spaces within the city, not only for recreational utilization by the citizens, but also to ensure control of microclimate, through plants, trees and the permeability of the ground, and urge you to reconsider and rescind this proposal and the perilous regulation which permits any such usage of public open spaces within the city.

Regards,



Nayana Kathpalia  
Trustee



Meher Rafaat  
Trustee

On behalf of Trustees

Atul Kumar D M Sukthankar Dinesh Ahir Gerson da Cunha Kunti Oza  
Meher Rafaat Nayana Kathpalia Neera Punj Parul Kumtha



# As parking under Bandra green cover gets push, locals see red

## BMC Invites Tenders For ₹88Cr Project

Richa.Pinto@timesgroup.com

Mumbai: The BMC proposal for an underground parking lot below the Raosaheb Patwardhan Garden adjacent to Linking Road in Bandra has inched closer to reality with the municipal corporation inviting tenders for the Rs 88 crore project earlier this month.

The development did not please many residents, who raised a red flag about the green credentials of the project and warned that the large open space was under threat.

They said 50% of the garden area might not remain the same after excavation as the green cover would be unable to sustain itself once the car park is created. They said roots of the large trees in the park were likely to suffer severe damage in the large-scale excavation planned.

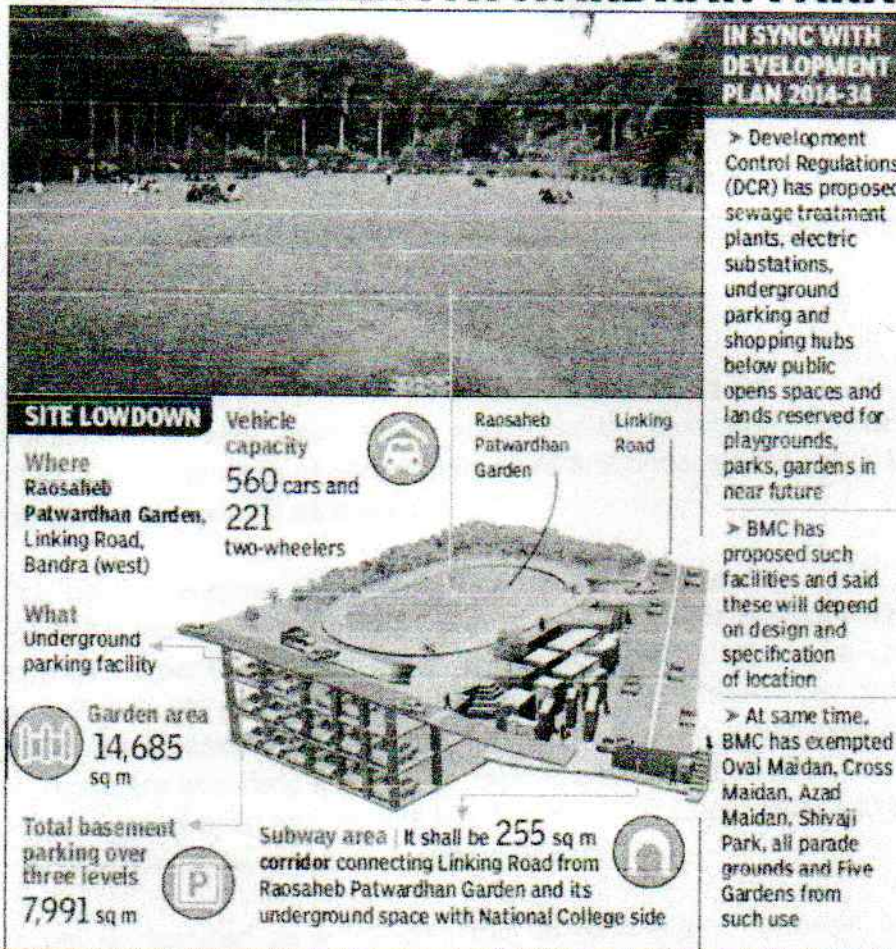
Khar activist Zoru Bathena said that when he scanned the e-tender notice uploaded on the BMC website online, he noticed that while the garden plot area was around 15,000 sq m, around 7,900 sq m was going to be excavated for the basement parking lot.

"This is over 50% of the area. The trees at the centre portion are proposed to be removed and transplanted, but then everyone is well aware of what a poor history the civic body has for transplantation of trees. While the plan is good, reduction of the garden space is in no way acceptable. Besides, the plan also mentions a shopping area, but there is nothing as such in the drawings. Many of the parking lots created in the past have turned into shops in the past and we fear the same could happen here as well," he said.

Bathena said he would be attending the official hearing scheduled next week to lodge his objections.

H-west assistant municipal commissioner Sharad Ugade said the BMC had ensu-

## FACILITY UNDER PATWARDHAN PARK



**TIMES VIEW:** An underground car park in a congested locality like Linking Road may appear to be a good idea, but how will the BMC ensure that the landmark Patwardhan Park is not affected? This popular park is frequented daily by hundreds of locals, including children and senior citizens. If the ground area of the park is reduced substantially and full-grown trees cut for excavation, as alleged by activists, the BMC must rework its plans and ensure this does not happen.

red that as little green space would be impacted as possible.

"Once the excavation is completed we would be filling up the area with green area created over the same. There is no way we want to reduce the green space of the park. Even while the car and two-wheeler parking will be three levels below ground, up to 1.5 metres of soil filling over top slab of underground parking will be done. This will help in retaining existing garden area and fur-

ther improvement of play area, yoga area and landscaping would also be done. The proposed work will be done by doing concrete shore piles at periphery, and garden will be excavated, thus big trees at periphery will be saved. Only a few trees at central area will have to be transplanted. This project will help in creation of much needed parking lot and traffic management," he said.

Prakash Jayakar, who has been visiting the park for the

past two decades, said there were very big and old trees with their roots spread far all along the garden space.

"These provide the much needed shade for walkers as well. We do not want this to be damaged in any way," Jayakar said.

Bandra MLA Ashish Shelar said the parking lot plan was sure to have long-term benefits.

"We are not reducing the green area but are working towards decongesting the area. We understand that during the excavation the park could be out of bounds for locals, but once work is completed it is sure to be an asset for the city. The parking space will help decongest the area in a big way," he said.





## Advocacy - Governance - Renewal

Ref no : 41/NAGAR/POS/Correspondence/21.07.2017

Mr. Ajoy Mehta  
The Municipal Commissioner, MCGM  
MCGM Head Office,  
Mahapalika Marg,  
Mumbai - 400001

July 21, 2017

**Subject:** Objection to MCGM's first underground pay-and-park facility at Byculla

Dear Mr. Mehta,

We are writing with reference to the news item which appeared in the Mumbai Mirror on 21<sup>st</sup> June, 2017(attached). The news report clearly states that the Municipal Corporation of Greater Mumbai (MCGM) is in the process of constructing city's first underground parking facility for the public, and elevate the playground as a podium.

We understand that the purpose for creating this facility is to deter the local populace from parking their personal motor vehicles on the street. The city of Mumbai faces a severe paucity of public open spaces. As per the ELU the public open space ratio is 1.24 sq. m / person (publicly accessible as well as clubs, gymkhanas and swimming pools). Whereas per capita open space completely public and accessible to all is mere 1.09 sq. m / person, which includes promenades and beaches. These are unsettling statistic, for they clearly indicate that there is little leeway to maneuver around existing open spaces. We fear that this ratio would reduce further should you approve the construction of pay-and-park facility at Byculla.

As Jhula Maidan is classified as a PG construction on it is not permitted for the following reasons: a) SC Verdict (MCGM v/s Kohinoor CTNL Infrastructure Co Pvt. Ltd civil no. 11150 of 2013); b) In accordance with section 34 of MRTP act (1966).

Paragraphs 25 & 45 of SC judgment clearly observes that the accessibility, permeability, open to sky are essential components of an open space and can't be done away with by any DCR regulation and are imperative in realizing citizen's fullest potential. In other words the SC has layered enjoyment of public open space under the ambit of Art 21.

So far as MRTP Act, 1966 is concerned section 34 (1) states that "Planning Authority shall make a fresh declaration of intention to prepare a Development plan for the additional area; and after following the provisions of this Act for the preparation of a draft Development plan, for such additional area either separately or jointly with the draft or final Development plan prepared or to be prepared to the area originally under its jurisdiction, and submit it to the State Government for sanction after following the same procedure as is followed for submission of a draft Development plan to the State Government." The section 34 (2) further observes that "where a draft development plan for the additional area requires modification of the final developmen

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plan or where the state government directs any such modification, the planning authority shall revise the final development plan after following the procedure laid down in section 38 so far as maybe relevant." This clearly curtails the MCGM from going ahead with the construction of the project.

Moreover, Sec 23 & 38(34) of DCR regulations of 1991 defines the extent of permissible construction on the site. In other words, MCGM's proposed parking construction plan is bad in law and doesn't conform to the above mentioned regulations. NAGAR believes that this move to construct plan the parking facility at Byculla also goes against your statement at the recent ORF seminar to release the student suggestions for DP 2034 where you explicitly stated that the ONLY permissible construction on RG/PG is a watchmans cabin and a toilet in any open space across Mumbai.

Finally and most importantly are the apprehensions and anguish expressed by both the local representative and citizen activists. Surely, these are weighty considerations and are emanating from well-meaning citizens and representatives who want nothing but the best for the city.

In light of above facts we request that MCGM withdraws its proposed plan to build pay and park facility at Byculla.

This is for your kind consideration and may please be placed on record.

Yours sincerely,

*Nayana Kathpalia*  
Nayana Kathpalia

*Atul Kumar*  
Atul Kumar

On behalf of Trustees

Anand Akerkar Atul Kumar D M Sukthankar Gerson da Cunha  
Dinesh Ahir Kunti Oza Meher Rafaat Nayana Kathpalia  
Neera Punj Parul Kumtha

Encl: "Byculla to get BMC's first underground pay-and-park" 'Mumbai Mirror' dtd 21<sup>st</sup> June, 2017

CC to:

Mr. Nitin Kareer  
Principal Secretary UDD  
Mantralaya, Madam Cama Marg  
Mumbai, 400001

MC  
MCGM



*21/7/2017*  
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# Heritage maidans go six feet under

**Byculla's Jhula Maidan is first with underground parking after state deletes key provision in development rules**

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**T**he unthinkable is about to happen. The BMC, in a bid to decongest roads and create extra parking lots, might raid the ground under some of city's heritage maidans. As the first cut and dry step, the state government has deleted a key provision in the city's Development Control Rules (DCR) that prohibited underground parking at public open spaces (POS) designated as heritage sites.

While at least a dozen maidans, including Byculla's Jhula Maidan (a grade IIA heritage site) and Bandra's Raosaheb Patwardhan Park, could lose their integrity, some of those that have luckily been spared are Oval Maidan, Azad Maidan and Cross Maidan in South Mumbai, Shivaji Park in Dadar, Worli's Jamboree Maidan, Nare Park in Parel, Five Gardens in Matunga, a playground near Bombay Scottish School in Mahim and the Police Parade Ground in Ghatkopar. No underground parking will be allowed at these nine iconic maidans.

While the project is yet to take off at Raosaheb Patwardhan Park, the BMC floated tenders for a three-level basement parking at Jhula Maidan in July. The consultant for both the projects is noted architect Hafeez Contractor, who was appointed after Municipal Commissioner Ajoy Mehta approved the plan last year.

According to a senior civic official, the draft DCR rules 2034 had prohibited any parking below open spaces designated as heritage sites.



Jhula Maidan ground and the design by Hafeez Contractor

"Provision 53 clearly said that no such uses will be allowed below POS on the list of heritage sites. But the state government has now published DCPR 2034 and a part of provision No. 53, restricting such use, has been deleted," the official said.

Earlier this year, when the BMC had tried to push for the Jhula Maidan project, a designated grade IIA heritage site, the Mumbai Heritage Conservation Committee (MHCC) had deferred the proposal. "As the provision itself has been deleted, the MHCC will now have to give an NOC," said the official.

Spread across approximately 4,000 sq mt, the BMC expects the basement parking at Jhula Maidan to help deal with severe parking crunch in the city. With total cost of around Rs 55 crore, the contract will include beautification of the maidan and restoring the playground with amenities such as a basketball court and a cricket pitch. The project, for which Hafeez Contractor's team has

already made plans, includes a lit-up and ventilated basement with staircase and lifts for access, ramps for vehicular access and public toilets.

According to experts, the move will dilute the character of these maidans. "The purpose of this rule was to preserve their fundamental nature as they have important local, historical and cultural connections," said urban planner Pankaj Joshi, a former heritage panel member.

A current heritage committee member agreed with Joshi and said that any parking lot under the heritage open spaces will interfere with the character of the maidans. "Even if utmost care is taken, the portion of the maidan will be elevated to accommodate the air ventilators," the member said.

Samajwadi Party corporator Rats Shaikh who has spearheaded the Jhula Maidan project said, "All heritage recommendations and guidelines will be followed. The aesthetic sense of the maidan will be retained."