

16 March 2016

**DEVELOPMENT ASSESSMENT REPORTS FOR THE  
REGULAR COUNCIL MEETING - TUESDAY, 29 MARCH  
2016**

Attached are the Development Assessments reports that will be submitted to the next Council Meeting.

If you have any enquiries regarding these applications, please contact the Director Planning and Environmental Services, Rod Logan on 9330 9450.



Paul Woods  
**General Manager**

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**Development Assessment Reports**

<b>D1</b>	Shop No. 7/600 Railway Parade, Hurstville - Development Application No. 243/15 - Change of Use - Renovation to develop property as new tattoo studio - Mr K Li (Applicant) - Fellowship Investments Pty Ltd - East Ward .....	1
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**Item D1:** Shop No. 7/600 Railway Parade, Hurstville - Development Application No. 243/15 - Change of Use - Renovation to develop property as new tattoo studio - Mr K Li (Applicant) - Fellowship Investments Pty Ltd - East Ward

**Author:** Rod Logan - Director Planning and Environmental Services (MRG)

**Reason for report:** Non-concurrence of Ward Report and unresolved objections.

**Recommendation:**

- a) That Council as the Consent Authority pursuant to Section 80(1)(a) Environmental Planning and Assessment Act 1979, grant consent to Development Application No. 243/2015 for Change of Use - Renovation to develop property as new tattoo studio at Shop No. 7/600 Railway Parade, Hurstville subject to conditions.

**SECTION A – General Conditions**

The conditions that follow in this **Section A** of the Notice of Determination are general conditions which are imposed to ensure that the development is carried out in accordance with the development consent.

**(1) Approved Plans of Consent**

The development must be implemented in accordance with the approved plans, specifications and details listed below and any supporting information submitted with the Development Application except as amended by any conditions attached to the Development Consent:

- (i) Architectural plans – Drawing Number 1 of 1, untitled dated 25 October 2015.

**(2) Compliance with Crime Assessment Report from NSW Police Force**

The recommendations outlined in the NSW Police Force – Crime Assessment Report dated 12 January 2016, are to be complied with in full, prior to the issue of an Occupation Certificate. Alternatively, confirmation in writing is to be furnished to Council from NSW Police, to verify if any of the recommendations outlined in this report are to be modified or deleted.

**(3) Assessment of Proposed Signage**

The application contains insufficient detail to accurately assess proposed signage within the shop front window at the front of the site. In this regard, signage is to either comply with the requirements of the Codes SEPP (Exempt and Complying Development) 2008 or a separate Development Application is to be submitted for Council's assessment and determination.

**(4) Operate within subject Lot.**

This consent does not authorise development or works outside the boundaries of the individual strata lot, being Lot 7 SP 60749 (known as Shop 7, 600 Railway Parade), or works which require separate consent from the Owners Corporation.

Item D1 (cont.)

**SECTION B – Prior to the Issue of a Construction Certificate Conditions**

The conditions that follow in this Section B of the Notice of Determination relate to the payment of fees, amendments being made to the proposal, further investigation being undertaken or the preparation of documentation that must be complied with prior to the issue of a Construction Certificate.

**Note:** A copy of the Construction Certificate shall be forwarded to Council prior to commencement of construction where Council is not the certifier who issued

**(5) Sanitary Facilities**

Sanitary facilities are to be provided within the premises, for the use of staff and people with a disability in accordance with the requirements of Parts F2.3 & F2.4 of the Building Code of Australia (BCA). In this regard the plans are to be amended to indicate the intended method of compliance prior to the issue of a Construction Certificate.

**(6) Access for People with a Disability**

Access for people with a Disability is to be provided to and within all areas normally used by the occupants of the building, from the main point of pedestrian entry at the allotment boundary and from any required accessible carparking space. The plans are to be amended to indicate the intended method of compliance prior to the issue of a Construction Certificate.

**(7) Certification of Skin Penetration Premises**

To ensure that adequate provision is made for the cleanliness, hygiene and maintenance of all hairdressing, beauty and skin penetration salons, all work associated with the fit-out of the premises shall be designed and implemented in accordance with the requirements of:-

- a) The Building Code of Australia;
- b) The Public Health Act 2010;
- c) Public Health Regulation 2012;

Certification to this effect shall be provided by an appropriately qualified person.

**(8) Sydney Water (DA Only)**

The approved plans must be processed through Sydney Water to determine whether the development will affect any Sydney Water asset's (sewer and water mains, stormwater drains and/or easements) and if any further requirements need to be met. An approval receipt will be issued by Sydney Water which is to be submitted to Council or the Principal Certifying Authority.

Please refer to the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) for;

- Sydney Water Tap in – see Plumbing, building and developing and then Sydney Water Tap in; and

**Item D1 (cont.)**

- Building over/adjacent to a Sydney Water Asset - see Plumbing, building and developing, building then Building Approvals or telephone 13 20 92.

**SECTION C – Prior to Commencement of Construction Conditions**

The conditions that follow in this Section C of the Notice of Determination are specific to the proposed development and must be complied with prior to the commencement of construction on the site.

**(9) Certification by Mechanical Engineer**

To ensure that adequate provision is made for ventilation of the building, mechanical and /or natural ventilation shall be provided. These systems shall be designed in accordance with the provisions of:-

- a) The Building Code of Australia;
- b) Australian Standard AS 1668 Part 1 - 1991;
- c) Australian Standard AS 1668 Part 2 - 1991;
- d) The Public Health Act 2010;
- e) The Public Health Regulation 2012;
- f) Australian Standard 3666.1 - 2002;
- g) Australian Standard 3666.2 - 2002;
- h) Australian Standard 3666.3 - 2000.

Details of all mechanical and /or natural ventilation systems, along with specific certification, provided by an appropriately qualified person, verifying compliance with the abovementioned requirements.

**SECTION D – Construction and Operational Conditions**

The conditions that follow in this Section D of the Notice of Determination are imposed to ensure the development is constructed and operates having regard to relevant legislation and does not unreasonably impact on the amenity of the locality or environment during the construction phase or the operation of the use.

**(10) Health and Public Nuisance**

The use of the premises shall not give rise to an environmental health nuisance to the adjoining or nearby premises and environment. There are to be no emissions or discharges from the premises, which will give rise to a public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and Regulations. The use of the premises and the operation of plant and equipment shall not give rise to the transmission of a vibration nuisance or damage other premises.

**(11) Inspections - Alterations/Additions**

The following lists of inspections are the **MANDATORY CRITICAL STAGE INSPECTIONS** that **MUST** be carried out by the Principal Certifying Authority (PCA).

**Item D1 (cont.)**

- (a) at the commencement of building works
- (b) after excavation for, and prior to the placement of, any footings, and
- (c) prior to pouring any in-situ reinforced concrete building element, and
- (d) prior to the covering of the framework for any floor, wall, roof or other building element, and
- (e) prior to covering waterproofing in any wet areas, and
- (f) prior to covering any stormwater drainage connections, and
- (g) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.

Certificates from your engineer or subcontractor are **NOT** acceptable in the first instance for the above inspections. Failure to have your PCA carry out these inspections could result in a delay or refusal to issue an Occupation Certificate.

**(12) Storage of materials on Public Road**

All building materials or waste containers must be stored within the confines of the site. The storage of such building materials, waste containers or equipment associated with the project upon the public roadway, including the pedestrian footway or unpaved verge, is prohibited.

**(13) Hours of Operation**

The hours of operation shall be limited to the following:-

Monday to Sunday 11.00am to 7.00pm

**(14) Hours of Construction**

Construction may only be carried out between 7.00 am and 5.00 pm on Monday to Saturday and no construction is to be carried out at any time on a Sunday or a public holiday.

**(15) No Sign erected without DA Consent**

No advertisement or sign shall be erected or displayed without development consent from Council, unless exempted under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 or Kogarah Local Environmental Plan 2012. Any advertising matter relating to the previous use of the premises shall be removed.

**(16) Disposable Sharps**

Disposable sharps waste shall be discarded in a clearly labelled puncture-resistant container which shall conform to Australian Standard AS 4031. A licensed waste contractor shall be engaged to dispose of the waste. Waste receipts for all sharps waste shall be available to Council upon request.

**Item D1 (cont.)****(17) Crime Prevention and Safety**

The development shall be carried out having regard to the recommendations of the NSW Police with respect to crime prevention and safety as specified in their letter dated 12 January 2016.

A copy of the recommendations made by the NSW Police is attached to this consent.

**SECTION E – Prior to Occupation or Subdivision Certificate Conditions**

The conditions that follow in this Section E of the Notice of Determination relate to conditions that ensure that the development is completed in accordance with the requirements of the Development Consent prior to the issue of either an Occupation Certificate or a Subdivision Certificate.

**(18) Skin Penetration Registration**

The skin penetration premises must be registered with Council's Environmental Health Officers in accordance with the *Public Health Regulation 2012*.

**(19) Fire Safety Schedule**

Certain items of equipment or forms of construction shall be nominated as "fire safety measures" within the building.

Upon completion of works, and before occupation of the building, each of the fire safety measures is required to be certified by an appropriately competent person (chosen by the owner of the building). The certificate is to state that the measure was inspected and found to be designed, installed and capable of operating to a standard not less than that required by the relevant regulations.

Further, it is the responsibility of the owner of the building that each fire safety measure is again inspected and certified as to its condition every twelve (12) months following the submission to Council of the original certification.

**SECTION F – Prescribed Conditions**

The following are prescribed conditions of development consent pursuant to s.80A(11) of the Environmental Planning and Assessment Act 1979 and cl.98 of the Environmental Planning and Assessment Regulation 2000.

**(20) Compliance with the Building Code of Australia**

The development must be carried out in accordance with the provisions of the Building Code of Australia.

**(21) Erection of Signs**

A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

**Item D1 (cont.)**

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the work site is prohibited.

The sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

**(22) Notification Requirements (Other)**

In relation to non-residential work, prior to the commencement of construction the Principal Certifying Authority must be informed in writing of:-

- (i) the name and contractor licence number of the licensee who has contracted to do or intends to do the work;
- (ii) the name and permit number of the owner-builder who intends to do the work, with a copy of the permit submitted; and
- (iii) the date of their intention to commence the erection of the building.

Further, if a contract is entered into for the work to be done by a different licensee or arrangement for doing the work are otherwise changed, the Principal Certifying Authority is to be immediately informed in writing of sufficient particulars for it to update its records.

**(23) Shoring and Adequacy of Adjoining Property**

If the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

- (a) protect and support the adjoining premises from possible damage from the excavation, and
- (b) where necessary, underpin the adjoining premises to prevent any such damage.

The above condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

**(24) Council Notification of Construction**

The erection of a building which is the subject of a Development Consent must not be commenced until:

**Item D1 (cont.)**

- a) Detailed plans and specifications of the building have been endorsed with a construction certificate by Council or an accredited certifier.
- b) the person having the benefit of the development consent has:
  - appointed a Principal Certifying Authority (PCA), and
  - notified Council (if Council is not the PCA) *in writing* of the appointment, and
  - given at least 2 days notice to Council of their intention to commence the erection of the building. The notice may be in writing or by phone.

**SECTION G – Demolition Conditions**

The following conditions are imposed to ensure the demolition associated with the proposed development is carried out having regard to relevant legislation and does not unreasonably impact on the amenity of the locality or environment.

Nil.

**END CONDITIONS****Advisory Notes****(i) Worksite Safety**

It is usually the owner/applicant's responsibility to ensure that the development site is a safe working environment. This may be by the engagement of an appropriately competent principal contractor. There are various legislative and WorkCover requirements with respect to maintaining a safe work-site. Details of these requirements and legislation, as well as, guidance and advisory material, can be found on the WorkCover Website [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au).

**(ii) Disability Discrimination Act**

This authorisation does not imply that the proposal complies with *Disability Discrimination Act 1992*. The Proponent is responsible to ensure compliance with this and other anti-discrimination legislation. The *Disability Discrimination Act 1992* covers disabilities not catered for in the minimum standards called up in the Building Code of Australia which references AS 1428.1 – Design for Access and Mobility. AS1428 Parts 2, 3 & 4 provides the most comprehensive technical guidance under *The Disability Discrimination Act 1992*.

- b) That the applicant be advised of their right of appeal to the Land and Environment Court with regard to Council's decision in this matter.
  - c) That those who made a submission be advised of Council's decision in this matter.
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**Item D1 (cont.)**

**Report in Full**

**Proposal**

1. Council is in receipt of an application for the change of use and renovation to develop an existing strata commercial suite into a new tattoo studio on the subject site.

**The Site and Locality**

2. The site is located on the southern side of Railway Parade between the intersections of West Street and Woniora Road. The site also has a frontage to Empress Lane at the rear.
3. The subject commercial suite is located at ground floor level on the front Railway Parade elevation of an existing multi storey mixed commercial residential building which is known as Empress Towers. The commercial premises is identified as being on Podium Level 4 on the Strata Plan.
4. The ground floor level of the building is elevated above the street frontage and access to the building and the individual suite is via an elevated driveway/ pedestrian access ramp connected to an external terrace area and entry portico at the front of the site.

**Section 79C Assessment**

5. The following is an assessment of the application with regard to Section 79C (1) of the Environmental Planning and Assessment Act 1979.

***(1) Matters for consideration – general***

***In determining an application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:***

- (a) the provision of:***
  - (i) any environmental planning instrument,***

**Kogarah Local Environmental Plan 2012 (KLEP 2012)**

**Part 2 – Permitted or Prohibited Development**

**Clause 2.1 – Land Use Zones**

6. The subject site is zoned B4 - Mixed Use and the proposal is a permissible form of development with Council's consent. The proposed development satisfies the objectives of the zone.

**REGULAR COUNCIL MEETING****Item D1 (cont.)****Part 4 – Principal Development Standards**Clause 4.1 - Minimum subdivision lot size

7. Not applicable.

Clause 4.6 – Exceptions to development standards

(1) *The objectives of this clause are as follows:*

(a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

(b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

8. Not applicable.

**Part 5 – Miscellaneous Provisions**Clause 5.4 – Control relating to miscellaneous permissible uses

9. Not applicable.

Clause 5.9 – Preservation of Trees or Vegetation

10. The proposed development does not involve the removal of any tree or vegetation subject to the provisions of this clause.

Clause 5.10 – Heritage Conservation

11. The subject site is not listed as a heritage item in Schedule 5, is not within a Heritage Conservation Area, nor are there any heritage items located nearby.

**Part 6 – Additional Local Provisions**Clause 6.1 – Acid Sulfate Soils

12. The subject site is not shown as being affected by acid sulfate soils as identified on the Acid Sulfate Soil Map.

Clause 6.2 – Earthworks

13. Not applicable.

**Item D1 (cont.)**

Clause 6.3 – Flood Planning

14. The subject site has been identified in the Kogarah Bay Creek Stormwater Overland Flow Risk Management Plan and therefore may be subject to flooding caused by stormwater overland flow.
15. The commercial suite subject to the proposed change in use is situated at ground floor level of the building. The ground floor level is significantly elevated above the street frontage and is therefore not likely to be affected by flooding.
16. It is considered that the proposed development satisfies the provisions of this clause in terms of compatibility, effect on flood behaviour, risk to life, impact on the environment and social and economic costs.

Clause 6.4 – Limited Development on Foreshore Area

17. Not applicable.

Clause 6.5 – Airspace Operations

18. The proposed development will not penetrate the Limitation or Operations Surface for both Sydney and Bankstown Airports and therefore provisions of this clause are not applicable.

Clause 6.6 – Development in areas subject to aircraft noise

19. Not applicable.

Clause 6.7 – Location of sex services premises

20. Not applicable.

**State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

21. A BASIX Certificate is not required to be issued for the proposed development.

**State Environmental Planning Policy (Infrastructure) 2007**

22. The site is located opposite the Southern/Illawarra Railway corridor. In this regard Clauses 85 & 87 of the Infrastructure SEPP must be considered.
23. In this regard the proposed change in use is not likely to have an adverse effect on rail safety or involve the use of a crane in air space above the rail corridor. The considerations outlined in Clause 85 (Development adjacent to Rail Corridors) are considered complied with.
24. The proposed use of the suite is not for residential purposes, public worship, a hospital, educational establishment or child care centre. The considerations outlined in Clause 87 (Impact of rail noise or vibration on non-rail development) are therefore considered complied with.

## Item D1 (cont.)

**Deemed State Environmental Planning Policy – Georges River Catchment**

25. Any stormwater from the proposed development can be treated in accordance with Council's Water Management Policy and would satisfy the relevant provisions of the Deemed State Environmental Planning Policy – Georges River Catchment
- (ii) *any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and*
26. A Planning Proposal for the New City Plan to amend Kogarah LEP 2012 is currently being considered.
27. The New City Plan includes changes to zoning and the introduction of development standards in parts of the City to deliver a range of new housing options.
28. The proposal is not inconsistent with the objectives and standards with the New City Plan.
29. There are no other draft planning instruments that are applicable to this site.
- (iii) *any development control plan,*

**Kogarah Development Control Plan 2013 (KDCP 2013)**

30. The proposed development is situated within the Hurstville Town Centre and is subject to the provisions of the Kogarah Development Control Plan 2013 (KDCP2013). The following comments are made with respect to the proposal satisfying the objectives and controls contained within the DCP.

**Vehicular access, Parking and Circulation**

31. A public car park is situated at lower ground floor level immediately below the existing commercial suite subject to the proposed change in use.
32. The existing public car park satisfies the parking demand generated by the proposed change in use.
33. One car space is also allocated on title, within the basement level of the building for the use of the occupants of the proposed tattoo studio. The carparking levels, connect to other levels of the building via an internal lift.
34. The proposed development satisfies the relevant objectives and controls KDCP 2013.

**Signage**

35. It is proposed to install signage within the shop front window to identify the use and premises. The submission contains insufficient detail to accurately assess the proposed signage.
36. A condition of Development consent has been imposed to reflect the above.

## Item D1 (cont.)

**BCA Considerations****Access for People with a Disability**

37. Pursuant to Part D3.1 of the BCA, access for people with a disability is to be provided to and within all areas normally used by the occupants of the building, from the main point of pedestrian entry at the allotment boundary and from any required accessible carparking space.
38. The proposal appears capable of compliance with the above requirement. Specific details will need to be submitted to indicate the intended method of compliance prior to the issue of a Construction Certificate.
39. A condition of Development consent has been imposed to reflect the above.

**Sanitary Facilities**

40. Sanitary facilities for the use of building occupants and people with a disability are required to be provided within the building in accordance with the requirements of Part F2.3 & F2.4 of the BCA. The submission contains insufficient detail to accurately assess the compliance with this requirement.
41. A condition of Development consent has been imposed to reflect the above.
- (iv) *Any matters prescribed by the regulations, that apply to the land to which the development application relates,*
42. Not applicable.
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
43. The proposed development is of a scale and character in keeping with other commercial uses in the locality. Accordingly, the proposal is not considered to have a significant impact on the natural and built environment of the locality.
- (c) *the suitability of the site for the development,*
44. It is considered that the proposed development is of a scale and design that is suitable for the site having regard to its size and shape, its topography and relationship to adjoining developments.
- (d) *any submissions made in accordance with this Act or the regulations,*
45. In accordance with the provisions of Section A2 – Public Notification of KDCP 2013, the application was placed on neighbour notification for a period of fourteen days and adjoining property owners were notified in writing of the proposal and invited to comment. Submissions were received from the strata managing agents of the building and the owners of Unit No. 802 and Shops 8 and 9, 600 Railway Parade, raising the following concerns:

**Item D1 (cont.)**

1. *Tattoo Studios are a target for criminal activities and anti-social behaviour.*
2. *The tattoo studio is located adjacent to a child-care centre and customers of the tattoo studio will pass by the childcare centre and may be confronting and visually offensive to patrons of the child care centre.*
3. *Occupants of the child care centre will suffer an increased risk to personal safety from undesirable customers of the tattoo studio.*
4. *The long business hours proposed are not appropriate for the locality or the existing mixed commercial/residential building.*
5. *There is no on street parking in front of the site.*
6. *Possible noise nuisance from customers arriving on motor bikes.*
7. *Use of public carpark within the building may attract anti-social behaviour.*
8. *A tattoo business is out of character within a primarily residential location.*
9. *Behaviour of tattoo parlour customers may intimidate other residents and occupants in the building.*

**Comment:**

46. The Development Application submission sought consent for hours of operation from 12 noon to 8pm.
47. Significant concerns were raised in relation to the proposed use by NSW Police in the Crime Risk Assessment Report, particularly in respect to the safety of staff, residents and surrounding properties. Other concerns were raised in respect to anti-social, offensive conduct and possible criminal behaviour occurring upon the site and within the locality, as a result of the proposed use, particularly in the early hours of the morning.
48. These concerns were outlined and discussed with the applicant. Subsequently, the applicant modified the proposed trading hours sought to 11am to 7pm.
49. NSW Police were also notified of this modification to the trading hours. Further, advice was received from NSW Police that the modified hours of operation were more appropriate. However, concerns were still raised about the proposal, particularly having regard to the tattoo studios location adjacent to an existing childcare centre.
50. The NSW Police Crime Risk Assessment Report also outlined recommendations in the event that Council as the consent authority, is to approve of the proposed development.
51. The concerns raised by the Strata Manager and the adjoining neighbours have also been considered.
52. Many of the public concerns raised are consistent and are correlated to a well-documented historical link between tattoo studios and anti-social and criminal activities.
53. It should be noted however, pursuant to the Kogarah LEP 2012, the proposed use is permissible within the B4 – Mixed Use zoning applicable to the site.

**Item D1 (cont.)**

54. In this regard, to maintain the amenity of the surrounding area, the hours of operation have been modified to be more in keeping with the locality and surrounding commercial and residential land-uses.
55. The other public concerns raised by the opponents of the development, although numerous, are primarily subjective perspectives regarding the issue of public amenity, safety and public interest.
56. In assessing this application, previous Land & Environment Court decisions have held the consent authority must not blindly accept subjective concerns raised in public submissions and that there must be evidence that can be objectively assessed that shows the adverse effect of the development on the amenity of the area.
57. At the time of assessment, no other evidence has been submitted to indicate specifically that the proposed development, its proprietors, staff and customers would have an adverse effect on the amenity of the area.
58. In this regard as the proposed use is a permissible use within the locality, the proposed development is considered acceptable.
59. The relevant recommendations from NSW Police have been incorporated into consent conditions.

**(e) *the public interest.***

60. For the reasons previously outlined in this report, the proposed development is considered to be of a scale and character that does not conflict with the public interest.

**Conclusion**

61. The application has been assessed having regard to the heads of consideration under Section 79C (1) of the Environmental Planning and Assessment Act 1979, the provisions of KLEP 2012 and the KDCP 2013.
62. Following detailed assessment it is considered that Development Application No. 243/2015 should approved subject to standard and the additional conditions outlined in this report.

**Attachments/Annexures**

<a href="#">1</a>	Neighbour Notification Map	1 Page	Annexure
<a href="#">2</a>	A4 Neighbour Notification plan	1 Page	Annexure

**End of Report**