

## Planning Report: CI.4.6 Exceptions to Development Standards

**Clause 4.6 assessment report – exceptions to development standards under Lockhart Local Environmental Plan 2012 to change use of place of public worship to allow a dwelling house at Lot 1 DP 336060, 192 Western Road, Urangeline. (DA53/23)**

### 1. Summary

Lockhart Shire Council seeks the Secretary's concurrence to vary *Clause 4.2B(3)(a) Erection of dual occupancies or dwelling houses on land in Zone RU1* under the Lockhart Local Environmental Plan 2012 (LLEP 2012). This would allow the existing place of public worship to be converted to a dwelling house on land that is significantly smaller in size than the specified minimum lot size (MLS) required for zone RU1 Primary Production.

The land has a total area of 2023m<sup>2</sup> and is zone RU1 Primary Production (Figures 1 and 2) where a minimum lots size (MLS) of 250ha applies. The proposal represents a 99.92% variation to the applicable MLS.

Having regard to the circumstances of the case and the information provided it is recommended that concurrence be granted in this case.

### 2 The Proposal

The proposed development seeks to permit a dwelling house on the subject land, which does not meet the MLS requirement. The dwelling house construction involves works to an existing building that was previously used as a Church.

### 3 Site description

Lot 1 DP 336060, known as 1962 Western Road, Urangeline, is located about 30 km south west of Lockhart and 30 km east of Urana (Figure 1). The land has access to Western Road, Urangeline. The site is occupied by a former place of public worship building. Lot 1 DP 336060 is zone RU1 Primary Production with a site area of 2023m<sup>2</sup>. The property and the existing building was previously used as the Saint Terrence's, Catholic Church from about 1937 to 2020. The subject land was then sold. It is located in a remote rural location and is surrounded by productive dryland rural farm land.

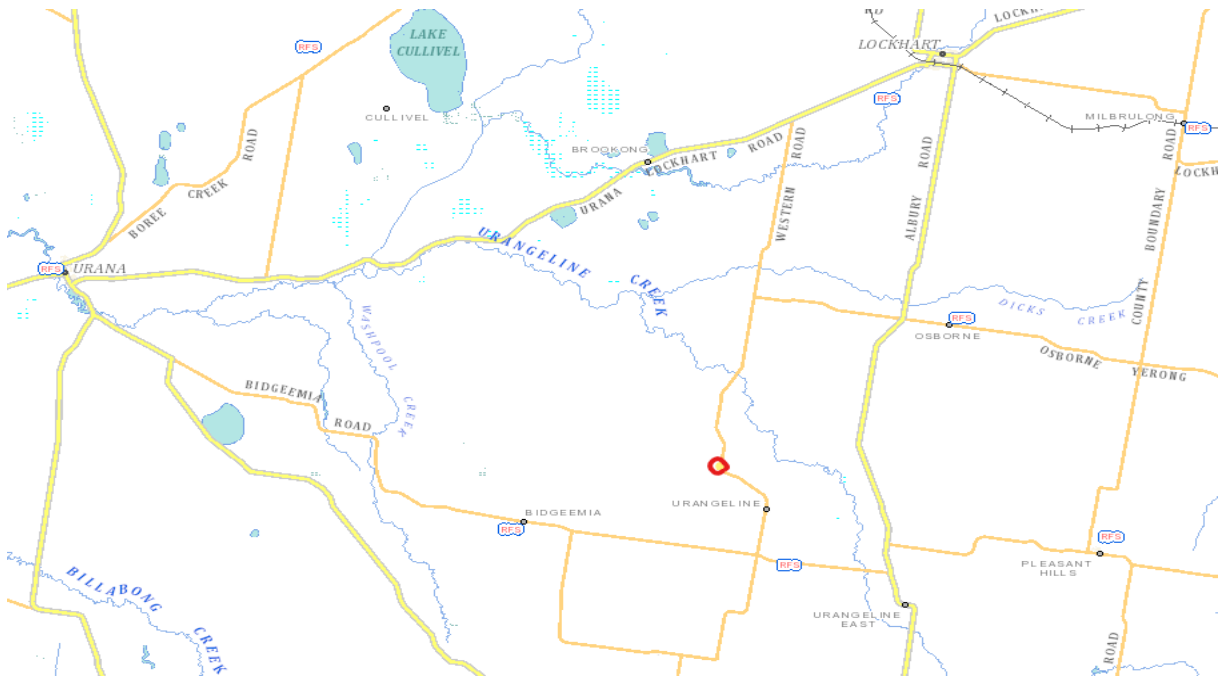


Figure 1 – Locality map – (source: ePlanning Spatial Viewer, 2022)



Figure 2 – Aerial view – (source: six maps)

### Planning Provisions

Under the *Lockhart Local Environmental Plan 2012 (LLEP 2012)*, the following planning provisions apply:

- The land is zoned RU1 Primary Production.
- The MLS required for a dwelling house is 250 ha.

- To erect a dwelling house on the subject land, clause 4.2B applies. Council advise that land does not meet the requirements of clause 4.2B or the MLS shown on the MLS Map.
- The building or land is not identified as a heritage item and there are no known constraints or considerations identified in the LLEP 2012.

#### **4 Applicant's submission**

The applicant has lodged a development application (DA53/23) objection to Lockhart Shire Council in relation to Lot 1 DP 336060 to convert the place of public worship to a dwelling house. The objection is on the grounds that the standard is unreasonable or unnecessary in this circumstance for the following reasons (as stated by the applicant):

- The proposal involves use of an existing building already constructed on the individual small lot, and to which no significant modifications are required;
- It is considered unreasonable to require such a larger lot to be created to accommodate an existing building for use as a dwelling house;
- The use of the building for a dwelling house will not create demands for the provision or extension of services as these are already provided to the property;
- The lot has been historically used for a use other than agriculture;
- The proposal will result in no physical changes to the property, including any loss of productive rural land, which is the overarching objective of the MLS applying to development of a dwelling house;
- The MLS expressed in the LEP would appear excessive in this circumstance.
- The site has been primarily used for a school and a place of public worship.
- A building that was used as a place of public worship building is located on the land and the application is to re-use the building as a dwelling house.
- Free from constraints - the building is located on the land and is to be re-used, access is available from Western Road. An onsite effluent assessment has been provided indicating the land is capable of onsite disposal of effluent. Onsite water supply can be provided to Council requirements.
- Development design – retain and re-use existing building so as no change to the rural landscape. The existing vegetation on site will be retained.
- Minor demolition works and alterations will be undertaken.
- Consistency with the objectives of the EP& A Act, LLEP 2012 and zone - despite not meeting the development standard, the development would not be inconsistent with the objectives of the plan, zone or standard.
- The land with a site area of 2023m<sup>2</sup> is not of a size to undertake primary production and the reuse of the building will be a sustainable use of a resource.
- The proposal will promote the delivery and maintenance of affordable housing

#### **5 Council's Position**

This application under clause 4.6 has not been assessed by Council or presented to Council for consideration or determination so Council's formal position is not known in relation to this application.

The Department requested further information from Council that was provided on 9 June 2023 and the Department officers met with Council officers on 15 June 2023 and confirmed the following:

- The subject land does not have dwelling house permissibility under clause 4.2B under the LLEP 2012.
- Concerns about the remote location of the land particularly for residential use

- The proposed change of use may create potential land use conflict due to adjoining agricultural land use.
- Potential future implications for dwelling houses on undersized rural land.

## 6 Departments Consideration

The concurrence of the Secretary is required under clause 4.6(4)(b) of the LLEP for this application.

The application seeks to permit a dwelling house on the subject land which is 99.92% less than the development standard (the subject land being 2023m<sup>2</sup> instead of the required 250ha).

The subject land immediately adjoins a productive rural area and is about 30km from the nearest townships of Lockhart and Urana. It is zoned RU1 Primary Production with a 250ha MLS for a dwelling house. The surrounding character and context of the land is rural, with adjoining properties are used for rural grazing and cropping activities.

The conversion of an existing Church building to a dwelling house on the subject lot will not impact on the character of the area and it is unlikely to create a wholesale precedent given the size and purpose of the land. The adaptive reuse of an existing building resource on the undersized lot which has traditionally not been used for agricultural purposes will not detract from surrounding existing agricultural production.

In deciding whether to grant concurrence under clause 4.6(5) of the LLEP 2012, the Secretary must consider the following matters:

### **(a) Whether contravention of the development standard raises any matter of significance for State or regional environmental planning**

The variation requested under the proposal to allow the adaptive reuse of a former place of public worship to a dwelling house on land (2023m<sup>2</sup>) that is significantly less than the MLS of 250ha is a matter of significance for regional environmental planning.

The proposed development is not justified through a strategic land use plan or study for the proposed use, nor is it of minor significance.

Following objective of the RMRP 2041 is relevant to the proposed development –

Objective 7: Provide for appropriate rural residential development

Strategy 7.1

New rural residential development areas must be identified in a local housing or other strategy, approved by the department, prepared in accordance with Objective 5

*Comment: inconsistent - subject land not identified in a strategy*

- be near existing urban areas to maximise the efficient use of existing infrastructure and services, such as roads, water, sewerage and waste services, public transport and social and community infrastructure, (including access to education facilities)

*Comment: inconsistent - subject land not near an urban area and is in a remote location.*

- not reduce future urban development options

*Comment: consistent*

- protect the economic use of rural land and be located away from significant agriculture, forestry, extractive resources or energy production or distribution areas or other air pollution emission sources (see Objective 12)

*Comment: inconsistent - the small lot with a proposed dwelling house will be located within an operational agricultural area.*

- not be located on areas of high environmental value or areas of cultural or heritage significance or not adversely affect nearby land with those values

*Comment: consistent - the subject land is not of high environmental value or in an area of cultural or heritage significance.*

- avoid fragmentation of waterfront areas, and not proliferate additional water rights to water bodies

*Comment – not applicable.*

- avoid areas that could pose a risk to public safety, including flood, landslip, bushfires, proximity to hazardous or offensive industry uses or contaminated land

*Comment- consistent.*

- be suitable for on-site effluent disposal (if required), or ensure treatment systems that can avoid overflow during storms

*Comment – consistent - based on the information provided with the development application the proposed dwelling house can be serviced by an onsite effluent disposal system.*

- avoid locations that could adversely impact surface water or groundwater resources

*Comment- consistent – the subject land and proposed dwelling house is unlikely to impact on surface and ground water.*

Note: where onsite sewer is being proposed, the cumulative impacts on groundwater must be considered.

*Comment- consistent as demonstrated by the work provided with the development application.*

- provide an adequate water supply for domestic purposes

*Comment – consistent – information with the development application indicates that a water supply of 60,000 litres can be provided. This will be subject to Council assessment and requirements.*

- offer permanent and safe all-weather access, avoid ribbon development along main roads and minimise access off major roads

*Comment – consistent - access is via Western Road.*

- provide a lot size and zone that ensures a dwelling is the primary use of the land.

Note: The RU4 Small Lot Primary Production Zone is not suitable for rural residential development.

*Comment- inconsistent – the subject land would be used for a dwelling house however the zone, MLS and location does not reflect a compatible use in this locality.*

The proposed dwelling house is located on land significantly under the MLS standard for zone RU1, which is not capable of supporting a productive agricultural enterprise and is on balance not consistent with the intent of the Regional Plan objectives above. The subject land adjoins other extensive dryland agricultural holdings (refer to Figures 1 and 2). Allowing the conversion of a former place of public worship to a dwelling house on this land:

- is unlikely to create a precedent as there are unique circumstances in relation to this land (existing individual lot and building) that would not encourage the construction of dwelling houses on other undersized lots in the Lockhart local government area. There would be a limited lots of this nature in the LGA.
- is unlikely to result in the fragmentation of surrounding productive agricultural land holdings however there is potentially land use conflicts with existing/future adjoining primary production uses as permanent residency may be impacted by noise, dust and hours of operation.
- as the size of the subject land, being 2023m<sup>2</sup>, is not sufficient to allow adequate separation buffer distance from the adjoining agricultural land but it is a legally created individual lot.
- is unplanned rural residential development in an area that is predominantly used for primary production activities.
- alienates of the subject land for residential purposes, making it difficult for primary production to continue or be established and indeed the size of the land does not allow this.
- is in an isolated location that results in the required support services not being readily available.

On balance while there are concerns about the isolated nature of the land that is in contravention of the development standard (ie. 250ha minimum lot size) is not a matter of State or regional significance in this case. The conversion of an existing building (previously used as a Church) to a dwelling house on the 2023m<sup>2</sup> is unlikely to impact on the character of the area.

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

There is public benefit in maintaining the 250ha minimum lot size for the erection of a dwelling house because:

- the MLS is a long established standard that has consistently been upheld by Council. Although Department records indicate that there have been four (4) clause 4.6 concurrence requests to vary this development standard under LLEP 2012 with support being granted to them all.
- sets the standard for density, amenity and character for the rural and environmental management areas.
- assists in preventing land use conflict.
- assists in achieving primary production and environmental outcomes.
- if changed should be through a strategic planning process.

However, the circumstances of this case is that:-

- the subject individual lot contains a building that was previously used as a Church and
- the change of use and works that will constitute the erection of a dwelling house on the 2023m<sup>2</sup> site would not undermine the objectives of the RU1 Primary Production

Zone as the proposed development will result in no physical changes to the property, including any loss of productive rural land.

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

The Department supported a similar application and variation in 2017 and there are no other matters that are required to be taken into consideration.

The applicant's justification demonstrated that the standard is not of state regional significance, there is no public benefit in maintaining the standard as it is unreasonable or unnecessary in this instance.

**7 Recommendation**

It is RECOMMENDED that the Secretary's delegate grant concurrence to the development application DA 53/23 in accordance with clause 4.6(4)(b) of *Lockhart Local Environmental Plan 2012* to permit the change of use of an existing building to that of a dwelling house on Lot 1 DP 336060, 1962 Western Road, Urangeline in accordance with the information submitted by the applicant and Council.

**Thomas Scoble**  
**Planning Officer**  
**Western Region**  
23 June 2023



**Wayne Garnsey**  
**Manager, Western Region**  
27 June 2023