

**13.3.1 DEVELOPMENT APPLICATION (RETROSPECTIVE CHANGE OF USE)
FOR TOURIST AND VISITOR ACCOMMODATION (USE NOT
LISTED) AT LOT 100 (HN. 17) SKULL SPRINGS ROAD, NULLAGINE**

Report Type	Planning
Responsible Officer	Robert Paull, Director Regulatory Services
Author	Julie Quartermaine Senior Planning
Voting Requirements	Simple Majority
Attachments	1. Order to Cease Operations 2. Septic Application Form 3. Submission Requirements for Planning Applications 4. Request for Further Information 5. Applicant Revised Plans and Details 6. Revised Site Plan
Author Disclosure of Interest:	No
Location / Address:	Lot 100 (Hn. 17) Skull Springs Road, Nullagine
Name of Applicant:	Kerry & Geoffrey Robertson

Officer Recommendation

That Council:

1. Pursuant to section 5.23(4)(a) of the *Local Government Act 1995*, withholds publication of conditional attachments as they contain personal advice to the applicant that require a separate approval process for septic and building certification, which are not subject to the proposed development application.
2. Resolves that the proposed retrospective change of use to "Tourist and Visitor Accommodation (Use not Listed) at Lot 100 (Hn. 17) Skull Springs Road, Nullagine may be consistent with the objectives of the Nullagine Townsite zone in accordance with Clause 3.2(c) of the Shire of East Pilbara Local Planning Scheme No. 4;

3. Requests the Chief Executive Officer:

- a. to follow the advertising and referral procedures of the Deemed Provisions found in Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, in considering the application for development approval, which includes public advertising to nearby landowners for a period of 14 days and referral to external agencies for a period of 42 days;
- b. should no objections be received as a result of 2(i) above, assess and approve the Application subject to any conditions as deemed applicable;
- c. should objections be received as a result of 2(i) above, refer the Application back to Council for consideration; and
- d. to advise the applicant that until the outcome of advertising in 2(i) above is completed and development approval has issued, the "Tourist and Visitor Accommodation" land use cannot operate until such time that all required septic approvals and building certification/s and approvals have been obtained, prior to re-opening the business operations.

Purpose

Council is requested to:

1. Accept the development application for a retrospective change of use to "Tourist and Visitor Accommodation" (Use not Listed) at Lot 100 (Hn. 17) Skull Springs Road, Nullagine, which may be determined to be consistent with the objectives of the Nullagine Townsite zone and the proposed "Use not Listed" can be considered under Clause 3.4.2 of the Shire's Local Planning Scheme No. 4, and therefore to;1.
2. Request the Chief Executive Officer:
 - i. To follow the advertising and referral procedures of the Deemed Provisions found in Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, in considering the application for development approval, which includes public advertising to nearby landowners for a period of 14 days and referral to external agencies for a period of 42 days;
 - ii. Should no objections be received as a result of 2(i) above, assess and approve the Application subject to any conditions as deemed applicable;
 - iii. Should objections be received as a result of 2(i) above, refer the Application back to Council for consideration; and
 - iv. To advise the applicant that until the outcome of advertising in 2(i) above is completed and development approval has issued, the "Tourist and Visitor Accommodation" land use cannot operate until such time that all required septic approvals and building certification/s and approvals have been obtained, prior to re-opening the business operations.

Background

Lot 100 (Hn. 17) Skull Springs Road, Nullagine has an area of approximately 1908sqm and the property is zoned "Nullagine Townsite R15/40" under the Shire's Local Planning Scheme No. 4 (LPS 4).

The property is located within a "Bush Fire Prone Area" and the majority of the townsite (including the subject property) is located in the 1:100 year Floodplain area, which is identified within the LPS No. 4 as a "Priority 3 - Water Source Protection Area". Lot 100 (Hn. 17) Skull Spring Road, Nullagine is located immediately adjacent to the southern side of the Nullagine River.

There are currently no Shire record land use planning approvals, building permits or environmental health approvals relating any existing development or land uses on site. The applicant purchased the property a number of years ago "as is" and has advised the Shire "the property has rented accommodation rooms in existing dongas for over 40 years".

The applicant has not provided scaled site plans, floorplans or elevations as part of the development application to quantify existing development, floor areas, site cover or setbacks. Shire staff have assisted the applicant in preparing a revised Site Plan for assessment purposes. The Shire has assessed the application on the information available, with aerials showing existing development on the property, as follows:

1. Main Residence (approximate area of 49.8sqm);
 2. Eight (8) existing donga rooms previously used as guest accommodation, however the applicant has revised the development application to reduce the number of rooms for tourist accommodation, to three rooms, which would permit a maximum of five (5) visitors/guests at any one time (combined approximate area 64.51sqm);
 3. Communal kitchen, kitchen storage and laundry facilities (approximately 32.87sqm);
 4. Two (2) communal bathroom and toilet facilities (approximately 9.67m);
 5. Large open shed (approximately 128sqm), which provides external roof cover over the top of the eight existing dongas;
 6. Four (4) patio's adjoining the large open shed located above dongas (approximate combined area 269.4sqm);
 7. Camper (approximately 4sqm) at western side boundary, which the applicant has advised is proposed to be removed;
 8. Shade sail cover (approximately 53sqm) adjacent to the front boundary and western side boundary and within the primary street setback area.
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Lot 100 (Hn. 17) Skull Springs Road, Nullagine (Source Shire of East Pilbara, GIS)

Details and Analysis

The Proposal

The retrospective change of use application, seeks to legitimise the current business operation at the property. A summary of the proposal is as follows:

- A maximum number of five (5) tourist or visitor guests are proposed to be accommodated at the proposed business (this is a reduction in the number of potential guests);
- There are no staff employed at the business, the owner of the residential property manages the tourist and visitor accommodation;
- A total of three (3) ensuite rooms (including 1 double bed room and 2 single bed rooms) is proposed to be used for guest accommodation;
- Three (3) existing rooms are proposed to be converted to storage rooms;
- There is an existing communal kitchen, kitchen storage and laundry facility;
- There are two (2) additional communal toilets and bathroom facilities;
- Three (3) visitor car parking spaces are proposed;
- The maximum time period a guest will rent a room in any one (1) year timeframe is for not more than three (3) months.

As the proposed change of land use application is retrospective and all buildings are existing, the structures on the property have not been certified by a licensed surveyor or a building permit approved by the Shire. It is the applicants hope that the reduction in the number of current rentable rooms from six (6) to three (3) rooms and subsequent reduction in visitors to less than five (5) persons, will satisfy the requirements for existing buildings (dongas) to be assessed as a Class 1B Buildings under the National Construction Code (NCC). Compliance with the NCC is likely to require the landowner to make significant improvements to existing structures and waste disposal system.

The applicant does not want to proceed with pursuing a building permit or septic upgrades without knowing whether the Shire will support the planning application. Whilst a retrospective planning application for a change of use (use not listed) can be considered and determined by the Shire, there is no legal framework to retrospectively approve unauthorised buildings. Subsequently, the Shire advised the applicant on the 19th May 2026 to cease operations until retrospective Planning Approval had been obtained as well as obtaining required Building and Health Services approvals, prior to recommencing operations, which includes the following:

1. 'Certification of Building Compliance' from a licenced surveyor;
2. 'Building Permit' approval from the Shire of East Pilbara; and
3. Approved 'Apparatus for the Treatment of Sewage' from the Shire of East Pilbara.

It is essential the applicant obtain the above approvals, regardless of the outcomes of the retrospective change of land use development application. In the event the retrospective planning application is approved, this does not foreshadow or fetter, approval or refusal under Building or Health services legislative requirements.

Planning Framework

Strategic Planning

The proposal seeks planning approval for a retrospective 'tourist and visitor accommodation' (use not listed) application. The land use has been in operation for an exceptionally long period, prior to various local and state, planning strategies and policies coming into effect.

The Shire of East Pilbara Local Planning Strategy (EPLPS) outlines the following strategy and actions relevant to the development application:

"Clause 3.1.7 Strategy - Nullagine

1. *Facilitate development in Nullagine to meet the requirements of a secondary centre level settlement in the Shire.*
2. *Recognise the extent of the flood plain environment of the townsite.*

Clause 3.1.8 Actions - Nullagine

2. *Introduce a Special Control Area for the Nullagine Floodplain to the extent of the 100 year ARI level and associated provisions.*
4. *Investigate land for townsite expansion for residential, tourist, and industrial land uses".*

The Western Australian Planning Commission's Position Statement: Planning for Tourism and Short-term Rental Accommodation provides development considerations for short-term rental accommodation.

Whilst the application does not 'fit' the definition of 'short-term rental accommodation', it does reflect some of the objectives and general measures of the position statement as follows:

- *"Encourage a range of tourist accommodation, including short-term rental accommodation, choices and experiences as required.*
- *Promote the location of tourist accommodation in areas with the highest tourism amenity (for example beach access, views, facilities, availability of services) and adequate separation from, or management of, any interface with residential land uses" (Position Statement: Planning for Tourism and Short-Term Rental Accommodation; pg. 2).*

The property is adjacent to the Nullagine River and Skull Springs Road provides direct access to local natural attractions including, the Nullagine River, 'Skull Springs' and 'Carawine Gorge', which are tourist attractions in the Pilbara region. There are limited tourist accommodation options in Nullagine town. Visitor movements are likely to fluctuate with seasonal climate changes and changes in surrounding mining settlements. Small towns and permanent residents in these towns rely on peak seasons where travel in the Pilbara is optimal. The property subject to this application is in a prime location for tourists and visitors to utilise 'tourist and visitor accommodation'.

Additionally, during growth phases of mine site(s), surrounding remote towns such as Nullagine there is a consequential demand on short term accommodation options for workforce accommodation or persons visiting the nearby mine sites during feasibility and construction phases of development. There is a clear need to support land uses that provide alternative tourist and visitor accommodation options in the town.

Statutory Planning Considerations - Land Use

The retrospective change of use application does not fit within the definition of a "short-term hosted or un-hosted rental accommodation" as per the provisions of the *Planning and Development (Local Planning Schemes) Amendment (Short Term Rental Accommodation Regulations 2024*.

The subject accommodation is proposed in rooms (dongas) that are not self contained, therefore do not fit the definition of an ancillary dwelling as outlined by the *Residential Design Codes of WA*. Consequently the Shire recommended the most appropriate land use for the retrospective development application, would be that of a "tourist and visitor accommodation" as the definition of this land use is not restrictive on 'tourist or visitor' use. Clause 2 of the *Planning and Development (Local Planning Schemes) Amendment (Short-Term Rental Accommodation) Regulations 2024*, which is subsidiary legislation to the *Planning and Development (Local Planning Schemes) Regulations 2015, Schedule 1, Part 6, cl. 38* provides the following land use definition:

Tourist and Visitor Accommodation

a. *means a building, or a group of buildings forming a complex, that:*

- is wholly managed by a single person or body; and*
- is used to provide accommodation for guests, on a commercial basis, with no individual guest accommodated for a period or periods exceeding a total of 3 months in any 12-month period; and*
- may include on-site services and facilities for use by guests; and*

- iv. *in the case of a single building - contains more than 1 separate accommodation unit or is capable of accommodating more than 12 people per night; and*
- a. *includes a building, or complex of buildings, meeting the criteria in paragraph (a) that is used for self-contained serviced apartments that are regularly serviced or cleaned during the period of a guest's stay by the owner or manager of the apartment or an agent of the owner or manager; but*
- c. *does not include any of the following:*
 - i. *an aged care facility defined in the Land Tax Assessment Act 2002 section 38A(1);*
 - ii. *a caravan park;*
 - iii. *hosted short-term rental accommodation;*
 - iv. *a lodging house as defined in the Health (Miscellaneous Provisions) Act 1911 Section 3(1);*
 - v. *a park home park;*
 - vi. *a retirement village as defined in the Retirement Villages Act 1992 section 3(1);*
 - vii. *a road house;*
 - viii. *workforce accommodation.*

However, "Tourist and visitor accommodation" is a land use that is 'not listed' within the zoning table of LPS 4. This does not impinge the Shire's ability to consider and determine the retrospective development application given Clause 3.4.2 of LPS 4 states:

If a person proposes to carry out on land any use that is not specifically mentioned in the Zoning Table and cannot reasonably be determined as falling with the type, class or genus of activity of any other use category the local government may:

- a. *determine that the use is consistent with the objectives of the particular zone and is therefore permitted;*
- b. *determine that the use may be consistent with the objectives of the particular zone and thereafter follow the advertising procedures of clause 64 of the deemed provisions in considering an application for planning approval; or*
- c. *determine that the use is not consistent with the objectives of the particular zone and is therefore not permitted.*

LPS was gazetted some 20 years ago and does not adequately reflect the nature of contemporary residential and tourist uses in our remote regional towns. In considering the proposal, the Council should determine whether the application is consistent with the objectives of the zone. Clause 3.2(c) provides the following objective for the 'Nullagine Townsite' zone:

"The objective of the Nullagine Townsite zone is to allow for a wide range of land uses that may reasonably be expected to exist in a small remote townsite, having regard for the unique existing land use mixes within Nullagine, but subject to the consideration of the orderly and proper planning and the preservation of local amenity".

Justification for the Retrospective 'Tourist & Visitor Accommodation' Land Use (Use not Listed)

1. The proposed change of use to "tourist and visitor accommodation" would allow the owner to utilise existing development on the property and rent rooms to tourists and workers visiting the remote town on a short term basis. This land use is retrospective and has been in operation for many years prior to use by the current owners. The Shire has not had formal complaints and the applicant has provided a letter of no objection from the adjoining landowner at 21 Skull Springs Road, Nullagine.
2. The remote location of Nullagine and increasing number of mine sites around the town, results in there being a need for short stay accommodation for transient workforce populations moving between sites located near or between Marble Bar, Nullagine and Newman. There is a need to provide alternative tourist and visitor accommodation options in the remote town.
3. The town is one of the most eastern towns in the Pilbara region and a regionally significant stopping point for tourists, transport vehicles and also for Aboriginal people living in remote settlements East of Nullagine. There is a need for a stopping or rest point for rural travelers creating a demand for 'tourist and visitor accommodation' options.
4. Nullagine is a small historic gold rush town with rugged and remote beauty. Skull Springs Road is also an approximate 90km road between Nullagine and Marble Bar, which attracts 4WD tourism opportunities due to the remote creeks, pools and springs located adjacent to the unsealed road to Carawine George. The Shire is supportive of operations that generate local employment and tourism opportunities within the local area.

Considerations of Orderly and Proper Planning

Nullagine townsite is entirely located within a Bushfire Prone Area, a 1:100 year floodplain and Priority 2 Public Drinking Water Source Area (PDWSPA) under Clause 5.2 of the Shire's LPS No. 4. In addition to these constraints that impact the entire Nullagine townsite, approximately 3/4 of the subject property at Lot 100 (Hn. 17) Skull Springs Road is located within a 1:25 year floodplain. There are no specific local planning scheme or policy provisions relating to development in floodplains. It is acknowledged that much of the town has developed historically and unlikely developed in congruence with current State policy guidelines.

Clause 5.2.1(b) of the LPS No. 4 outlines the purpose of the PDWSPA's is to:

- ensure that land use and development within PDWSPA's is compatible with the protection and long-term management of water resources for public water supply.

It is the view of the assessing officer, that the land use is not a high producing nutrient loading land use, such as a poultry or piggery and no chemicals, fuels or polluting substances will be stored on site.

However, given the business has operated for many years without appropriate approvals relating building structures, wastewater and septic and the majority of the site is within a 1:25 year floodplain there is an essential public liability and public health reason to warrant referral to the Department of Water and Environmental Regulation (DEWER) in regards to onsite wastewater treatment prior to determining the application and the Shire consider recommendations made by DWER prior to determination.

Bushfire management can be dealt with by way of condition and ensuring the provision of a Bushfire Management Plan and procedures.

The following is recommended prior to determining whether the application is consistent with the objectives of the Nullagine Townsite zone and determining the application:

1. Public Advertising, for a 14 day period in accordance with requirements in Schedule 2, Part 8, Clause 64 (7) of the *Planning and Development (Local Planning Schemes) Regulations 2015*; and
2. Referral of the planning application to DEWER, for a 42 day period as per Schedule 2, Part 9, Clause 66(3) of the *Planning and Development (Local Planning Schemes) Regulations 2015* prior to determining the development application.

Community Engagement

Should Council determine that the proposed "tourist and visitor accommodation" may be consistent with the objectives of the 'Nullagine Townsite zone', the Shire would advertise the proposal in accordance with Clause 64 of the Deemed Provisions as found in Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*. This would result in a 14 day advertising period to adjoining residents along with notification on the Shire's website to seek community views (if any) on the proposal.

In consideration development on the property is existing and there is no wastewater treatment approval, given the lot is within a Priority 2 Public Drinking Water Source Area and 1:25 Year floodplain, that the application be referred to the Department of Water and Environmental Regulation (DEWER) as per Clause 66(3) of the *Planning and Development (Local Planning Schemes) Regulations 2015* prior to determining whether the retrospective 'tourist and visitor accommodation (use not listed) proposal is consistent with the objectives of the Nullagine Townsite zone.

Once advertising and referral is completed, should objections be received either from public advertising or external agency referral, the application would be referred back to Council for determination. In the event no objections are received, the application would be addressed and determined under delegation, as provided by Council for such planning matters.

Strategic, Legislative and Policy Implications

Strategic Community Plan	1.2 Work with local entrepreneurs, existing businesses and artists to increase their internal capacity and explore business opportunities that will reduce leakage from the local economy. 1.3 Undertake economic development planning for Marble Bar, Nullagine and remote communities. 5.2 Facilitate collaboration and partnerships with industry and government in key issues for the Shire (such as transport, housing, economic development and tourism, social wellbeing, public spaces etc).
Statutory Implications/Requirements	Council will determine this application with its powers under the <i>Planning and Development Act 2005</i> , <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> and the Shire of East Pilbara Local Planning Scheme No. 4.
Policy Implications	There are no known policy implications.

Risk Management Considerations

Risk	Financial / Compliance / Reputational / Health / Environmental / Service Interruption <i>[Provide description of what the risk is]</i>
Consequence	Insignificant / Minor / Significant / Major / Severe
Likelihood	Rare / Unlikely / Possible / Likely / Almost Certain
Current Risk Rating	Medium 7-15
Mitigation Action	<i>Fire Management Plan</i> <i>Operational Management Plan and Code of Conduct</i> <i>Septic Tank Approval</i> <i>Building Certification</i> <i>Building Permit Approval</i>
Residual Risk Rating	Low 1-6

	Insignificant	Minor	Significant	Major	Severe
Rare	Low 1	Low 4	Low 6	Medium 13	Medium 15
Unlikely	Low 2	Low 5	Medium 11	Medium 14	High 21
Possible	Low 3	Medium 9	Medium 12	High 19	High 22
Likely	Medium 7	Medium 10	High 17	High 20	Critical 24
Almost Certain	Medium 8	High 16	High 18	Critical 23	Critical 25

Financial Implications

There are no known financial implications.

Sustainability Considerations

The application has economic benefits, but also environmental considerations to be considered. The proposal is believed to benefit the local community, provided the applicant provides safe business operations in lieu of the environmental constraints (floodway and public drinking water resource and bushfire management).

Options

Option 1

Council to resolve the proposed retrospective change of use (use not listed) may be consistent with the objectives of the "Nullagine Townsite" zone and advertise the proposal in accordance with Clause 64 of the Deemed Provisions for a period of 14 days and refer the application to the Department of Water and Environmental Regulation (DWER) in accordance with Clause 66 of the Deemed Provisions.

Once statutory advertising is completed, the Shire would refer the matter back to Council for consideration if objections are received. If no objections are received then the application would be determined under delegated authority.

Option 2

Council resolved that the proposed retrospective change of use (use not listed) is not consistent with the objectives of the "Nullagine Townsite" zone and is therefore not permitted.
