

# Wollongong Local Planning Panel Assessment Report | 19 September 2023

<b>WLPP No.</b>	Item No. 2
<b>DA No.</b>	DA-2023/384
<b>Proposal</b>	Place of public worship - construction of a new monument - 32.5 metre cross
<b>Property</b>	100 Wyllie Road KEMBLA GRANGE
<b>Applicant</b>	Macedonian Orthodox Church Sv. Kliment Ohridski Port Kembla
<b>Responsible Team</b>	Development Assessment and Certification - City Wide Team (EM)

## ASSESSMENT REPORT AND RECOMMENDATION

### Executive Summary

#### Reason for consideration by Regional Planning Panel

The proposal has been referred to the Wollongong Local Planning Panel (WLPP) for **determination** pursuant to section 2.19(1)(a) of the Environmental Planning and Assessment Act 1979. Under Schedule 2(3) of the Local Planning Panels Direction of 30 June 2020, the proposal is development that contravenes a development standard imposed by an environmental planning instrument by more than 10%. Additionally, under Schedule 2(2b) the development is contentious development, having received more than 10 unique submissions by way of objection.

#### Proposal

The proposal is for the construction of a new monument being a 34 metre high x 22.37metre wide cross located on the grounds of an existing place of public worship.

#### Permissibility

The site is zoned RE2 Private Recreation pursuant to Wollongong Local Environmental Plan (WLEP) 2009. The proposal is categorised as development that is ancillary to a place of public worship and is not permissible in the RE2 Private Recreation zone. The proposal relies on existing use provisions detailed in the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2021.

#### Consultation

The proposal was exhibited in accordance with Council's Community Participation Plan 2019 and received 115 submissions in total, including 1 petition. Twenty of these submissions were objections to the proposal and 95 were in support of the proposal. The submissions are further discussed at section 1.5 of the assessment report.

#### Main Issues

- Existing use rights- intensification of the existing use on the site
- Exception to a development standard – Clause 4.3 Height of Buildings WLEP 2009
- Heritage impacts on Illawarra Escarpment Heritage Conservation Area
- Non-compliance with Chapter C13 – Places of Public Worship
- Built Form and Character
- Visual impacts
- Public Interest

## RECOMMENDATION

It is recommended that DA-2023/384 be refused.

## 1 APPLICATION OVERVIEW

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### 1.1 PLANNING CONTROLS

The following planning controls apply to the proposal:

State Environmental Planning Policies:

- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Koala Habitat Protection) 2021
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021

Local Environmental Planning Policies:

- Wollongong Local Environmental Plan 2009 (WDCP 2009)

Development Control Plans:

- Wollongong Development Control Plan 2009 (WDCP 2009)

Other policies

- West Dapto Development Contributions Plan (2020)
- Wollongong Community Participation Plan 2019

### 1.2 DETAILED DESCRIPTION OF PROPOSAL

The proposal comprises the following:

- One vertical, four arm cross, with a height of 32.5m and a width of 22.37m.
- The cross is constructed of galvanised steel and is proposed to be of the colour grey.
- A 1.532 metre high support plinth at the base. The support plinth is brick.

The total height of the cross and plinth is 34m.

### 1.3 BACKGROUND

The relevant development history of the site is as follows:

Application Number	Description (Application)	Decision	Determined
CC-2005/381	Construction Certificate - Council New bell tower	Approved	15 December 2008
PC-2013/19	Construction Certificate - Private Certifier Construction of car park with 92 spaces, candle room and associated water feature, front boundary fence and entry gate	Approved	11 December 2012
DA-2009/1679	Development Application Construction of car park with 92 spaces, candle room and associated water feature, front boundary fence and entry gate	Approved	23 December 2010
DA-2005/1869	Development Application Bell Tower and Electrical Switch Room	Approved	8 September 2011

DA-2009/1679/A	(Construction of car park with 92 spaces, candle room and associated water feature, front boundary fence and entry gate Modification A - extension of car park, pathway, landscaping and levelling of western car park)	Approved	8 November 2018
DA-1997/679	Monastery and Chapel and 2 Lot Subdivision	Approved	2 February 1998

No pre-lodgement meeting was held for the proposal.

#### Customer service actions

The site has previously been subject to a number of enforcement actions and notices in relation to the illegal dumping of fill material. These have satisfactorily been resolved, requiring no further action and do not impact on the proposed development.

There are no outstanding customer service requests of relevance to the development.

#### **1.4 SITE DESCRIPTION**

The site is located at 100 Wyllie Road KEMBLA GRANGE and the title reference is Lot 11 DP 878167. The site is an irregular shaped lot with an area of approximately 5.87ha and a frontage of approximately 236m to Wyllie Road.

The site falls from the northwest at 90m AHD to the south east at 24m AHD, an overall change in level of 66 metres across the site. Existing development on the site consists of a monastery, a bell tower, associated church buildings, a 92-space car park, access driveway and landscaping- the main buildings on site are located at around the 54-metre contour.

The site contains minimal vegetation and as such, the north-western corner of the site creates a significant viewpoint in this location due to its high elevation.

Adjoining development is as follows:

- North: Dense vegetation directly north on environmentally zoned land and the residential area of Farmborough Heights approximately 250m north.
- East: Lawn Cemetery to the immediate east.
- South: Wyllie Road directly to the south, and the Ian McLennan Park approximately 75m to the south.
- West: Recycling Facility and lands occupied by Farmborough Height Rural Fire Service

#### Property constraints

Council records identify the land as being impacted by the following constraints:

- Flooding: Medium and High Flood Risk Precincts
- Ecologically Sensitive Land – NR Biodiversity
- Unstable land
- Acid sulphate soils: Class 5
- Bushfire prone land
- Encumbrance

There following restrictions are on the title:

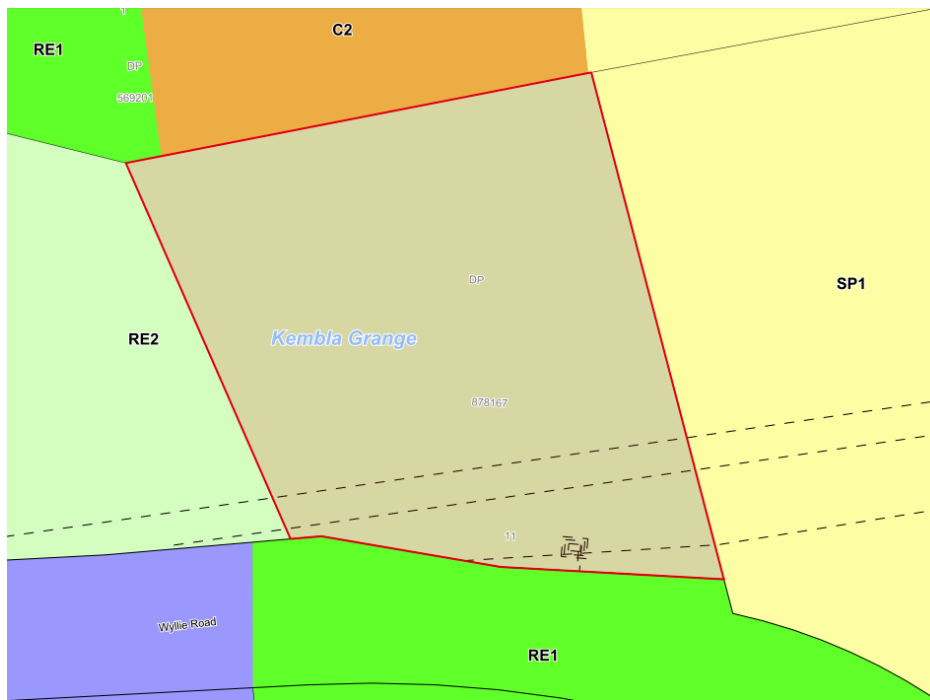
- No building or other structure shall be erected or permitted to remain on the land hereby burdened unless a stormwater detention structure is constructed in accordance with plans and specifications which have been prepared by Wollongong City Council's *Requirements for On Site Detention Storage* or approved by the City of Wollongong Council.
- No building or other structure shall be erected or permitted to remain on the land hereby burdened unless constructed in accordance with plans and specifications which have been prepared by a qualified structural and/or civil engineer or approved by Wollongong City Council.

There are easements benefitting Endeavour Energy for a 33,000-volt high voltage overhead power lines in close proximity to the site. Endeavour Energy have reviewed the proposal and provided conditions for inclusion of any consent granted.



Figure 1: Aerial photograph





**Figure 2: WLEP 2009 zoning map**

### 1.5 SUBMISSIONS

The proposal was exhibited in accordance with Council's Community Participation Plan 2019. There were 115 submissions received, including one petition that contained 476 signatures of objection. It is noted that out of these 115 individual submissions, 20 were in opposition to the proposal. The issues identified are discussed below.

**Table 1: Submissions**

Concern	Comment
1. Height and Development Standards Departure	<p>The proposed development exceeds the 9m permitted building height for the land identified under Clause 4.3 of the <i>WLEP 2009</i> by 25m. It is noted that Clause 4.4 of Chapter C13 WDCP 2009 states that spires, towers, or similar structures should be included in height calculations and must be sympathetic with the prevailing character of the locality.</p> <p>The submitted <i>Clause 4.6 Variation</i> does not satisfactorily address required planning justifications for the departure and is not consistent with the required objectives of the RE2 zone.</p>
2. Public Interest	<p>The proposed cross is not considered to be in the public interest due to its adverse visual impact arising from the size, scale and external appearance extending outside of the subject site. The proposed cross can be viewed from significant viewpoints across the LGA of up to 1.5km away.</p>
3. Character and Precedence	<p>The size, scale, height, form, and external appearance of the proposal is not compatible the prevailing character of the locality. The proposal, as discussed throughout the report, is out of character with the</p>

Concern	Comment
	<p>area, particularly that of the Illawarra Escarpment, and would likely result in adverse amenity and environmental impacts. The proposal has failed to adequately consider the constraints and context of the site.</p> <p>Whilst the existence of the transmission tower above the ridgeline is acknowledged, Council does not believe that this historical, utility development should set a precedent for future development that will have intensified and unreasonable visual impacts. The transmission tower is located on Council owned land and is a service that benefits the greater community, therefore incomparable to the proposed cross which is located on private land with limited public interest and of private benefit.</p> <p>The development does not consider the amenity of the surrounding locality and is expected to have adverse visual impacts on neighbouring sites, including the residential neighbourhood of Farmborough Heights to the north, Berkeley and Unanderra to the south-east and Kembla Grange.</p>
4. Visual Impact	<p>The proposal is located on an upslope hill with the Illawarra Escarpment ridgeline as a backdrop. The Visual Impact Assessment (VIA) argues the topography will improve the visual impact; however this is inconsistent with the Statement of Environmental Effects (SEE) which notes the proposal is to be a landmark monument. The SEE states "The purpose of a monument of this scale and size is because such important monuments are meant to be visually important and manifest."</p> <p>Additionally, the VIA does not consider key views from the Escarpment looking east identified in Chapter B6 of WDCP. It is unclear whether the monument would be visible from key locations to the west, such as Mount Kembla.</p> <p>The VIA also argues that the monument is not to exceed the height of the transmission tower, however it is 32m tall and the proposal is 32.5m tall. Due to the topography, the RL's are inconsistent and conflicting.</p> <p>There are significant views along Northcliffe Drive to the ridgeline of the Escarpment. Development within Farmborough Heights is largely hidden behind the topography, and as such, the monument would become the focal point and interrupt these escarpment view lines.</p>
5. Heritage	<p>The proposed development will have an unacceptable visual impact on the Illawarra Escarpment Heritage</p>

Concern	Comment
	<p>Conservation Area (HCA). The proposed development does not satisfy the objectives or controls of Chapter E11 Part 14.2 Development in the Vicinity of a Heritage Item.</p> <p>A Heritage Impact Statement has not been provided that considers the potential impacts on the HCA, as required by Part 10 of Chapter E11.</p> <p>The proposed monument will have an adverse visual impact on the HCA as identified in the VIA prepared by Form Design Studio. The application does not address Clause 5.10 of WLEP and does not demonstrate how the proposal meets the WLEP objectives of 5.10(1) (b).</p> <p>The variation is not supported from a heritage perspective due to visual impacts on the Illawarra Escarpment HCA.</p>
<p>6. Environmental Impacts (erosion, wildlife)</p>	<p>Details of the application submission were referred to Council's Geotechnical Officer for comments relating to site instability and potential erosion. Advice received is that the application is considered conditionally satisfactory in this regard.</p> <p>The application was also referred to Council's Environment Officer for comment on the proposal's potential impacts upon wildlife. There is no tree removal or remediation work required as part of this development, however information relating to proposed lighting has not been provided and as such, the impacts of the proposal on wildlife from lighting are unknown.</p>
<p>7. Community Consultation</p>	<p>Concerns raised an evident lack of consultation with community, in particular the Aboriginal Community.</p> <p>The Illawarra Escarpment and the connection between Mount Kembla and Mount Keira, as well as views to and from the Five Islands has significant cultural values to the Aboriginal Community.</p> <p>The proposal will interrupt these views and connections and have adverse impacts on the cultural values associated with the Escarpment.</p> <p>The proposal is not consistent with Chapter B6 Objective (b) "Protect and conserve the cultural heritage of the Illawarra Escarpment, including places of Aboriginal cultural heritage significance".</p> <p>No consideration of the cultural values of the Escarpment and potential impacts have been demonstrated.</p> <p>Whilst it is noted that an Aboriginal Heritage Information Management System (AHIMS) report has</p>

Concern	Comment
	<p>been submitted and did not return any Aboriginal sites in or near the location, the concern is the Illawarra Escarpment backdrop as a holistic item, not the specific subject site.</p> <p>Consultation with the Aboriginal Community is required.</p> <p>Records show there was also no prior consultation with Council. Council's pre-lodgement meeting feature should have been utilised. It is clearly stated on Council's website that pre-lodgements are recommended for work that varies from standard development policies.</p>
<p>8. Traffic Impacts (congestion increase, distraction to Princes Highway)</p>	<p>The proposal may be reasonably is expected to substantially increase visitation and traffic to the site due to its social and cultural significance, as outlined in the SoEE.</p> <p>Council considers the development to substantially increase traffic generation and therefore should comply with Chapter C13, Clause 4.10.2 and Chapter E3 of WDCP2009.</p> <p>The development is considered a major alteration and/or addition to an existing development that will result in a significant increase in patrons. No supporting traffic analysis was provided in accordance with the requirements of Chapter E3 of Wollongong DCP 2009. The car park and access to the site is currently via an unsealed road and the capacity of that road to cater to increased vehicular movements is uncertain. Although the SoEE clearly indicates an expected increase in visitors to the site, with the proposed cross envisaged to become a tourist attraction in its own right, additional supporting information in relation to the traffic impacts was not provided with the application.</p> <p>Given the likely increase in patronage, there is minimal capacity on the existing site as a tourist attraction.</p> <p>The proposal will also likely have an obtrusive and distractive impact on the adjacent A1 motorway and traffic impacts to residents in the suburbs of Berkeley, Stream Hill, Brownsville, and Horsley.</p>
<p>9. Zoning</p>	<p>The development is not a type of development that is permissible with consent in the RE2 Private Recreation zone, however it is noted that the proposal relies on existing use rights, in accordance with Division 4.11 of the Environmental Planning and Assessment Act 1979.</p> <p>It is believed, however, that the development is not consistent with the zone objectives, impacts on the Illawarra Escarpment heritage are considered</p>

Concern	Comment
	detrimental and the proposal will not provide enhanced protection of this area.
10. Illawarra Flight-Path Disruption	The site is not located within the Illawarra Airport Flight Path or obstacle limitation surface.
11. Economic Impacts (tourism, property values)	<p>Devaluation of property by a proposed development is not a matter for consideration under Section 4.15 of the Environmental Planning and Assessment Act.</p> <p>The application submission proposes that this development will become a “major tourist attraction for the area” as per the SoEE. No specific mention or plan of management has been submitted with this application to display the economic benefit this may bring, nor the number of visitors expected to the region. It is difficult for Council to comment on this matter as such insufficient detail has been provided on visitation times, rates and figures.</p>
12. Lighting and Noise Pollution	<p>No lighting has been proposed as part of the application submission.</p> <p>Noise impacts of the proposed development are likely confined to during construction only.</p>
13. Design and Materials	<p>The proposal will be an orthodox style, 4 arm cross made of galvanised steel.</p> <p>The appearance of the cross is significant and obtrusive against the backdrop of the Illawarra Escarpment.</p>
14. Amenities	Whilst increased visitation is expected, details have not been provided in relation to required upgrades to the site facilities.

Table 2: Number of concerns raised in submissions

Concern	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Frequency	9	11	3	13	5	3	3	2	2	1	2	2	1	1

There were 95 submissions received in support of the proposed development on the following basis:

- The cross will bring tourists to the region and generate greater economic benefits
- The cross holds cultural and spiritual value for many
- The cross will add to the natural landscape and be visually appealing
- The cross will improve the quality of life and health for people in the region
- The cross is a symbol of “unity and peace”

## **1.6 CONSULTATION**

### **1.6.1 INTERNAL CONSULTATION**

#### **Geotechnical Engineer**

Council's Geotechnical Officer has reviewed the application and provided a conditionally satisfactory referral.

#### **Urban Release**

Council's Urban Release team has reviewed the application and has provided a satisfactory referral.

#### **Heritage Officer**

Council's Heritage Officer has reviewed the application and provided an unsatisfactory referral response for the following reasons:

- The proposed development is not supported from a heritage perspective, as it will have an unacceptable visual impact on the Illawarra Escarpment HCA.
- The proposed development does not satisfy the objectives or controls of Part 14.2 Development in the vicinity of a heritage item and is a significant exceedance of the LEP height limit, which has not been demonstrated to not have an impact on the setting, views to, and rural character of, the heritage item.
- There was also no prior consultation or consideration towards the Aboriginal Community before lodgement and their connection to the Illawarra Escarpment.

#### **Environment Office**

Council's Environment Officer has reviewed the application and provided an unsatisfactory referral response for the following reasons:

- the VIA fails to demonstrate any visual and obtrusive impacts of the development on M1 traffic and suburbs of Farmborough, Berkely, Stream Hill, Brownsville and Horsley.
- there was no description of proposed lighting for the cross including any flood lights pointing upward at the cross, their LUX values and compliance with Transport for NSW and Airservices Australia requirements or details of impacts on nearest suburbs and adjoining bushland.

#### **Development Engineering Officer**

The application has been assessed in regard to traffic, stormwater and flooding matters and found to be unsatisfactory in regard to traffic.

### **1.6.2 EXTERNAL CONSULTATION**

#### **Endeavour Energy**

The application was referred to Endeavour Energy under section 2.48 of State Environmental Planning Policy (Transport and Infrastructure) 2021 as development likely to affect an electricity transmission or distribution network. Correspondence was received from Endeavour Energy dated 22 May 2023, noting no objection to the development application.

#### **Australian Rail Track Corporation**

The application was referred to the Australian Rail Track Corporation (ARTC). Correspondence was received from ARTC dated 13 June 2023. There was no objection to the development application.

#### **Transport for NSW**

The application was referred to Transport for NSW. The site is considered too far from the transport corridor to warrant assessment under s.2.120 of State Environmental Planning Policy (Transport and Infrastructure) 2021.

## **Sydney Trains**

The application was referred to Sydney Trains. The site is too far from the transport corridor to warrant assessment under s2.98 of State Environmental Planning Policy (Transport and Infrastructure) 2021.

## **Jemena**

The application was referred to Jemena under s2.77 of State Environmental Planning Policy (Transport and Infrastructure) 2021, however no comments were provided.

## **TransGrid**

The application was referred to TransGrid under s2.48 of State Environmental Planning Policy (Transport and Infrastructure) 2021 however no comments were provided.

## **2 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

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### **2.1 SECTION 1.7 APPLICATION OF PART 7 OF BIODIVERSITY CONSERVATION ACT 2016 AND PART 7A OF FISHERIES MANAGEMENT ACT 1994**

This Act has effect subject to the provisions of Part 7 of the Biodiversity Conservation Act 2016 and Part 7A of the Fisheries Management Act 1994 that relate to the operation of this Act in connection with the terrestrial and aquatic environment.

#### NSW BIODIVERSITY CONSERVATION ACT 2016

There is no clearing of native vegetation proposed and as such, the proposal does not trigger the requirement for a biodiversity offset scheme. The site is also not identified as being of high biodiversity value on the [Biodiversity Values Map](#).

The development would therefore not be considered to result in adverse impacts on biodiversity and is consistent with the provisions of the Biodiversity Conservation Act 2016.

### **2.2 EXISTING USES**

#### **2.2.1 DIVISION 4.11 EXISTING USES ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

The proposed development is ancillary to a place of public worship which is prohibited development in the RE2 Private Recreation zone. Council's records for the development history of the site indicate that DA-1997/679 was issued under Wollongong Local Environmental Plan 1990 for a Monastery and Chapel and 2 Lot Subdivision".

A number of subsequent consents detailed under section 1.3 of this report appear to indicate that there was continuity of the approved land use on the site, however the application submission is silent on the matter of permissibility and existing use rights.

#### **2.2.2 ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2021 – PART 7 EXISTING USES- THE ACT, DIV 4.11**

Based on the description and intent of the proposal as described in the application submission, it appears that the proposed "monument" will constitute an intensification of the existing use on the site, although this is not articulated in the application submission and insufficient information has been submitted to enable a complete assessment.

The intensification is a contravention of s4.66(2)(c) of the Act in the absence of the application clearly seeking consent for the intensification of the existing use under Part 7 of the Regulations.



## **2.3 SECTION 4.15(1)(A)(1) ANY ENVIRONMENTAL PLANNING INSTRUMENT**

### **2.3.1 STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021**

#### **Chapter 4 Koala Habitat Protection 2021**

The subject lot has an area of more than one hectare. No approved koala plan of management applies to the lot.

Details of the application submission were referred to Council's Environment Officer for comment. Advice received is that the proposed development would have no impact on koalas or koala habitat as no trees are to be cleared.

### **2.3.2 STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021**

#### **2.48 Development likely to affect an electricity transmission or distribution network**

Endeavour Energy have reviewed the proposal and provided a conditionally satisfactory referral response on 22 May 2023.

#### **2.77 Development adjacent to pipeline corridors**

Jemena Gas was requested to comment on the proposal; however no response has been provided to date.

#### **2.98 Development adjacent to rail corridors**

Sydney Trains have reviewed the proposal and a decision was not required as per their referral advice of 1 June 2023.

### **2.3.3 STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021**

#### **Chapter 4 Remediation of land**

#### 4.6 Contamination and remediation to be considered in determining development application.

A desktop audit via Council's land information system database for property constraints and previous uses was undertaken to understand the likelihood of contamination issues. Filling without consent has occurred on the site in the past and has been the subject of enforcement action by Council. A review of Council's records reveals that this matter was satisfactorily resolved on 9 November 2018, and that the fill material was clean and did not contain contaminated material. As there are no other issues that might indicate the likelihood of contamination, the WLPP as the determining authority can be satisfied that clause 4.6 matters are thus satisfied.

### **2.3.4 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009**

#### Clause 1.4 Definitions

**Place of public worship** means a building or place used for the purpose of religious worship by a congregation or religious group, whether or not the building or place is also used for counselling, social events, instruction or religious training.

#### **Part 2 Permitted or prohibited development**

#### Clause 2.2 – zoning of land to which Plan applies

The zoning map identifies the land as being zoned RE2 Private Recreation.

#### Clause 2.3 – Zone objectives and land use table

The objectives of the zone are as follows:

- To enable land to be used for private open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.

The proposal is unsatisfactory with regard to the above objectives.

The land use table permits the following uses in the zone.

Animal boarding or training establishments; Aquaculture; Boat building and repair facilities; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Centre-based child care facilities; Community facilities; Entertainment facilities; Environmental facilities; Environmental protection works; Extensive agriculture; Function centres; Kiosks; Markets; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Respite day care centres; Restaurants or cafes; Roads; Signage; Take away food and drink premises; Water recreation structures

The proposal is ancillary to an existing place of public worship, which is a prohibited land use in the RE2 zone. As discussed above under section 2.2, the proposal relies on existing use rights.

#### Part 4 Principal development standards

##### Clause 4.3 Height of buildings

This clause prescribes a maximum height of 9m for the Site, as shown on the Height of Buildings Map. The proposed cross and plinth has a maximum overall height of 34m, exceeding the height limit by 25m.

##### Clause 4.6 Exceptions to development standards

An exception to the building height development standard under Clause 4.6 is sought. The applicant's Clause 4.6 Statement forms **Attachment 3**.

Table 2: Clause 4.3 Height of buildings of WLEP 2009

WLEP 2009 clause 4.6 proposed development departure assessment	
Development departure	Clause 4.3 Height of buildings
Is the planning control in question a development standard	Yes
4.6 (3) Written request submitted by applicant contains a justification:	
that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and	<p>The applicant provides the following justification that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:</p> <p><i>Although the Wehbe case was decided in relation to State Environmental Planning Policy No 1— Development Standards ("SEPP 1") and not clause 4.6 of WLEP, it remains of some assistance in relation to identifying the ways in which an applicant may demonstrate that compliance with development standards is unreasonable or unnecessary in the circumstances of the case.</i></p> <p><i>This case is applied in this circumstance, as it better fits the predicament of a monument structure that exceeds the height of buildings control.</i></p> <p><i>In the Wehbe case, Justice Preston said the most commonly invoked way to establish that compliance with a development standard is unreasonable or unnecessary is to demonstrate that the objectives of the development standard are achieved notwithstanding noncompliance with the standard.</i></p> <p><i>The objectives of the height of buildings control are set out in Clause 4.3 (1) of WLEP as follows and we provide an assessment against these:</i></p> <p><i>(a) to establish the maximum height limit in which buildings can be designed and floor space can be achieved,</i></p>

	<p><i>Assessment: In this instance, the emphasis of the words floor space is obvious to the reader.</i></p> <p><i>We note there is no floor space ratio in place for the land and we know as a matter of fact that floor space leads to cubic content or floor space of a building.</i></p> <p><i>And furthermore, there is a correlation between building height and floor space which also provides guidance for the bulk and scale of a building. When these elements are introduced, they reflect a usable floor space which is turn relates to a building with walls and cubic content.</i></p> <p><i>In this instance we do not have any enclosed walls or floor space and we would simply say that Clause (a) would not apply to a monument in our interpretation of this wording.</i></p> <p><i>(b) to permit building heights that encourage high quality urban form,</i></p> <p><i>Assessment: The objective here is to achieve high quality urban form.</i></p> <p><i>The Cambridge Dictionary defines a form as:</i></p> <p><i>the shape or appearance of something.</i></p> <p><i>We would state the shape and appearance of the Cross to be formed of structural steel elements in the classical form being Orthodox style is appropriate and culturally and religiously representative and respectful to Jesus Christ.</i></p> <p><i>We have also given example of similar monuments erected around the world and the Cross in our view with the 4 arm detail is on par with other impressive Crosses.</i></p> <p><i>(c) to ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight.</i></p> <p><i>Assessment: The Cross would not block the views of the sky or affect sunlight exposure as there are no buildings in the immediate vicinity of the space around the vertical arms of the Cross.</i></p> <p><i>It is unlikely that any future buildings would be erected at the escarpment to the north or north west given the power lines that are located in that area given the bushfire prone land over this landscape.</i></p> <p><i>Therefore, the proposal satisfies the relevant height of buildings objectives.</i></p> <p><u><i>Consistency with the zone objectives of Wollongong Local Environmental Plan 2009</i></u></p> <p><i>The subject site is zoned RE 2 Private Recreation under Wollongong Local Environmental Plan 2009.</i></p> <p><i>The objectives of the RE 2 Private Recreation zone are set out in the Land Use Table of WLEP as follows and we provide an assessment against these:</i></p> <ul style="list-style-type: none"> <li><i>• To enable land to be used for private open space or recreational purposes.</i></li> </ul> <p><i>Assessment: The erection of the Cross would support the current use of the premises for physical, social, cultural or intellectual development or welfare of the community.</i></p> <ul style="list-style-type: none"> <li><i>• To provide a range of recreational settings and activities and compatible land uses.</i></li> </ul>
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	<p><i>Assessment: The land is currently used as a community facility and the erection of the Cross would not conflict with the use of adjoining lands and is considered compatible for cultural and spiritual purposes.</i></p> <p><i>This part of the land holding with the upslope topography would not be suited for any buildings or recreational space in a traditional sense such as fields or courts.</i></p> <p><i>The landscape would rather encourage activities to occur by foot for say hikers and trekkers and is something that would be stimulated upon the erection of the Cross as the land would otherwise be considered inaccessible.</i></p> <ul style="list-style-type: none"> <li><i>• To protect and enhance the natural environment for recreational purposes.</i></li> </ul> <p><i>Assessment: The erection of the Cross would not compromise the environmental capability of the land holding as the land is already clear and would allow the land to be used by hikers and trekkers to get a closer look at the monument and to enjoy the surrounding environment.</i></p> <ul style="list-style-type: none"> <li><i>• To cater for the development of a wide range of uses and facilities within open spaces for the benefit of the community.</i></li> </ul> <p><i>Assessment: Upon completion, we feel the Cross will have important spiritual, symbolic cultural and social purposes for the Monastery and would encourage walkers and trekkers to access this open space.</i></p> <p><i>This would extend beyond the realm of the local Macedonian community but would reach out to far greater audiences and result in tourists appreciating the ridgeline.</i></p> <p><i>The development proposal satisfies the objectives of RE 2 Private Recreation zone under Wollongong Local Environmental Plan 2009 and the proposal does not result in any circumstance that would be contrary to those objectives.</i></p> <p><u><i>Consistency with State and Regional planning policies</i></u></p> <p><i>Assessment: The height of buildings variation requested for the purposes of a monument allows for the orderly and economic use of land as envisaged by the Environmental Planning and Assessment Act, 1979.</i></p> <p><i>If the height control was strictly enforced, it would contradict the purpose of a monument and would lead to a less impressive structure and poor architecture.</i></p> <p><i>We believe the Cross is compatible with surrounding land uses and there would be no detrimental visual intrusions or visual impacts to the locality.</i></p> <p><u><i>The variation allows for a better planning outcome</i></u></p> <p><i>Assessment: We believe the variation should be sought as the Cross is to serve as an important monument and we have given the reasons for this.</i></p> <p><i>This approach is desirable in the context of this application and is considered a better planning outcome to achieve a superior architectural outcome.</i></p>
that there are sufficient environmental planning grounds to	<p>The applicant provides the following commentary in relation to planning grounds:</p>

<p>justify contravening the development standard.</p>	<p><i>Assessment: There and no adverse environmental outcomes identified in our assessment.</i></p> <p><i>Monuments around the world have been built by many different groups and societies throughout time and the purpose of a monument is for it to be grand and monumental structure.</i></p> <p><i>We believe the Cross in the classical form is appropriate and culturally and religiously representative and respectful to Jesus Christ.</i></p> <p><i>The height of the monument being 32.5 metres also represents the age of Jesus Christ.</i></p> <p><i>To date, our approach to monuments in Australia has been lost or simply said to be ordinary, and we feel this Cross would be classical and traditional which is the appropriate measure.</i></p> <p><i>The variation is in the public interest.</i></p> <p><i>Assessment: No circumstances have been identified to indicate that the proposal would not be in the public interest.</i></p>
<p>4.6 (4) (a) Consent authority is satisfied that:</p>	
<p>the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</p>	<p>The applicant's written request has not sufficiently demonstrated those matters set out by subclause (3).</p> <p>The submission argues that the relevance of the standard objectives is limited, however its argument is flawed in the following respects:</p> <p>(a) in relation to objective 4.3(1)(a), reference to floor space ratio does not derogate the relevance of the aim to establish the maximum building height limit in which buildings can be designed. Although it is agreed that in tandem, building height and floor space ratio can work together to influence bulk and scale and that floor space is not relevant to the proposed cross, it is noted that the structure is not two dimensional and still has scale, of which the proposed building height is a factor. In this regard, the scale of the proposal is considered to be unacceptable.</p> <p>(b) the proposal is not considered to achieve high quality urban form. A high quality urban form respects the context and character of the area in which it is located and minimises adverse visual impacts that might otherwise arise from a poor design response. In its efforts to present as a "monument", the proposal aims to be visually prominent, is located on the high point of the site to increase the visual impact and as such, results in adverse visual impacts on the surrounding area.</p> <p>It is noted that there is already a bell tower and chapel that exceed the permissible building height, being approved at approximately 24m high and 14 metres high under the previous planning instrument, under which building height was not a development standard. However the bell tower and chapel sit amongst the existing buildings on site and on the lower portion of the slope, within the curtilage of the approved built form for the land use. The circumstances of those approvals do not represent an abandonment of the standard.</p> <p>In relation to the zone objectives, the existing use and proposal are generally not consistent with the zone objectives as they are not a category of development that would be ordinarily be contemplated for the zone.</p>

	<p>The following points are noted in response to the submission:</p> <p>(a) the proposed land use is neither private open space or a use for the purposes of recreation, thus the development does not satisfy objective (a);</p> <p>(b) objective (b) considers land uses that are compatible with the recreational zoning. The application submission has not clearly demonstrated how the proposed cross or “monument” will relate to both the existing land use and the future use of the site. Likely impacts have not been sufficiently explored and detailed and as such, the determining authority cannot be satisfied that the proposed intensification of the existing use will not result in adverse impacts and that the site is suitable for the development. In addition, the visual impacts and impacts on the Illawarra Escarpment that <i>are</i> known are not acceptable and are not considered to be “compatible” with the objectives of the zone;</p> <p>(c) the proposal does not protect or enhance the Illawarra Escarpment.</p> <p>In terms of sufficient environmental planning grounds to justify the contravention, in the absence of a complete application submission that fully describes the proposed use, how it is proposed to function and the likely impacts, it is not possible to draw a firm conclusion that the environmental planning grounds justify the exception. Based on what has been presented in the application submission, the known impacts are adverse and unacceptable and do not warrant contravening the building height standard.</p>
the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and	<p>The proposal exceeds the maximum building height of 9m with the proposal; for the cross at the highest point on the site at 34m.</p> <p>The submission has not demonstrated consistency with the zone and standard objectives. The development will adversely impact the Illawarra Escarpment Heritage Conservation area- this will set a negative precedent for the area as Council has been consistent in its application of standards and controls to protect the Illawarra Escarpment HCA. The proposal will interrupt significant views across the LGA and will have adverse visual impacts for surrounding suburbs such as Kembla Grange, Berkeley, and Farmborough Heights. The cross will also disrupt deep connections to the Illawarra Escarpment held by the Aboriginal Community.</p> <p>The proposal fails to meet the objectives of the zone regarding protecting and enhancing the natural environment. The cross has adverse visual impacts on an important natural area of significance and is not considered appropriate in the context of the existing and future anticipated character of the area. The development is therefore considered not to be in the public interest as it inconsistent with objectives of the development standard and the objectives for development in the zone.</p>
the concurrence of the Secretary has been obtained.	Wollongong Local Planning Panel can exercise its assumed concurrence in this instance.

Comment: The requested exception to the development standard for height of the building is not supported.

## **Part 5 Miscellaneous provisions**

### Clause 5.10 Heritage conservation

The proposed development was reviewed by Council's Heritage Officer and has been considered in regard to potential heritage impacts as required under this Clause, Chapter B6: Development in the Illawarra Escarpment and E11: Heritage Conservation of WDCP 2009.

The site is adjacent to mapped Illawarra Escarpment land and is in the vicinity of the Illawarra Escarpment HCA. A Heritage Impact Statement has not been prepared which considers the potential impacts on the HCA as required by Part 10 of Chapter E11.

The proposed monument is 23.5m above the 9m LEP height limit and will have a visual impact on the Illawarra Escarpment HCA as identified in the VIA prepared by Form Design Studio. The variation is not supported from a heritage perspective due to visual impacts on the Illawarra Escarpment Heritage Conservation Area as discussed below.

The Escarpment and the connection between Mount Kembla and Mount Keira, as well as views to and from the Five Islands, have significant cultural values to the Aboriginal Community. The proposal will interrupt these views and connections and have an impact on the cultural values associated with the Escarpment. The proposal is not consistent with Chapter B6: Objective (b) Protect and conserve the cultural heritage of the Illawarra Escarpment, including places of Aboriginal cultural heritage significance. No consideration of the cultural values of the Escarpment and potential impacts has been demonstrated in the application submission.

### Clause 5.21 Flood planning

The subject land is identified as being flood hazard affected. Council's Development Engineering Officer has assessed the application submission in this regard and provided satisfactory advice.

## **Part 6 Urban release areas**

The application is located in the West Dapto Urban Release Area. A referral was sent to the Urban Release team who had no objection to the proposal, however raised concern with potential impacts upon Civil Aviation Safety. The proposal is not located within an area mapped as impacted by the Obstacle Limitation or Operations Surface.

## **Part 7 Local provisions – general**

### Clause 7.1 Public utility infrastructure

The subject site is already serviced by public utilities. However, visitation numbers to the site would be reasonably expected to increase and consideration towards amenities upgrades have not been demonstrated by the application submission.

### Clause 7.2 Natural resource sensitivity – biodiversity

Council records indicate the site is affected by "Natural Resource Sensitivity – Biodiversity". The application was referred to Council's Environment Division to assess likely impacts of the proposal in this regard and no objections were raised in relation to this matter. There is no tree removal proposed.

### Clause 7.5 Acid Sulfate Soils

The site is identified as being affected by class 5 acid sulphate soils, however an acid sulphate soils management plan is not required.

### Clause 7.6 Earthworks

Earthworks associated with the proposal are not considered to be land reshaping works. The proposed earthworks are not considered to have an adverse impact on environmental functions and processes, neighbouring uses or heritage items and features of surrounding land.



#### Clause 7.8 Illawarra Escarpment area conservation

The site is located within the Illawarra Escarpment Area. The application was accordingly referred to Council's Environment and Heritage Officers for comment. Significant concerns were raised in relation to impacts on the Illawarra Escarpment area, as discussed throughout this report.

#### **2.4 SECTION 4.15(1)(A)(II) ANY PROPOSED INSTRUMENT**

None Applicable.

#### **2.5 SECTION 4.15(1)(A)(III) ANY DEVELOPMENT CONTROL PLAN**

##### **2.5.1 WOLLONGONG DEVELOPMENT CONTROL PLAN 2009**

The development has been assessed against the relevant chapters of WDCP2009 and found to be unsatisfactory with regards to the Illawarra Escarpment, car parking and access and heritage. A compliance table is provided at Attachment 4 to this report.

##### **2.5.2 WEST DAPTO DEVELOPMENT CONTRIBUTIONS PLAN (2020)**

In accordance with Section 4.17(1)(h) of the Environmental Planning and Assessment Act 1979 and the West Dapto Development Contributions Plan (2020), a monetary contribution (subject to indexation) would be required be paid to Council towards the provision of public amenities and services, prior to the release of any associated Construction Certificate.

#### **2.6 SECTION 4.15(1)(A)(IIIA) ANY PLANNING AGREEMENT THAT HAS BEEN ENTERED INTO UNDER SECTION 7.4, OR ANY DRAFT PLANNING AGREEMENT THAT A DEVELOPER HAS OFFERED TO ENTER INTO UNDER SECTION 7.4**

There are no planning agreements entered into or any draft agreement offered to enter into under S7.4 which affect the development.

#### **2.7 SECTION 4.15(A)(IV) THE REGULATIONS (TO THE EXTENT THAT THEY PRESCRIBE MATTERS FOR THE PURPOSES OF THIS PARAGRAPH)**

##### **Environmental Planning and Assessment Regulation 2021**

There are no prescribed matters of relevance to the proposal that require further consideration under this section.

## 2.8 SECTION 4.15(1)(B) THE LIKELY IMPACTS OF DEVELOPMENT

### Context and Setting:

In regard to the matter of context, the planning principle in Project Venture Developments v Pittwater Council [2005] NSWLEC 191 is relevant in that it provides guidance in the assessment of compatibility. The two major aspects of compatibility are physical impact and visual impact. In assessing each of these the following questions should be asked:

- Are the proposals physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.
- Is the proposals appearance in harmony with the buildings around it and the character of the street?

In this circumstance the departure to the height development standard along with other Development Control Plan non-compliances and issues identified throughout the report indicate that the development as proposed is inappropriate for the subject site. The proposal is not considered to be consistent with the context and setting of the surrounding area.

### Access, Transport and Traffic:

A Traffic Impact Assessment has not been provided to demonstrate access, parking and manoeuvring requirements for the likely increase in visitors to the site. Council's Development Engineering Officer reviewed the proposal and provided an unsatisfactory referral in this regard.

### Public Domain:

The proposal is not considered to be conducive to the context and setting of the locality and would set an undesirable precedent. The potential cumulative impact of similar development would likely have an adverse impact upon the public domain.

### Utilities:

It is unknown if existing utilities are adequate to service the proposal in the absence of a robust description of the anticipated impacts of the proposal that would likely include an increase in visitors to the site.

### Heritage:

The subject site is listed located in the vicinity, and beneath the backdrop, of a local heritage item being the Illawarra Escarpment. Details of the application were referred to Council's Heritage Officer for comment. Advice received is that the proposed development is considered unsatisfactory.

The proposal is expected to have an adverse visual impact on the Illawarra Escarpment HCA and will also likely adversely impact on Aboriginal connections to the Escarpment.

### Other land resources:

The proposal is not envisaged to impact upon any valuable land resources.

### Water:

The proposal is not envisaged to have unreasonable water consumption.

### Soils:

The proposal is unlikely to have an adverse impact on soil conservation.

### Air and Microclimate:

The proposal is not expected to have negative impact on air or microclimate.

#### Flora and Fauna:

There is no vegetation removal or landscaping proposed or required.

The application submission does not include any lighting details for the proposed structure and as such, an assessment is not able to be made in relation to the likely impacts of that lighting on surrounding fauna.

#### Waste:

The requirements for ongoing waste management for the site have not been addressed by the application submission, noting that the likely increased visitation to the site will result in an increase in waste generation.

#### Energy:

The proposal is not envisaged to have unreasonable energy consumption.

#### Noise and vibration:

The proposal is not expected to result in an increase in noise impacts to residential receivers to the north except for during construction

#### Natural hazards:

Council records list the site as flood affected. Due to the nature and location of the proposal, there are no issues arising in regard to flooding.

#### Technological hazards:

Filling without consent has occurred on the site in the past, and has been the subject of enforcement action by Council. A review of Council's records reveals that this matter was satisfactorily resolved on 9 November 2018, and that the fill material was clean and did not contain contaminated material.

Council records list the site as unstable land affected. The application was referred to Council's Geotechnical Officer for review to which no objection was raised.

Council records list the site as acid sulphate soil affected however this can be addressed through conditioning where appropriate.

#### Safety, Security and Crime Prevention:

This application does not appear to result in any greater opportunities for criminal or antisocial behaviour.

#### Social Impact:

The proposal may result in negative social impacts. It is considered that insufficient information has been submitted for Council to be satisfied that impacts from the proposal on the amenity of the neighbourhood and the surrounding area will not be adverse.

The adverse visual impacts arising on the Illawarra Escarpment HCA and the general locality occur as a result of a non-secular proposal and the application submission does not demonstrate that the proposal will benefit and be in the interests of the wider community.

The proposed development also requires notification to the local aboriginal community and relevant stakeholders, however insufficient information has been provided to enable a meaningful consultation (principle of subsidiarity).

#### Economic Impact:

The economic impacts of the proposal are unknown as they have not been demonstrated by the application submission.

Site Design and Internal Design:

The application requests a 25m departure from the WLEP 2009 Clause 4.3 Height of Buildings development standard of 9m which is not supported.

Construction:

Conditions of consent could be recommended in relation to construction impacts such as hours of work, erosion and sedimentation controls, works in the road reserve, excavation, demolition and use of any crane, hoist, plant or scaffolding.

Cumulative Impacts:

Considering the matters outlined throughout this report, the proposal is considered likely to result in adverse cumulative impacts.

## **2.9 SECTION 4.15(1)(C) THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT**

Does the proposal fit in the locality?

The development as proposed is considered to set an undesirable precedent given the issues raised in this report, including potential traffic impacts, availability/adequacy of utilities on the site, visual impact and the relationship of the development to the Illawarra Escarpment. Therefore, proposal is not considered to be appropriate for the locality.

Are the site attributes conducive to development?

As the likely outcomes of the proposed development have not been fully described, it is not possible to be certain that the site attributes are conducive to the proposed development.

## **2.10 SECTION 4.15(1)(D) ANY SUBMISSIONS MADE IN ACCORDANCE WITH THIS ACT OR THE REGULATIONS**

See section 1.5 of this report.

## **2.11 SECTION 4.15(1)(E) THE PUBLIC INTEREST**

The application is considered likely to result in negative impacts on the environment and the amenity of the locality. The proposal is considered inappropriate with consideration to site constraints, contrary to the relevant planning controls and in the current form, approval would not be considered to be in the public interest.

## **3 CONCLUSION**

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This application has been assessed having regard to the Heads of Consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979.

The proposal seeks an intensification of an existing use, however the application submission fails to address existing use rights, and has not identified that consent is sought for the intensification of the use under Part 7 of the Environmental Planning and Assessment Regulations 2021.

The development proposes an exception to the Height of Buildings development standard pursuant to the Clause 4.3 of WLEP2009. The proposed exception is not supported as detailed in this report.

The proposal is considered to be unacceptable with respect to scale, visual impact and impacts on Aboriginal Heritage and the Illawarra Escarpment Heritage Conservation Area.

The application has failed to demonstrate impacts relating to traffic, car parking and access, heritage, fauna impacts, waste management, social impacts, and economic impacts.

Council's Heritage, Environment and Development Engineering Officers have provided unsatisfactory referral advice. Council's Geotechnical and Urban Release Officers have provided satisfactory referral advice.

Several matters including those identified within submissions remain unresolved.

It is considered the proposed development has not been designed appropriately given the constraints and characteristics of the site and has the potential to result in significant adverse impacts on the amenity of the surrounding area. The development as proposed is considered to set an undesirable precedent and approval would not be considered to be in the public interest.

#### **4 RECOMMENDATION**

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The Development Application has been assessed having regard to the Heads of Consideration under Section 4.15(1) of the Environmental Planning and Assessment Act 1979, the provisions of Wollongong Local Environmental Plan 2009 and all relevant Council DCPs, Codes and Policies.

Having regard to the above information, the application is considered to be unsatisfactory and is recommended for refusal subject to the following reasons:

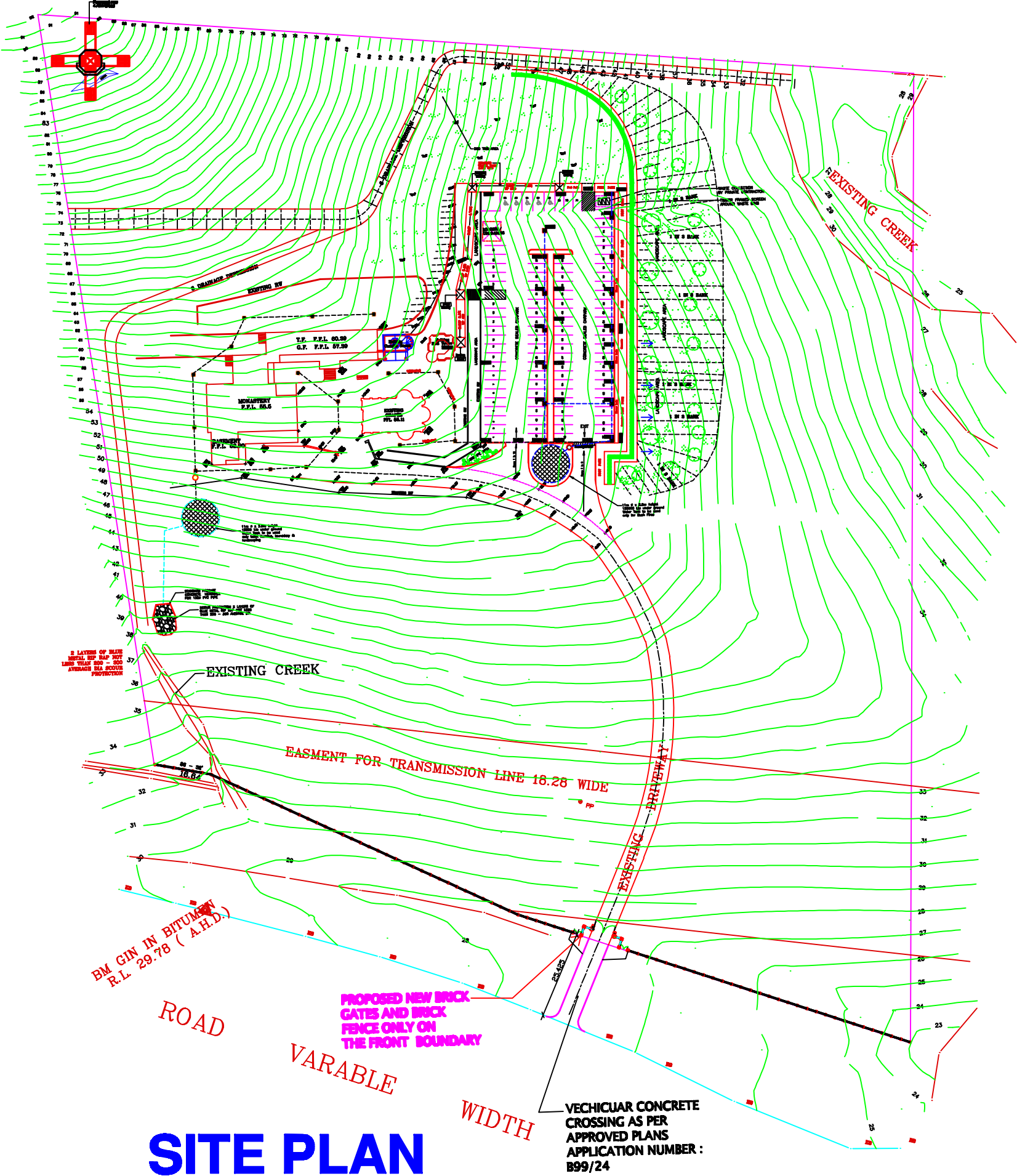
1. The proposed development is not a land use that is permissible with consent in the RE2 Private Recreation zone and the application fails to demonstrate existing use rights in accordance with Division 4.11 of the Environmental Planning & Assessment Act 1979.
2. The proposal represents an intensification of the existing use on the site however the application submission fails to identify that consent is being sought for the intensification of an existing use in accordance with section 164 of the Environmental Planning and Assessment Regulation 2021, and insufficient information has been provided to enable a complete assessment of the intensification.
3. Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the application submission fails to demonstrate consistency with Wollongong Local Environmental Plan 2009 with respect to:
  - a. Clause 1.2 Aims of Plan (f) and (h)
  - b. Clause 2.3 Zone Objectives
  - c. Clause 4.3 Height of buildings: the proposed development does not comply with Clause 4.3 Height of Buildings and is not consistent with the objectives of the Clause;
  - d. Clause 4.6 Exceptions to development standards: The written request provided by the applicant has not adequately addressed the matters required to be demonstrated by Clause 4.6(3) for the proposed Height of Building exceedance, and the proposed development is not considered to be in the consistent with the objectives of the development standard and zone;
  - e. Clause 5.10 Heritage Conservation: the proposed development will result in an adverse impact on the heritage significance of the Illawarra Escarpment Heritage Conservation Area and Aboriginal heritage;
  - f. Clause 7.8 Illawarra Escarpment area conservation: the proposed development fails to minimise any adverse impact on the natural features and environment of the Illawarra Escarpment.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning & Assessment Act 1979, the proposed development does not comply with the provisions of Wollongong Development Control Plan 2009 in a number of areas:

- a. The development is unsatisfactory with the provisions within Chapter B6 – Development in the Illawarra Escarpment, including visual impact assessment, Aboriginal and European heritage, maximum building heights and building character and form controls.
  - b. The development fails to demonstrate compliance with the provisions within Chapter C13 – Places of Public Worship including maximum building height, car parking and access, building form and character.
  - c. The development fails to demonstrate compliance with the provisions within Chapter E3 - Car Parking Access Servicing Loading Facilities
  - d. The development fails to demonstrate compliance with the provisions within Chapter E10 – Aboriginal Heritage
  - e. The development fails to demonstrate compliance with the provisions within Chapter E11 – Heritage Conservation
  - f. The development fails to demonstrate compliance with the provisions within Chapter E7- Waste Management.
5. Pursuant to the provisions of Section 4.15 (1)(b) of the Environmental Planning and Assessment Act, 1979, the likely impacts of the proposal on the context and setting and the impacts of the siting and design of the proposal on the amenity of the area, heritage items and heritage conservation area are adverse.
  6. Pursuant to the provisions of Section 4.15 (1)(b) of the Environmental Planning and Assessment Act, 1979, the proposal will have an unacceptable social impact.
  6. Pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning & Assessment Act 1979 the proposal is not considered to fit with the locality.
  7. Pursuant to the provisions of Section 4.15(1 (d) and (e) of the Environmental Planning & Assessment Act 1979, having regard to the submissions received, it is considered that in the circumstances of the case, approval of the development would set an undesirable precedent for similar inappropriate development and is therefore not in the public interest.
  8. The application submission fails to demonstrate the impacts of the proposed development with respect to fauna, utilities, traffic, car parking and access, waste management, economic impacts and site suitability. As such, a complete assessment of the likely impacts of the development is not able to be made.

## **5 ATTACHMENTS**

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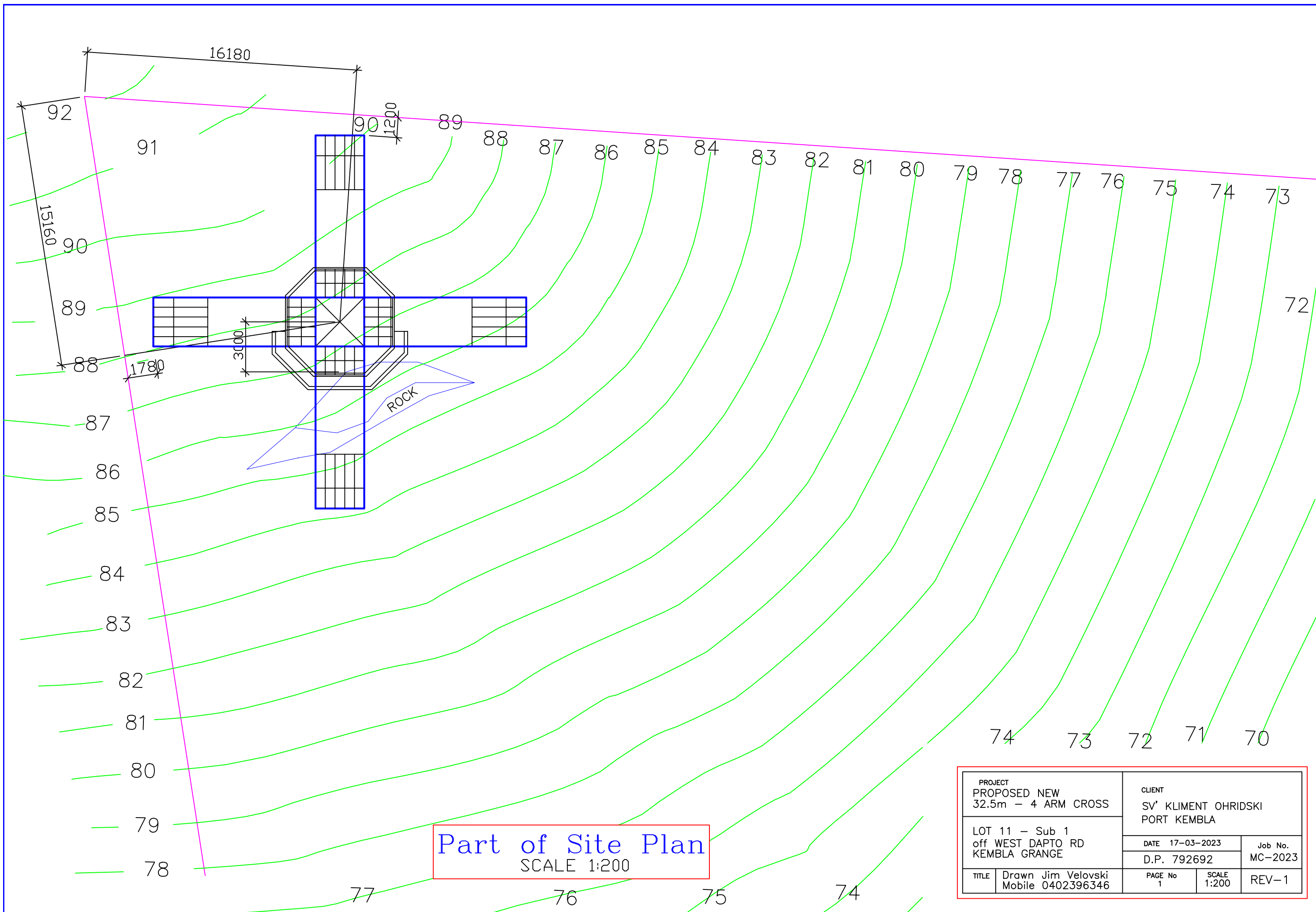
- 1 Plans
- 2 Site Inspection Photos
- 3 Clause 4.6 Exception to Development Standard Statement – Applicant
- 4 Compliance table for Wollongong Development Control Plan 2009
- 5 Reason for Refusal



**SITE PLAN**

Scale 1:200





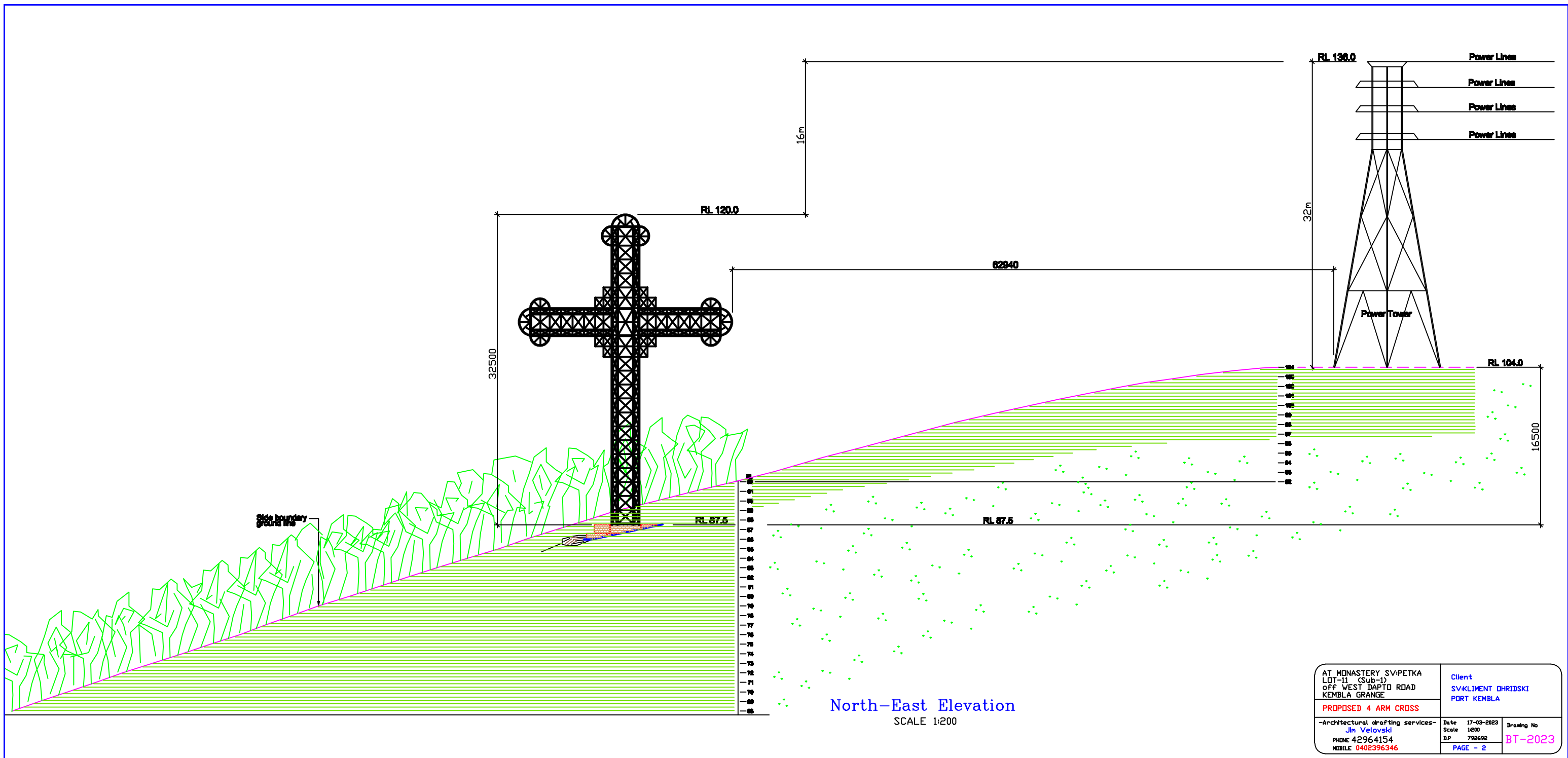
Part of Site Plan  
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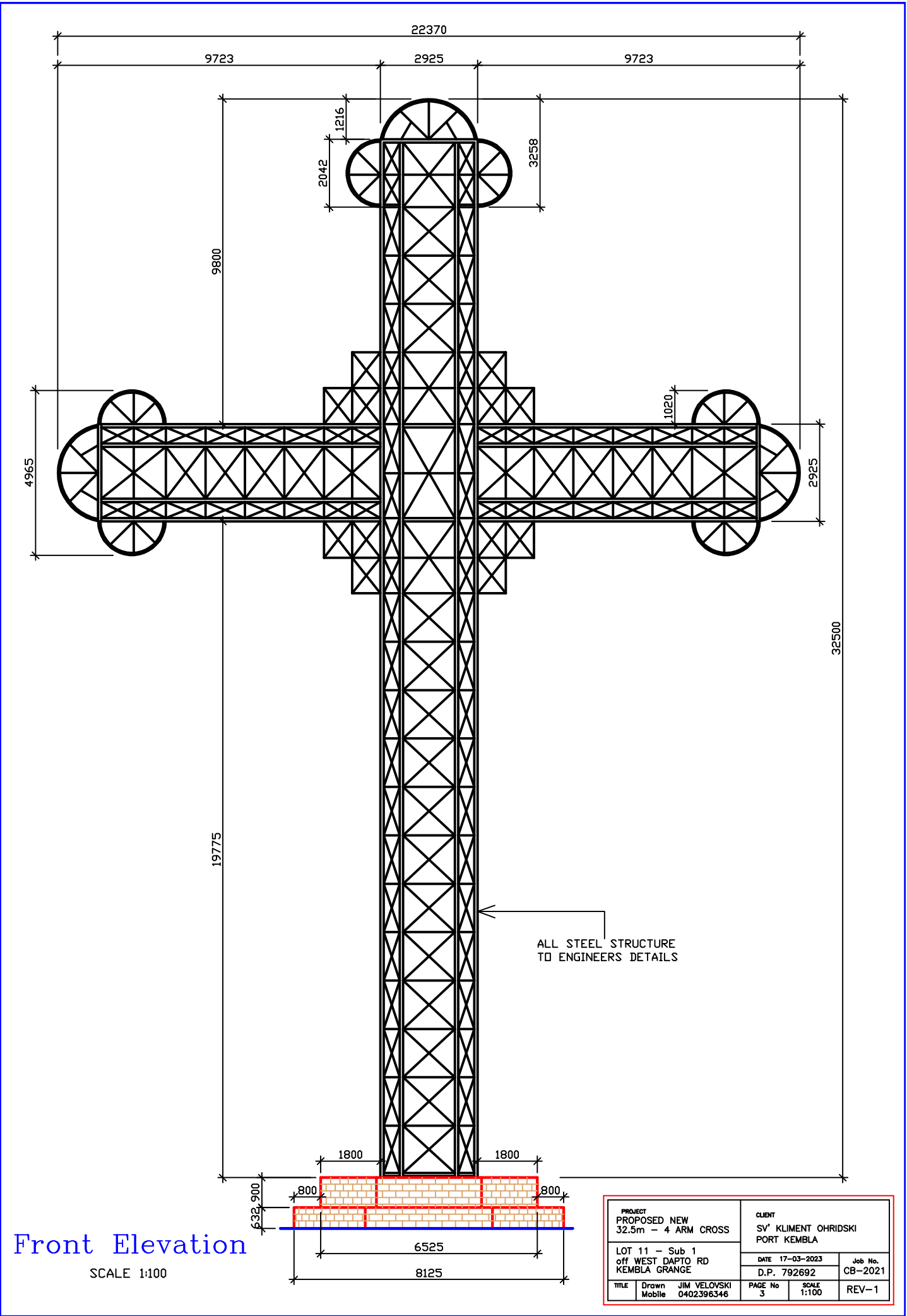
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		D.P. 792692	
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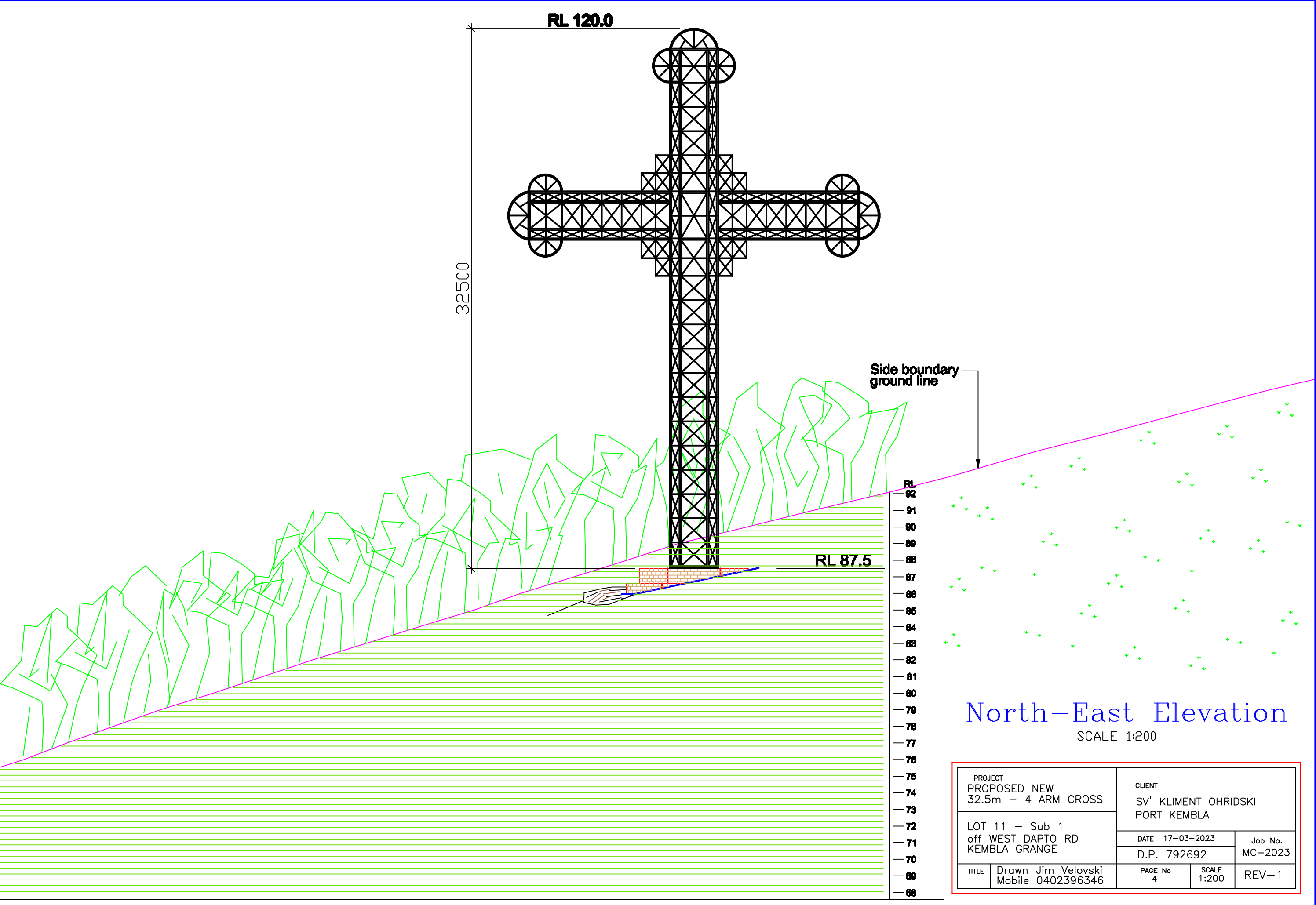


PROJECT PROPOSED NEW 32.5m – 4 ARM CROSS		CLIENT SV' KLIMENT OHRIDSKI PORT KEMBLA		
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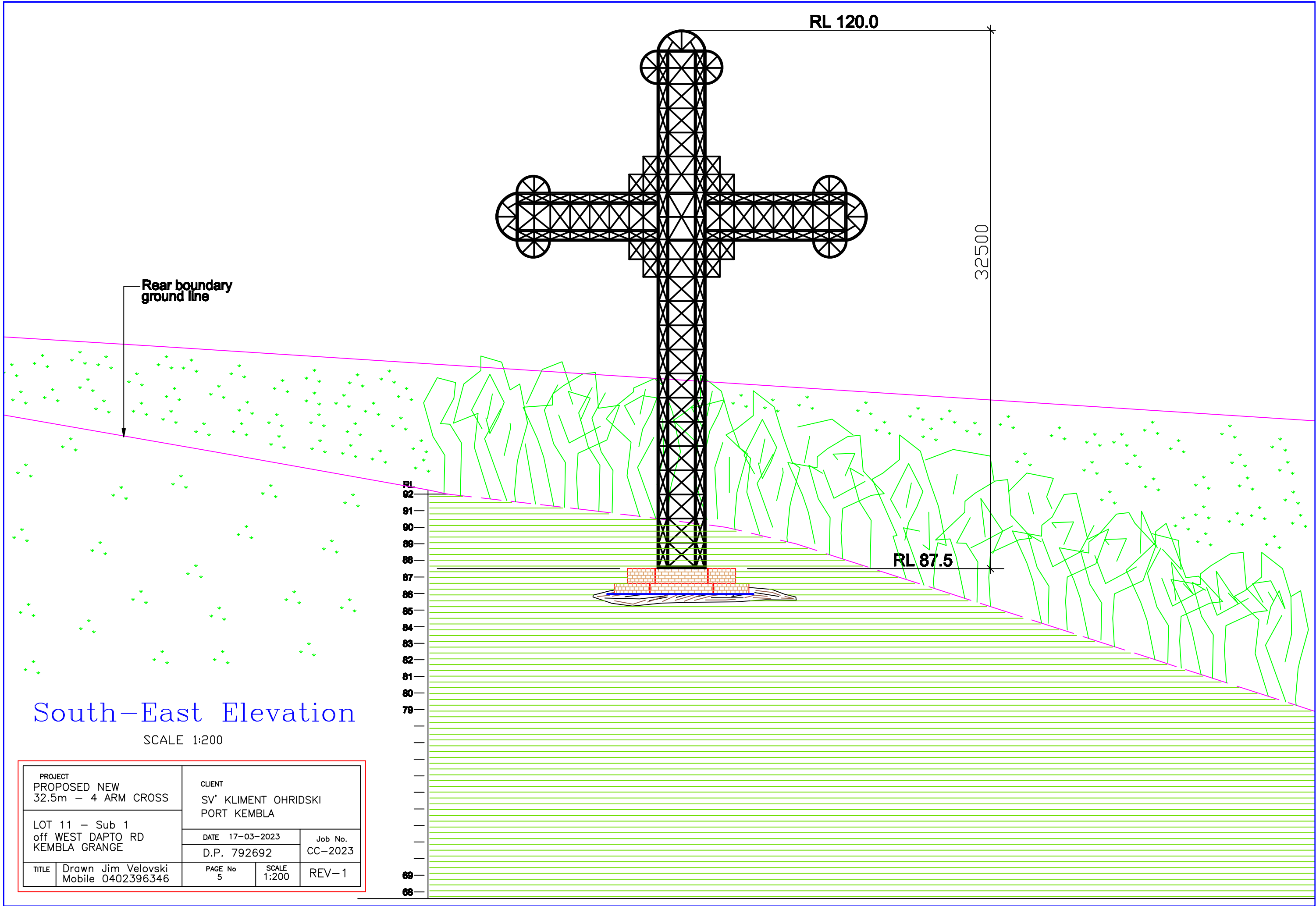








PROJECT PROPOSED NEW 32.5m – 4 ARM CROSS		CLIENT SV' KLIMENT OHRIDSKI PORT KEMBLA		
LOT 11 – Sub 1 off WEST DAPTO RD KEMBLA GRANGE		DATE 17-03-2023	Job No. MC-2023	
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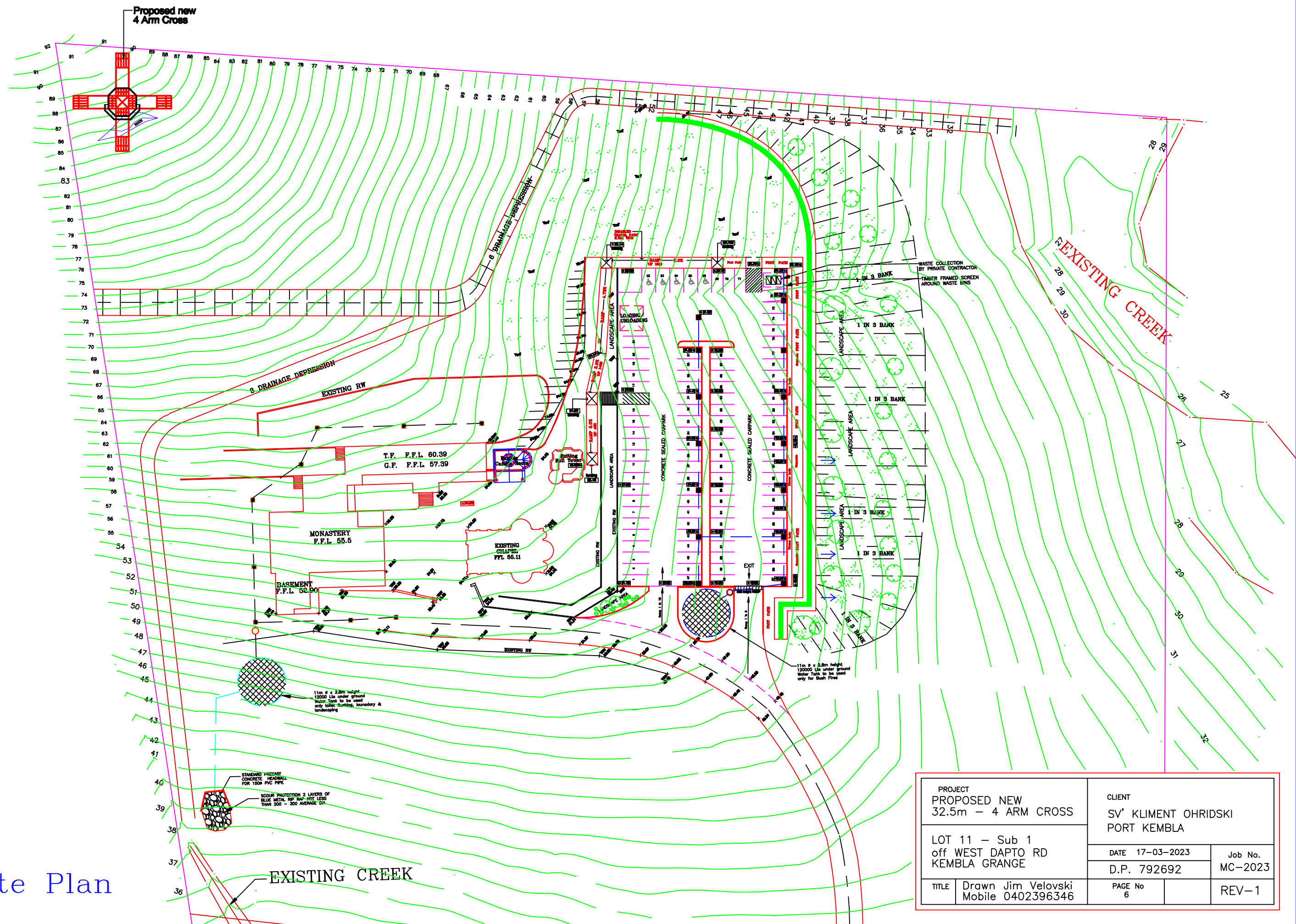


South-East Elevation

SCALE 1:200

PROJECT PROPOSED NEW 32.5m – 4 ARM CROSS		CLIENT SV' KLIMENT OHRIDSKI PORT KEMBLA		
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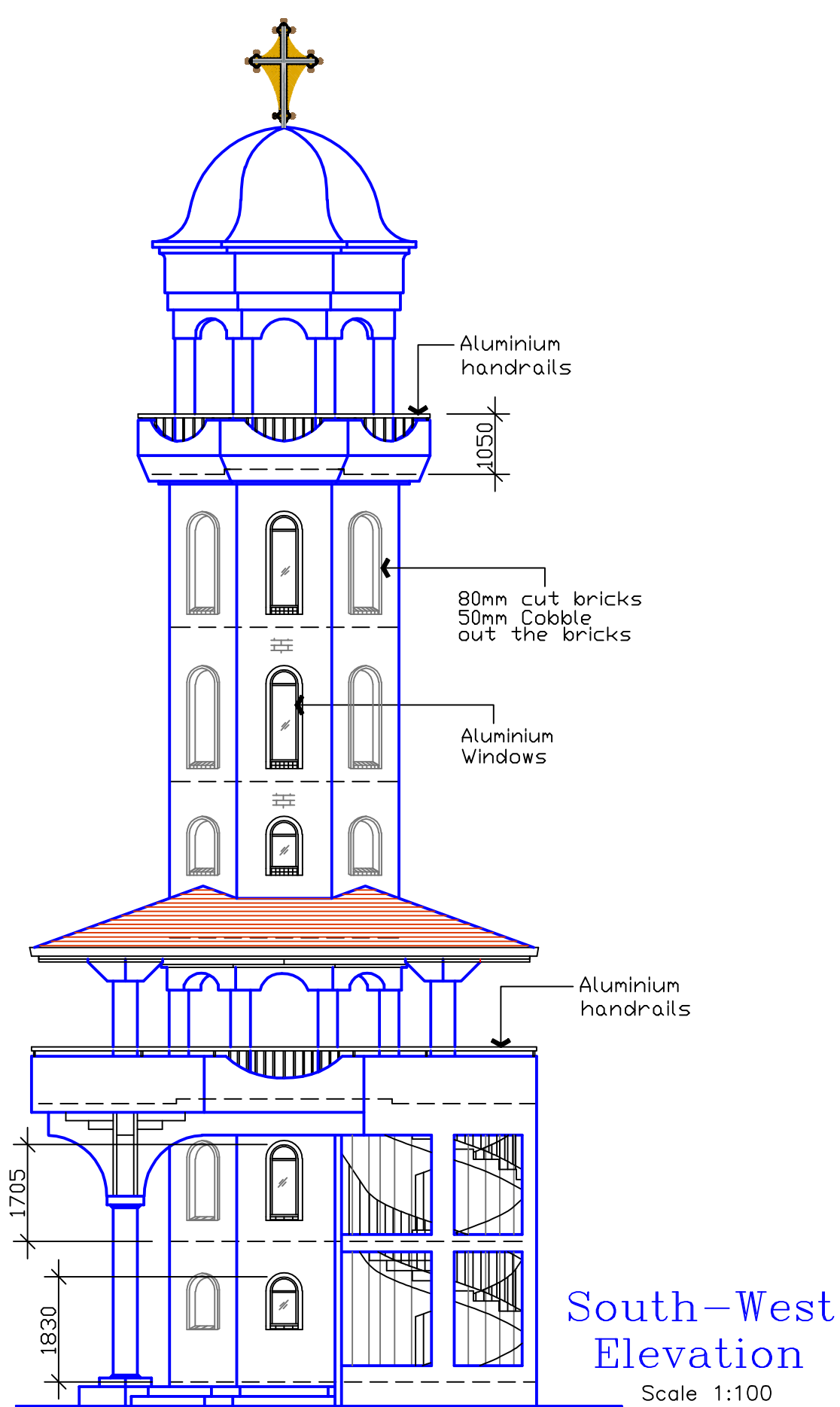
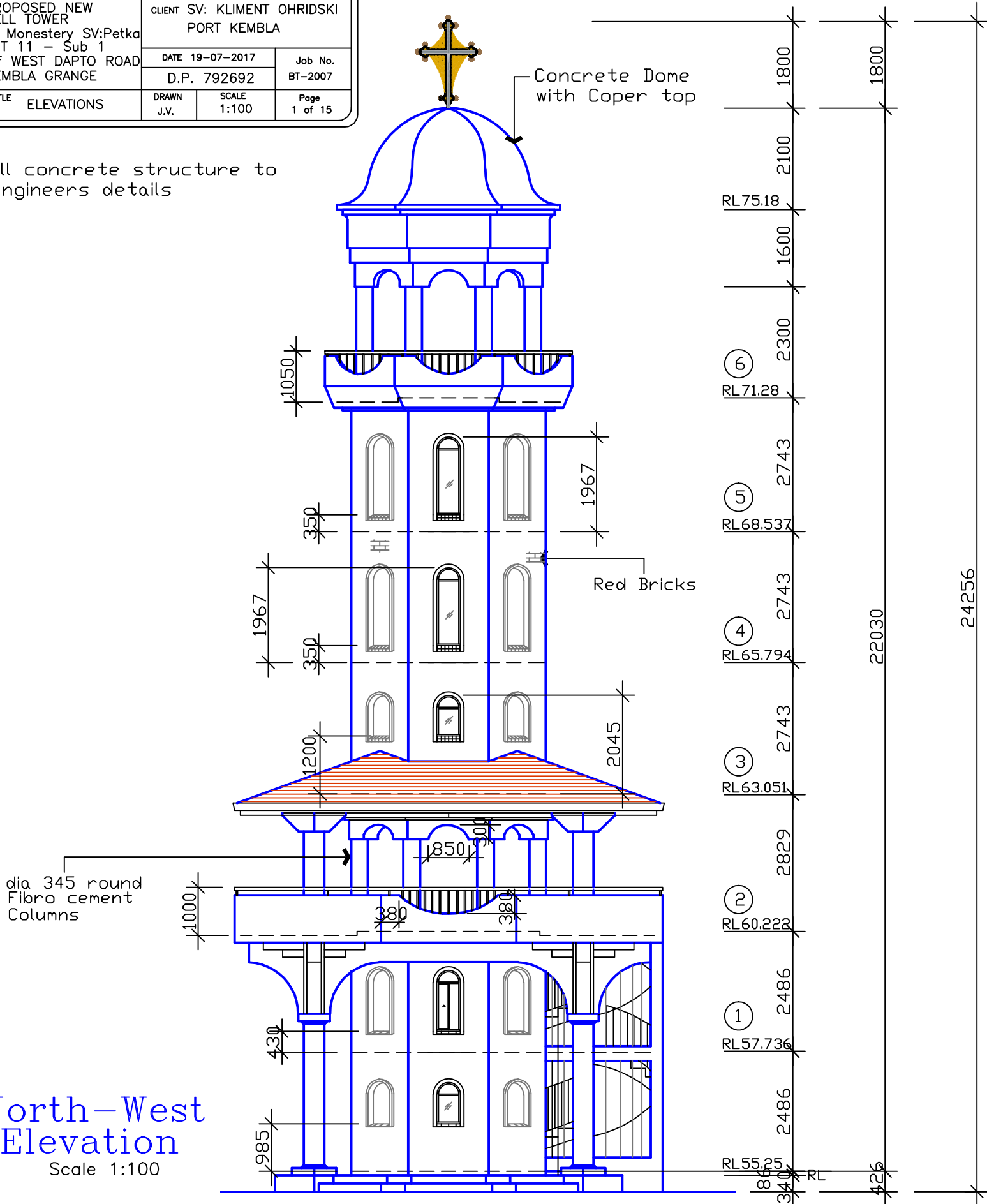




# Site Plan

PROJECT PROPOSED NEW BELL TOWER at Monastery SV:Petka LOT 11 - Sub 1 off WEST DAPTO ROAD KEMBLA GRANGE	CLIENT SV: KLIMENT OHRIDSKI PORT KEMBLA		
	DATE 19-07-2017	Job No. BT-2007	
	D.P. 792692	Page 1 of 15	
TITLE ELEVATIONS	DRAWN J.V.	SCALE 1:100	

All concrete structure to  
Engineers details



Floor Area 8.4sqm

## Steps

6.15qm

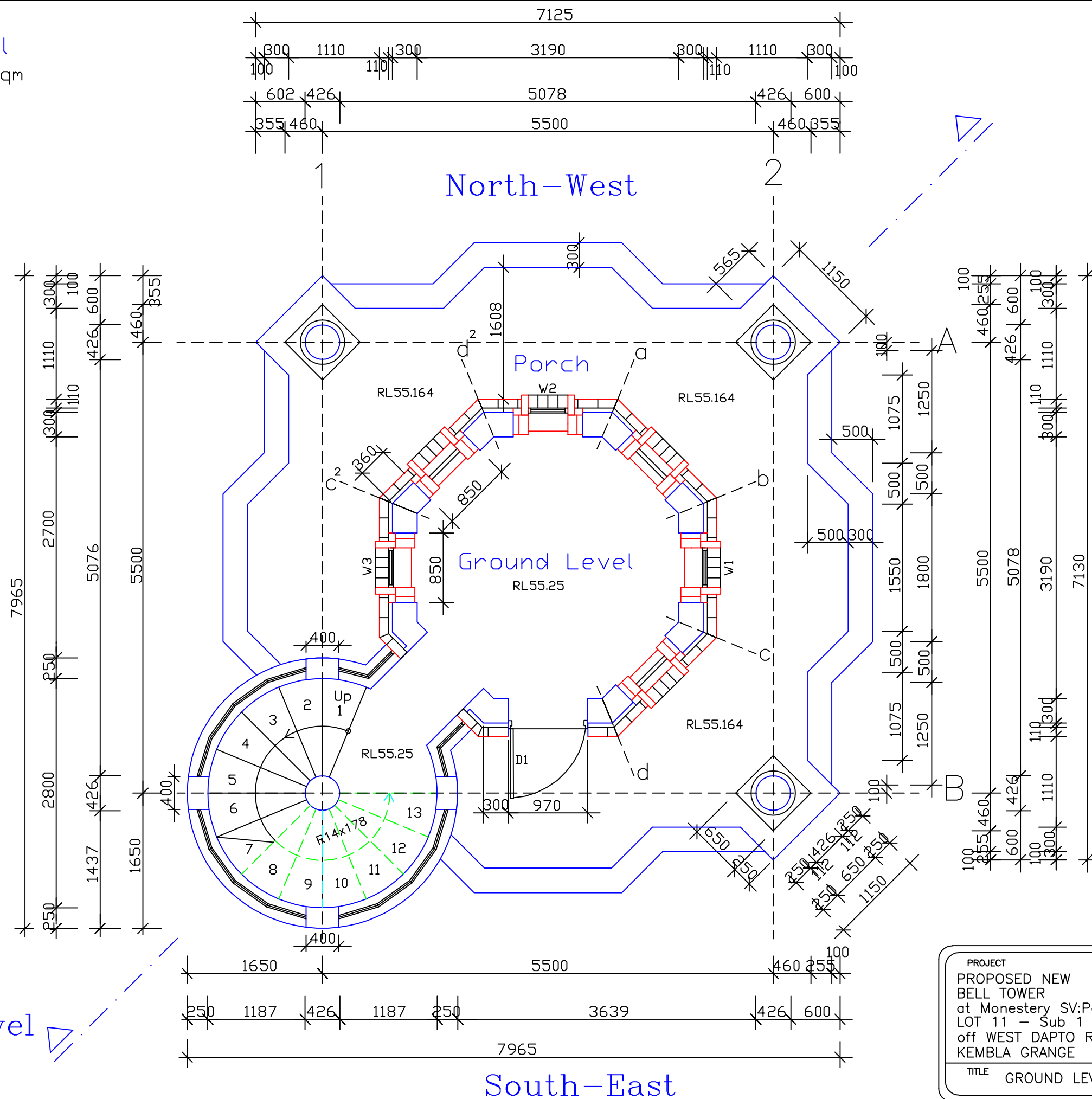
Porch

25.4sqm

South–West

Ground Level

SCALE 1:50



PROJECT  
PROPOSED NEW  
BELL TOWER  
at Monastery SV:Petka  
LOT 11 – Sub 1  
off WEST DAPTO ROAD  
KEMBLA GRANGE

TITLE	GROUND LEVEL
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CLIENT SV: KLIMENT OHRIDSKI  
PORT KEMBLA

DATE	19-07-2017
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D.P. 792692
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Job No.  
BT-2007

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## ATTACHMENT 2



*Figure 1: Subject site, facing north-west towards the location of proposed cross*



*Figure 2: Subject site from Northcliffe drive, approximately 1.5km to the south-east*





*Figure 3: View from south-west (Princes Highway) to subject site, approximately 1.3km away*



*Figure 4: View from Princes Highway, to the east of the subject site. Approximately 1.4km away*





*Figure 5: View from Orangegrove Avenue Unanderra, east from subject site, approximately 1.6km away*



*Figure 6: View from Canterbury Road, Kembla Grange, south-east from subject site, approximately 1.2km away*





*Figure 7: View from Northcliffe drive/Princes Highway to subject site, south-east from the subject site. Approximately 1.1km away*

# **1. Attachment 3 - Clause 4.6 variation - Exception to Development Standards**

**Erection of a new monument- 32.5 metre Cross at the Macedonian Monastery, Sveta Petka at 100 Wyllie Road, Kembla Grange, NSW 2526**

## **Introduction**

Clause 4.3 of Wollongong Local Environmental Plan 2009 (WLEP) prescribes a height of building control of 9 metres for the site.

The new monument is to have a total height of 32.5 metres (vertical arm or RL 120) and exceeds the height of building control by 23.5 metres or 261%.

We also note the existing bell tower on the Monastery grounds under construction has an approved height of 24.256 metres and exceeds the building height control by 15.256 metres or 169.5%.

In recognition of this, a variation is sought pursuant to Clause 4.6 of the WLEP, seeking for a dispensation to the height of building control.

In our view, we would like to point out that objectives of Clause 4.3 refer to buildings and an associated floor space which do not relate to a monument as a monument is not a building.

We note the definition of a *building* in the EP & A Act 1979 means:

*building includes part of a building, and also includes any structure or part of a structure (including any temporary structure or part of a temporary structure), but does not include a manufactured home, moveable dwelling or associated structure within the meaning of the Local Government Act 1993.*



There is no definition of a *structure* in the EP & A Act 1979. The Cambridge Dictionary defines a *structure* as:

*something that has been made or built from parts, especially a large building.*

The Cambridge Dictionary defines a *monument* as:

*a structure or building that is built to honour a special person or event:*

An interesting fact is we note that Clause 5.6 of WLEP also identifies architectural roof features, however in this instance a building is not proposed for the Cross to be classed as an architectural roof feature to allow for an automatic dispensation.

We feel that the town planning language is not representative or is silent on monuments, and that historically, monuments are intended to be grand and monumental architectural statements as that is the purpose in which they are always erected.

In our experience, the interpretation of key words used to describe the intent of a development standard will assist us in understanding whether there is merit in granting a dispensation.

And we would simply put on record that if a building height control was strictly enforced on such an important monument as proposed, it would contradict the purpose of a monument and would lead to a less impressive structure and poor architecture and lack any grandness.

For completeness, and to remove any doubt, we file this Clause 4.6 Variation to support the erection of the Cross and to cover any jurisdictional considerations for a consent authority.

*Clause 4.6 of the WLEP details exceptions to development standards and includes objectives which seek to:*

*(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.*

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

*(4) Development consent must not be granted for development that contravenes a development standard unless:*

*(a) the consent authority is satisfied that:*

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

*(b) the concurrence of the Planning Secretary has been obtained.*

*(5) In deciding whether to grant concurrence, the Planning Secretary must consider:*

*(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*

*(b) the public benefit of maintaining the development standard, and*

*(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*

#### **Variation requested**

#### Height of buildings control

<b>LEP requirement</b>	<b>Cross</b>	<b>Exceedance</b>
9 metres	Total height of 32.5 metres (vertical arm or RL 120).	Yes  <b>+ 23.5 metres or 261%</b>

In recognition of this, an objection is submitted pursuant to Clause 4.6 of WLEP.

### **Written justifications for the contravention of the development standard**

Pursuant to clause 4.6(3) of WLEP development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

*Clause 4.6(4) of WLEP, also states:*

*(4) Development consent must not be granted for development that contravenes a development standard unless:*

*(a) the consent authority is satisfied that:*

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

*(b) the concurrence of the Planning Secretary has been obtained.*

In relation to the matters required to be demonstrated by subclause (3) there are various ways that may be invoked to establish that compliance with a development standard is unreasonable or unnecessary, as discussed by various case studies and more importantly, Chief Justice Preston of the NSW Land and Environment Court in the case of *Wehbe v Pittwater Council* [2007] NSWLEC 827 is used as background information.

Although the *Wehbe* case was decided in relation to State Environmental Planning Policy No 1— Development Standards (“SEPP 1”) and not clause 4.6 of WLEP, it remains of some assistance in relation to identifying the ways in which an applicant may demonstrate that compliance with development standards is unreasonable or unnecessary in the circumstances of the case.

This case is applied in this circumstance, as it better fits the predicament of a monument structure that exceeds the height of buildings control.

In the *Wehbe* case, Justice Preston said the most commonly invoked way to establish that compliance with a development standard is unreasonable or unnecessary is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The objectives of the **height of buildings** control are set out in Clause 4.3 (1) of WLEP as follows and we provide an assessment against these:

*(a) to establish the maximum height limit in which buildings can be designed and floor space can be achieved,*

**Assessment:**

In this instance, the emphasis of the words *floor space* is obvious to the reader.

We note there is no floor space ratio in place for the land and we know as a matter of fact that floor space leads to cubic content or floor space of a building.

And furthermore, there is a correlation between building height and floor space which also provides guidance for the bulk and scale of a building. When these elements are introduced, they reflect a usable floor space which in turn relates to a building with walls and cubic content.

In this instance we do not have any enclosed walls or floor space and we would simply say that Clause (a) would not apply to a monument in our interpretation of this wording.

*(b) to permit building heights that encourage high quality urban form,*

**Assessment:**

The objective here is to achieve high quality urban form.

The Cambridge Dictionary defines a *form* as:

*the shape or appearance of something.*

We would state the shape and appearance of the Cross to be formed of structural steel elements in the classical form being Orthodox style is appropriate and culturally and religiously representative and respectful to Jesus Christ.

We have also given example of similar monuments erected around the world and the Cross in our view with the 4 arm detail is on par with other impressive Crosses.

*(c) to ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight.*

**Assessment:**

The Cross would not block the views of the sky or affect sunlight exposure as there are no buildings in the immediate vicinity of the space around the vertical arms of the Cross.

It is unlikely that any future buildings would be erected at the escarpment to the north or north west given the power lines that are located in that area given the bushfire prone land over this landscape.

Therefore, the proposal satisfies the relevant height of buildings objectives.

**Consistency with the zone objectives of Wollongong Local Environmental Plan 2009**

The subject site is zoned RE 2 Private Recreation under Wollongong Local Environmental Plan 2009.

The objectives of the RE 2 Private Recreation zone are set out in the Land Use Table of WLEP as follows and we provide an assessment against these:

- *To enable land to be used for private open space or recreational purposes.*

**Assessment:**

The erection of the Cross would support the current use of the premises for physical, social, cultural or intellectual development or welfare of the community.

- *To provide a range of recreational settings and activities and compatible land uses.*

**Assessment:**

The land is currently used as a community facility and the erection of the Cross would not conflict with the use of adjoining lands and is considered compatible for cultural and spiritual purposes.

This part of the land holding with the upslope topography would not be suited for any buildings or recreational space in a traditional sense such as fields or courts.

The landscape would rather encourage activities to occur by foot for say hikers and trekkers and is something that would be stimulated upon the erection of the Cross as the land would otherwise be considered inaccessible.

- *To protect and enhance the natural environment for recreational purposes.*

**Assessment:**

The erection of the Cross would not compromise the environmental capability of the land holding as the land is already clear and would allow the land to be used by hikers and trekkers to get a closer look at the monument and to enjoy the surrounding environment.

- *To cater for the development of a wide range of uses and facilities within open spaces for the benefit of the community.*

**Assessment:**

Upon completion, we feel the Cross will have important spiritual, symbolic cultural and social purposes for the Monastery and would encourage walkers and trekkers to access this open space.

This would extend beyond the realm of the local Macedonian community but would reach out to far greater audiences and result in tourists appreciating the ridgeline.

The development proposal satisfies the objectives of RE 2 Private Recreation zone under Wollongong Local Environmental Plan 2009 and the proposal does not result in any circumstance that would be contrary to those objectives.

**Consistency with State and Regional planning policies**

**Assessment:**



The height of buildings variation requested for the purposes of a monument allows for the orderly and economic use of land as envisaged by the Environmental Planning and Assessment Act, 1979.

If the height control was strictly enforced, it would contradict the purpose of a monument and would lead to a less impressive structure and poor architecture.

We believe the Cross is compatible with surrounding land uses and there would be no detrimental visual intrusions or visual impacts to the locality.

#### **The variation allows for a better planning outcome**

##### **Assessment:**

We believe the variation should be sought as the Cross is to serve as an important monument and we have given the reasons for this.

This approach is desirable in the context of this application and is considered a better planning outcome to achieve a superior architectural outcome.

#### **There are sufficient environmental grounds to permit the variation**

##### **Assessment:**

There and no adverse environmental outcomes identified in our assessment.

Monuments around the world have been built by many different groups and societies throughout time and the purpose of a monument is for it to be grand and monumental structure.

We believe the Cross in the classical form is appropriate and culturally and religiously representative and respectful to Jesus Christ.

The height of the monument being 32.5 metres also represents the age of Jesus Christ.

To date, our approach to monuments in Australia has been lost or simply said to be ordinary, and we feel this Cross would be classical and traditional which is the appropriate measure.

The variation is in the public interest.

**Assessment:**

No circumstances have been identified to indicate that the proposal would not be in the public interest.

**Are there sufficient environmental planning grounds to justify contravening the development standard?**

Yes, this written request demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and we have provided a detailed assessment in the Statement of Environmental Effects and other supportive documents.

**Does the Council have delegation to exercise the concurrence function of the Director-General of the Department of Planning and Infrastructure for development that contravenes a development standard? If so:**

***(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and***

***(b) the public benefit of maintaining the development standard.***

In response to the above it is noted:

Pursuant to the Notification of assumed concurrence of the Director-General under clause 4.6(4) (and the former clause 24(4)) of the Standard Instrument contained in Planning Circular PS 08–003 (dated 9 May 2008), the concurrence of the Director-General of the Department of Planning and Infrastructure under clause 4.6(4)(b) of Wollongong Local Environmental Plan 2009 may be assumed to the granting of development consent to the development that contravenes the development standards for height of buildings in clause 4.3 of WLEP;

The proposed development and variation from the development standard does not raise any matters of significance for State or regional environmental planning; and

Variation from the adherence to the numerical height of building control standard will not be detrimental to the orderly use of the site and there is no public benefit in maintaining the development standard in this instance.

## **Conclusion**

For reasons mentioned herein, the proposed development satisfies the provisions of Clauses 4.6(3) and (4) of the WLEP and the compliance with the development standard for the height of building control is unreasonable or unnecessary in the circumstances of this case.

Therefore, the written justifications for contravening the height of building control are well founded and worthy of support and historically monuments around the world have been built by many different groups and societies throughout time and the purpose of a monument is for it to be grand and monumental structure.

This Clause 4.6 variation is forwarded to Council in support of the development proposal and this request be looked upon favourably by Council.

**<END>**

## ATTACHMENT 4

### CHAPTER A2 – ECOLOGICALLY SUSTAINABLE DEVELOPMENT

Development controls to improve the sustainability of development throughout Wollongong are integrated into the relevant chapters of this DCP.

Generally speaking, the proposal is considered to be consistent with the principles of Ecologically Sustainable Development.

### CHAPTER B6: DEVELOPMENT IN THE ILLAWARRA ESCARPMENT

<i>Controls/objectives</i>	<i>Comment</i>	<i>Compliance</i>
<u>5 Visual impact assessment</u>	It is considered that insufficient information has been provided to demonstrate that the proposal will have minimal impact on the visual amenity of the area. Details of the proposal were referred to Council's Heritage Officer for comment. Advice received indicates that while a Visual Impact Assessment (VIA) was provided it is not considered to provide an adequate assessment and fails to demonstrate that visual impact of the development on the area and heritage items will be adverse.	No
<u>6 Aboriginal heritage</u>	The Escarpment and the connection between Mount Kembla and Mount Keira, as well as views to and from the Five Islands has significant cultural values to the Aboriginal Community. The proposal will interrupt these views and connections and have an impact on the cultural values associated with the Escarpment. The proposal is not consistent with Part 2 of Chapter B6: b) Protect and conserve the cultural heritage of the Illawarra Escarpment, including places of Aboriginal cultural heritage significance. No consideration of the cultural values of the Escarpment and potential impacts has been demonstrated	No

<u>7 Heritage (European)</u>	<p>The subject site is not directly listed as a local heritage item under the WLEP 2009, however it is adjacent to mapped Illawarra Escarpment land and is in the vicinity of the Illawarra Escarpment Heritage Conservation Area. Details of the application were referred to Council's Heritage Officer for comment. Advice received is that the proposed development is considered unsatisfactory noting:</p> <ul style="list-style-type: none"> <li>• The proposed monument is 23.5m above the 9m LEP height limit and will have a visual impact on the Illawarra Escarpment Heritage Conservation Area</li> <li>• The proposal is on an upslope hill with the Escarpment ridgeline as a backdrop.</li> <li>• Key views from the Escarpment looking east identified in Chapter B6, are not considered. It is unclear whether the monument would be visible from key locations to the west such as Mount Kembla.</li> <li>• No Heritage Impact Statement has been prepared.</li> <li>• There are significant views along Northcliffe Drive to the ridgeline of the Escarpment, development within Farmborough Heights is largely hidden behind the topography, the monument would become the focal point and interrupt these view lines.</li> <li>• The scale, height and character of the proposed development will have an unacceptable impact on the Illawarra Escarpment HCA, the proposal will interrupt the visual relationship from a number of view points in the public domain and the Escarpment.</li> </ul>	No
<u>9 Geotechnical / land instability issues</u>	Council's Geotechnical Officer has assessed the application submission and considered it conditionally satisfactory.	Yes
<u>12 General requirements</u>	The application has been assessed in regard to general requirements such as fencing, landscaping, stormwater, and waste and found to be generally satisfactory.	Yes

**CHAPTER C13: PLACES OF PUBLIC WORSHIP**

<i>Controls/objectives</i>	<i>Comment</i>	<i>Compliance</i>
<u>4.1 Locational Requirements</u>	The proposal is located at an existing and approved place of public worship that is appropriately sited.	Yes
<u>4.2 Minimum Lot Size &amp; Lot Width Requirements</u>	The site is not located near a residential zone boundary.	NA
<u>4.3 Maximum Site Coverage</u>	The proposal will not exceed site coverage of 50%.	Yes
<u>4.4 Maximum Building Height</u>	The proposal is non-compliant with height. Note that spires, towers, and similar structures are included in this definition. The exceedance of the 9m height limit by 23.5m is considered excessive and inappropriate. The proposal does not respond positively to the site context or the prevailing character of the locality. There will be significant visual interruptions, particularly on the Illawarra Escarpment Area.	No
<u>4.8 Building Form and Character</u>	<p>The proposal does not consider the amenity of the surrounding locality. The proposal is expected to have adverse impacts on neighbouring sites, including the residential neighbourhood of Farmborough Heights to the north, Berkley and Unanderra to the south-east and Kembla Grange.</p> <p>The size, scale, height, form, and external appearance of the proposal is not compatible the prevailing character with of the locality.</p>	No

<i>Controls/objectives</i>	<i>Comment</i>	<i>Compliance</i>
<u>4.9 Noise Impact Assessment</u>	<p>A noise impact report was not submitted by the Applicant. The Statement of Environmental Effects quotes that this development will be a “major tourist attraction” that will have “positive economic impact on the region.” Whilst the Applicant details the extent of this proposal on the economy and locality, there are no figures given on expected visitation rates. If a proposal were to be considered of such a large scale, the Applicant should have provided sufficient supporting information to assist this claim. Council considers this to be a major alteration and addition to an existing place of public worship and a Noise Impact Assessment should have been provided, alongside sufficient information on visitor numbers.</p>	No

<i>Controls/objectives</i>	<i>Comment</i>	<i>Compliance</i>
<u>4.10 Car Parking, Access and Traffic Impact Assessment Requirements</u>	<p>The application has been assessed by Council's Development Engineer in regard to parking. A pre-lodgement meeting would have been beneficial to discuss the current parking and access arrangements against this proposal. There is insufficient information on the number of expected visitors to the site and a traffic management/impact assessment was not provided. Given the likely increase in patronage, the existing site lacks capacity to become a major tourist attractor.</p> <p>The Applicant's Statement of Environmental Effects states that the cross "would encourage walkers and trekkers to access this open space". There are no details on how pedestrian access to the cross would be achieved, noting that the site is steeply sloped towards the north-western corner location. There are no details of proposed pathways or access points to the cross.</p>	No
<u>4.11 Solar Access</u>	There are no directly adjoining residential properties that would be impacted by solar access.	NA
<u>4.12 Crime Prevention Through Environmental Design</u>	The provisions of this chapter to do not apply.	NA
<u>4.13 Access for People with a Disability</u>	The provisions of this chapter to do not apply.	NA
<u>4.14 Landscaping Requirements</u>	The proposal has adequate landscaping within the site.	Yes
<u>4.15 Hours of Operation</u>	Details on the churches hours of operation were not	NA



<i>Controls/objectives</i>	<i>Comment</i>	<i>Compliance</i>
	submitted with this application but should comply with the consent issued with the original DA.	

## **CHAPTER D1 – CHARACTER STATEMENTS**

### Kembla Grange

The proposed land use is generally consistent with the desired future character for the locality, however significant issues have been raised by Council's Heritage and Environment Officers in relation to the proposal's connection and proximity to the Illawarra Escarpment.

## **PRECINCT PLAN – Chapter D16: West Dapto Release Area**

The site is located in the West Dapto Urban Release Area, Stages 1 and 2 area. The application was referred to Council's Urban Release Officer for comment and no objection was raised.

## **CHAPTER E3: CAR PARKING, ACCESS, SERVICING/LOADING FACILITIES AND TRAFFIC MANAGEMENT**

The application was reviewed by Council's Development Engineer in relation to car parking and access. No supporting traffic analysis was provided in accordance with the requirements of Chapter E3 of Wollongong DCP 2009 given the likely increase in patronage, and lack of capacity of the existing site as a tourist attractor.

The Applicant's Statement of Environmental Effects states that the cross "would encourage walkers and trekkers to access this open space". There are no details on how pedestrian access to the cross would be achieved, noting that the site is steeply sloping towards the north-western corner location.

## **CHAPTER E7: WASTE MANAGEMENT**

A Site Waste Minimisation and Management Plan has been provided in accordance with this chapter. There is no demolition proposed.

## **CHAPTER E10 ABORIGINAL HERITAGE**

The Escarpment and the connection between Mount Kembla and Mount Keira, as well as views to and from the Five Islands has significant cultural values to the Aboriginal Community. Whilst it is noted that the proposal is not located directly on a heritage item, as stipulated by an AHIMS search, the proposal will interrupt these views and connections and have an impact on the cultural values associated with the Escarpment.

The proposal is not consistent with Part 2 of Chapter B6: b) Protect and conserve the cultural heritage of the Illawarra Escarpment, including places of Aboriginal cultural heritage significance. No consideration of the cultural values of the Escarpment and potential impacts has been demonstrated.

If a future proposal will be considered in this location, consultation with the Aboriginal Community is required.

## **CHAPTER E11 HERITAGE CONSERVATION**

The site is adjacent to mapped Illawarra Escarpment land and is in the vicinity of the Illawarra Escarpment heritage Conservation Area. No Heritage Impact Statement has been prepared which considers the potential impacts on the HCA as required by Part 10 of E11.

Details of the application were referred to Council's Heritage Officer for comment. Advice received is that the proposed development is considered unsatisfactory noting:

- The proposal will impact on the Aboriginal Cultural values associated with view keys to the Escarpment and does not meet the Objectives of Chapter B6 and no consultation has been undertaken with the local Aboriginal Community;
- The VIA is inadequate and does not consider visual impacts from the Escarpment looking east, as identified in Part 5.1 of Chapter B6;
- The VIA is contradictory to the justification of the development in the SEE;

- No Heritage Impact Statement has been prepared;
- The Variation statement does not consider heritage impacts of Clause 5.10 WLEP 2009 Objectives and does not demonstrate the proposal will not have an impact on the heritage values of the Illawarra Escarpment Heritage Conservation Area

#### **CHAPTER E12 GEOTECHNICAL ASSESSMENT**

The application has been reviewed by Council's Geotechnical Engineer in relation to site stability and the suitability of the site for the development. Appropriate conditions have been recommended and would have formed part of the consent if this application were to be approved.

#### **CHAPTER E13 FLOODPLAIN MANAGEMENT**

The site is identified as being located within a high to medium flood risk precinct. Council's Stormwater Engineer has reviewed the proposal with respect to the provisions of this chapter and clause 7.3 of WLEP 2009 and did not raise any concern in this regard.

#### **CHAPTER E16 – BUSHFIRE MANAGEMENT**

Council records indicate that the subject site is located within a bushfire prone area therefore the proposal has been assessed having regard to the provisions of Planning for Bushfire Protection (PBP) 2019. The proposal could be considered a Class 10 building as per provisions in the Planning for Bushfire Protection 2019 guidelines. The applicant did not submit a bushfire hazard assessment report.

#### **CHAPTER E22 SOIL EROSION AND SEDIMENT CONTROL**

Conditions of consent were recommended in regard to appropriate sediment and erosion control measures to be in place during works, in the instance that consent was granted.

### **Attachment 5: Reasons for Refusal**

1. The proposed development is not a land use that is permissible with consent in the RE2 Private Recreation zone and the application fails to demonstrate existing use rights in accordance with Division 4.11 of the Environmental Planning & Assessment Act 1979.
2. The proposal represents an intensification of the existing use on the site however the application submission fails to identify that consent is being sought for the intensification of an existing use in accordance with section 164 of the Environmental Planning and Assessment Regulation 2021, and insufficient information has been provided to enable a complete assessment of the intensification.
3. Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the application submission fails to demonstrate consistency with Wollongong Local Environmental Plan 2009 with respect to:
  - a. Clause 1.2 Aims of Plan (f) and (h)
  - b. Clause 2.3 Zone Objectives
  - c. Clause 4.3 Height of buildings: the proposed development does not comply with Clause 4.3 Height of Buildings and is not consistent with the objectives of the Clause;
  - d. Clause 4.6 Exceptions to development standards: The written request provided by the applicant has not adequately addressed the matters required to be demonstrated by Clause 4.6(3) for the proposed Height of Building exceedance, and the proposed development is not considered to be in the consistent with the objectives of the development standard and zone;
  - e. Clause 5.10 Heritage Conservation: the proposed development will result in an adverse impact on the heritage significance of the Illawarra Escarpment Heritage Conservation Area and Aboriginal heritage;
  - f. Clause 7.8 Illawarra Escarpment area conservation: the proposed development fails to minimise any adverse impact on the natural features and environment of the Illawarra Escarpment.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning & Assessment Act 1979, the proposed development does not comply with the provisions of Wollongong Development Control Plan 2009 in a number of areas:
  - a. The development is unsatisfactory with the provisions within Chapter B6 – Development in the Illawarra Escarpment, including visual impact assessment, Aboriginal and European heritage, maximum building heights and building character and form controls.
  - b. The development fails to demonstrate compliance with the provisions within Chapter C13 – Places of Public Worship including maximum building height, car parking and access, building form and character.
  - c. The development fails to demonstrate compliance with the provisions within Chapter E3 - Car Parking Access Servicing Loading Facilities
  - d. The development fails to demonstrate compliance with the provisions within Chapter E10 – Aboriginal Heritage
  - e. The development fails to demonstrate compliance with the provisions within Chapter E11 – Heritage Conservation
  - f. The development fails to demonstrate compliance with the provisions within Chapter E7- Waste Management.
5. Pursuant to the provisions of Section 4.15 (1)(b) of the Environmental Planning and Assessment Act, 1979, the likely impacts of the proposal on the context and setting and the impacts of the siting and design of the proposal on the amenity of the area, heritage items and heritage conservation area are adverse.
6. Pursuant to the provisions of Section 4.15 (1)(b) of the Environmental Planning and Assessment Act, 1979, the proposal will have an unacceptable social impact.

6. Pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning & Assessment Act 1979 the proposal is not considered to fit with the locality.
7. Pursuant to the provisions of Section 4.15(1 (d) and (e) of the Environmental Planning & Assessment Act 1979, having regard to the submissions received, it is considered that in the circumstances of the case, approval of the development would set an undesirable precedent for similar inappropriate development and is therefore not in the public interest.
8. The application submission fails to demonstrate the impacts of the proposed development with respect to fauna, utilities, traffic, car parking and access, waste management, economic impacts and site suitability. As such, a complete assessment of the likely impacts of the development is not able to be made.