

**AGENDA of the
Portfolio Committee : Planning and Development
17 March 2026
(Also the agenda for the Mayoral Committee Meeting : 25 March 2026)**

**6.
A PORTION OF ERF 5327 AND A PORTION OF 4831, HERMANUS (DE MOND):
LEASE OF MUNICIPAL PROPERTY TO POINT CARAVAN RESORT (PTY) LTD**

**A Le Roux Divisional Manager: Property Management
5 February 2026**

(028) 316 – 5623

1. Executive Summary

To consider the request of Point Caravan Resort (Pty) Ltd (hereinafter referred to as the “Lessee”) to approve their request for a Relief Event as submitted in terms of the lease agreement entered into between the Municipality and Point Caravan Resort (Pty) Ltd in respect of municipal property, being a portion of Erf 5327, Hermanus ($\pm 0,70$ ha in extent) and a portion of Erf 4831 Hermanus ($\pm 9,94$ ha in extent) (total lease area of $\pm 10,64$ ha) situated south east of Seventeenth Avenue, Hermanus and south of the R43 towards Stanford, here, hereinafter referred to as “the Property”, for a lease period of 45 (FOURTY-FIVE) years for the lease and development of municipal property as a public resort.

See the locality map attached hereto marked Annexure “A”.

2. Service Delivery and Budget Implementation Plan - IGNITE

Planning and Development
Property Management

3. Compliance with Strategic Priorities

Provision of democratic, accountable and ethical governance
Promotion of tourism, economic and social development

4. Delegated Authority

None

5. Legal Requirements

- Local Government: Municipal Financial Management Act (Act 56 of 2003) (“MFMA”)
- Municipal Asset Transfer Regulations (R. 878 of 2008)
- Administration of Immovable Property Policy of the Overstrand Municipality, as amended.

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6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

HISTORY

A: Proposal Call 1 – March 2007

The first proposal call was advertised March 2007 before the Municipal Asset Transfer Regulations (2008) (“MATR”) were promulgated, thus advertised under the Cape Municipal Ordinance 20 of 1974, where a total of four tenders were received. The tender was awarded to Atterbury Western Cape and an agreement was entered into. Atterbury Western Cape’s agreement was cancelled in 2010 following their submission that the transaction was a Public Private Partnership in terms of Section 120(4) of the Municipal Finance Management Act (56 of 2003).

Council subsequently at a meeting held 24 November 2010 resolved as follows:

“that the Municipal Manager of Overstrand Municipality hereby be authorised and directed to conduct the Feasibility Study required by Section 120(4) of the Municipal Finance Management Act, 2003, No. 56 of 2003 and comply with all applicable statutory and regulatory requirements, including the Public Private Partnership Regulations, and to report the finding of said Feasibility Study and comments thereon to the Council in order that it be able to take a reasoned, deliberate decision in principle on whether to proceed with a proposed Public Private Partnership Agreement.”

Mr. J du Plessis Attorney and Ms. A. Botha of PAMS as specialist consultant on PPP’s were appointed to conduct the study in terms of Section 120 of the Municipal Finance Management Act (56 of 2003). Public comments were invited on feasibility study on 1 December 2011, and four comments were received and adequately addressed.

The comments from Provincial and National Treasury were also obtained as required by the MATR, who confirmed that according to them the leasing of De Mond does not constitute a Public Private Partnership, but rather a long-term lease that can be disposed according to the Council Fixed Asset Management Policy.

However, before the next competitive process could commence, the then occupiers of the Property had to be given notice to vacate and remove their structures, which was done. A few of the people who resided on the Property permanently refused to vacate forcing the Municipality to apply

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for an eviction order which was granted on 10 December 2012. The remaining occupiers vacated, and the Property was then available for the competitive process to proceed.

Council then on 27 February 2013 resolved as follows:

- “1. that the comments received on the feasibility study **be noted** and the authors be advised of the Council’s decision.
2. that the findings of the feasibility study **be noted** and accepted, and
3. that the municipal properties concerned be made available on a long-term lease basis for development of primarily a public resort in a manner that will secure ecologically sustainable development, promote more equitable access for members of the broader public to municipal resources, socio economic development and optimum use of municipal land in the best interest of the local community.”

B: Proposal Call 2 – 28 March 2014

Lyners Consulting Engineers was appointed to assist with preparation of the proposal call documentation. Ms A Botha of PAMS, with assistance of Adv W Zybrands, were included as sub consultants to assist with preparation of proposal call documentation. In addition to the above the following technical reports were also compiled:

- a) Bulk services department – GLS Consulting
- b) Standard for Civil Engineering Services – Overstrand Municipality
- c) Planning Reports – Urban Dynamics
- d) Environmental Report – Withers Environmental Consultants

No tenders were received, and the tender was subsequently cancelled.

C: Proposal Call 3 – 2 October 2014

Only one tender was received. This tender was non-responsive, and the tender was cancelled.

D: Proposal Call 4 – 31 July 2015 and 12 February 2016

This proposal call consisted of a 2-stage bidding process with the first stage being where interested parties could register and only the registered parties will partake in the second stage, which was the tender proposal. During this process eleven parties registered of which nine remained after the compulsory site visit and briefing session. At the end only three bids were received, and the tender was awarded to Crown Grant JV (Pohl Group).

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A lease agreement was entered into on 7 March 2018 between Overstrand Municipality and Pohl Group for a lease period of 45 (FOURTY-FIVE) years, with an initial additional two years (“contract period”), to obtain all relevant approvals, after the tender was successfully awarded to them. The Pohl Group failed to fulfil the suspensive conditions contained in the lease agreement by 1 July 2019. This had the effect that the lease agreement lapsed on 1 July 2019, which the Pohl Group placed in dispute. The matter was referred for mediation and subsequently arbitration (as the mediation was unsuccessful). The arbitration was instituted by the Pohl Group in terms of the lease agreement. The outcome of the arbitration (29 September 2020) was that the lease had lapsed on 1 July 2019, and the property was again available to the Municipality.

E: Proposal Call 5 – 29 July 2022

During a Special Council meeting, dated 26 January 2022, it was resolved as follows:

- “1. that Council request for proposals for the development of the De Mond property; and*
- 2. that a public participation process commence after the proposals have been received.”*

The Property was also identified as one of the “Investment Conference” properties to be made available by means of a competitive process. Following various public notices, including the Investment Conference held on 23 and 24 June 2022, eleven people initially registered as interested parties to partake in the tender for the *“Lease and Development of a Portion of Erf 4831 Hermanus and a Portion of Erf 5327 Hermanus (De Mond) as a Public Resort”*.

The tender for the lease and development of the De Mond Caravan Park as a Public Resort was advertised on 29 July 2022. Four tenders were received, and the tender was subsequently awarded by the Accounting Officer on 4 March 2024 to Point Caravan Resort (Pty) Ltd, at a rental amount of R117,735.80 (ONE HUNDRED AND SEVENTEEN THOUSAND SEVEN HUNDRED AND THIRTY-FIVE RAND AND EIGHTY CENTS (VAT included) per month for a period of 45 (FOURTY FIVE) years.

Council subsequently approved the long-term lease on 25 September 2024 subject to additional conditions.

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LEASE AGREEMENT

A lease agreement was entered into between the Municipality and the Lessee on 16 July 2024 (which remained subject to Council's approval which was subsequently obtained as referred to above), which lease period commenced on 1 July 2024 from which date the Lessee accepted liability and took full responsibility of the Property (i.e. security, maintenance, etc.).

The following main clauses of this lease agreement are applicable to this report:

“5. SPECIAL CONDITIONS

- 5.1 *The Lessee must complete phase 1 (one) of the Development of the Land in accordance with the details submitted by it in its tender submitted under SC2308/2022, on or before the Commencement Date, which obligations will include, but not be limited to, the following specific time-lines and requirements:*
- 5.1.1 *The submission by the Lessee and approval by the Lessor of a final Site Development Plan within a period of 1 (one) year from the Effective Date.*
- 5.1.2 *Compliance by the Lessee with the Infrastructure conditions contained in clause 20 below within the time limits provided for in that clause, but in any case, on or before the Commencement Date.*
- 5.1.3 *Obtaining the necessary environmental authorisation required by law.*
- 5.2 *The respective periods referred to in 5.1 above may with the prior written consent of the Lessor be extended, which consent shall may be granted or withheld by the Lessor within its entire discretion, the Lessee warranting that it can perform these obligations within the time provided for and being willing to take the risk should it be unable to meet these timelines and the Agreement being cancelled as a consequence thereof. Such request for extension shall:*
- 5.2.1 *be in writing;*
- 5.2.2 *be made before 2 months before the expiry date of the relevant time period;*
- 5.2.3 *state the reason(s) for the delay;*
- 5.2.4 *fully motivate why the extension should be granted; and*
- 5.2.5 *be directed to the relevant delegated authority of the Lessor.*
- 5.3 *Any consent for an extension or extensions contemplated in clauses 5.1 and 5.2 above shall not affect the Commencement Date and the responsibility of the Lessee to pay the Rental as and from the Commencement Date, irrespective of whether they are able to operate the Holiday Resort in full or part at that time.*

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5.5 *The Lessee acknowledges that the special conditions contained in this clause 5.1 are material conditions of this Agreement and failure to meet these special conditions within the time specified will constitute a material breach of the Agreement and entitle the Lessor to terminate the Agreement.*

12. RELIEF EVENT AND FORCE MAJEURE

12.1 Relief Event

12.1.1 *If and to the extent that a Relief Event:*

12.1.1.1 *directly causes a delay or interruption in putting into operation any phases of the Development; or,*

12.1.1.2 *materially adversely affects the ability of the Lessee to perform and/or comply with any of its obligations under this Agreement,*

then the Lessee shall be entitled to apply for relief from any rights of the Lessor arising from clauses 5, 19.2.3 and 20.

12.1.2 *To obtain relief, the Lessee must:*

12.1.2.1 *as soon as practicable, and in any event, within 10 (ten) Business Days after it became aware that a Relief Event has caused or is likely to cause a delay which will in all probability materially adversely affect the ability of the Lessee to perform any or all of its obligations under this Agreement, submit to the Lessor a notice of its claim for relief from its obligations under this Agreement, including full details of the nature of the Relief Event, the date of occurrence and its likely duration;*

12.1.2.2 *within 10 (ten) Business Days of receipt by the Lessor of the notice referred to in clause 12.1.2.1 above, give full details of the relief claimed; and,*

12.1.3 *In the event that the Lessee complied with its obligations under clause 12.1.2 above then:*

12.1.3.1 *the scheduled date of putting into operation the relevant phase of the Development shall be postponed by such a period as shall be reasonable for such a Relief Event, provided that this shall under no circumstances delay the Lessee's obligation to pay the Rental as and from 1 July 2026; and,*

12.1.3.2 *should the Lessee then comply with such amended timelines, the Lessor shall not be entitled to exercise its right to terminate this Agreement in terms of clause 20 or its right to claim*

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damages in terms of clause 19 as a result of a Relief Event; and,

12.1.3.3 *The Lessee shall, as soon as practicable but in any event within 10 (ten) business days, notify the Lessor that it has received or became aware of further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.*

12.1.4 *In the event of a Relief Event continuing for a period in excess of 120 (one hundred and twenty) Business Days the Parties shall meet in order to find a mutually satisfactory solution for dealing with such prolonged Relief Event and failing agreement on a satisfactory solution within 14 Business Days of such meeting being called, either Party may require that the matter shall be dealt with in accordance with clause 18.*

12.1.5 *If the Parties cannot agree on the extent of the relief required, or the Lessor disputes that a Relief Event has in fact occurred or that the Lessee is entitled to an extension of the scheduled date of putting into operation the relevant phase of the Development or continuing with the Development and/or to claim relief from other obligations under this Agreement, either Party may require that the matter be resolved in*

19. BREACH

19.1. *The Lessee hereby covenants with the Lessor that the Lessee will pay the Rental as herein before mentioned and agrees to faithfully observe and fulfil each and all conditions of this Agreement.*

19.2. *In the event of:*

19.2.1 *the Rental not being paid on or before the date when the same becomes due and payable as per the municipal account mentioned in clause 7.2 above; or*

19.2.2 *the said Land and subsequent Development aforesaid not being kept and maintained in an effective and efficient state of repair and in good structural condition; or*

19.2.3 *any or all of the conditions of this Agreement not being duly observed and fulfilled in accordance with the terms thereof, and after the Lessee has been given 20 (twenty) Business Days' notice by e-mail, fax or hand,*

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the Lessor shall be entitled to cancel and terminate this Agreement and to re-enter upon and resume possession of the Land and subsequent Development without prejudice to the right of recovery of any Rental due, and to recover from the Lessee such amount in respect of loss or damage as the Lessor may have sustained or expenses which may be entailed upon the Lessor by reason of the failure of the Lessee to observe and fulfil the conditions of this Agreement. In such event the Lessee shall not have the right to remove any part of the Development which may have been erected from its own and/or borrowed funds on the Land in terms of this Agreement.”

LEGAL PROCEEDINGS

In December 2024 a Ms E de Kock (the “Applicant”) commenced with litigation against the Municipality and the Lessee through a Notice of Motion which was served on the Municipality on 19 December 2024. In terms of this Notice of Motion, the Applicant’s prayer was for an order for, amongst others, the following:

- “2. *Reviewing, setting aside, and declaring unlawful:*
- 2.1. *the decision of the first respondent (the OSM) on or about 4 March 2024 to award to the second respondent (Point Caravan) Tender No.: SC 2308/2022 for the lease and development of a portion of Erf 4831 Hermanus and a portion of Erf 5327 Hermanus (De Mond) as a public resort (the De Mond tender); and*
 - 2.2. *the decision of the OSM taken on 1 July 2024; alternatively 25 September 2024, to conclude a 45-year lease agreement pursuant to the award of the Tender with Point Caravan (the De Mond lease); and*
 - 2.3. *the De Mond lease.”*

The Applicant further requested documents relating to the process and award of the lease. (The interlocutory application relating to the production of these documents and information is also pending before the court.) The Municipality filed a notice to oppose, and the Lessee filed a notice to abide by the decision of Court. The above legal proceedings are still pending; thus, the matter is *sub judice*.

As a result of the pending court proceedings, the Lessee accepted that the conditions imposed in clause 5 of the lease agreement was automatically suspended and that they were subsequently not guaranteed security of tenure due to the current litigation that is still ongoing. The Municipality was, however, not in agreement with the Lessee’s opinion and issued a notice to the Lessee to rectify their breach. In terms of this notification the Lessee had to submit the

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necessary application in terms of clause 5.2 of the lease agreement (extension of the period to submit the site development plan).

The Lessee submitted the required application to rectify the breach, and approval was given by the delegated authority on 6 January 2026 for the extension of the period to submit the site development plan (formal Town and Spatial planning process) for a year to 30 June 2026.

However, in terms of clause 5.3 of the lease agreement, the Lessee's responsibility to pay rental at an amount of R117,735.80 (ONE HUNDRED AND SEVENTEEN THOUSAND SEVEN HUNDRED AND THIRTY-FIVE RAND AND EIGHTY CENTS (VAT included) per month would still be applicable, irrespective of whether the resort is operational.

The Lessee subsequently submitted the following application for a Relief Event to suspend the operation of this part of the lease agreement:

"Our request for De Mond is as follows :

- 1. The agreement between the parties was signed in June 2024.*
- 2. It provided for certain obligations to be complied with within certain time periods.*
- 3. However, High Court litigation was launched late last year to set aside the award of the tender; this litigation is still ongoing.*
- 4. Thus, it is our formal request here that the obligations required by us in the agreement be extended for a period of one year, so that the outcome of the litigation be finalized.*
- 5. It cannot be commercially feasible for us to expend capital expenditure to give heed to the obligations in the agreement when our security of tenure is not guaranteed due to the litigation.*
- 6. There is a risk that the award may be set aside, and this we will have no right of recourse for any capital invested in the development; the municipality cannot guarantee an outcome of the litigation, nor be in any position to offer us any monetary guarantees for recovery of any capital invested in the development.*
- 7. We believe it may then be prudent to delay the obligations by a year – we will then be able to garner the result of the litigation – and then be able to comply with the terms and conditions."*

Evaluation

In terms of the lease agreement, the term "Relief Event" is defined as follows:

"(a) any fire, explosion, tempest, flood, drought (to the extent it does not constitute an event of Force Majeure), earthquakes, wind and/or hailstorms, ocean wave action, riots, official or unofficial strikes, "go slow"

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- or other labour disputes generally affecting the relevant industry or a significant sector of it, lock-out and civil commotion;*
- (b) without limiting the obligations of Lessee in terms of this Agreement, any failure by the Lessor to comply with its obligations related to the Development as required by this Agreement;*
 - (c) the discovery of any heritage objects or resources that could not reasonably have been discovered despite proper due diligence but only if it affects the Development;*
 - (d) any delay in obtaining any consent or authorisation beyond the control of the Lessee and that could not have reasonably been prevented or avoided by the Lessee; but only if it affects the Development;*

but excluding where any of the events listed in clauses (a) to (d) inclusive arises, directly or indirectly, as a result of any negligence, wilful conduct or default of the Lessee or any subcontractor appointed by it;”

As mentioned above, the relevant clause stipulates as follows:

12.1.1 If and to the extent that a Relief Event:

- 12.1.1.1 directly causes a delay or interruption in putting into operation any phases of the Development; or,*
- 12.1.1.2 materially adversely affects the ability of the Lessee to perform and/or comply with any of its obligations under this Agreement,*

then the Lessee shall be entitled to apply for relief from any rights of the Lessor arising from clauses 5, 19.2.3 and 20.

The commencement of legal proceedings by a third party against the tender award and subsequent lease agreement entered into, which has been considerably delayed by the Applicant, does materially and adversely affect the Lessee’s ability to perform or comply with their obligations under the lease. In effect the whole proposed development is affected as it cannot be expected from the Lessee to incur any financial capital expenditure on the Property pending the outcome of litigation. The Lessee did start with the clearing of certain areas within the Property, which had financial implications, but again this attempt to do something for safety reasons on the Property was met with complaints from the community.

If a Relief Event is approved, it will have the effect that:

- (a) The the scheduled date of putting into operation the relevant phases of the proposed development on the Property will be postponed by such a period deemed reasonable, depending on the reason for the request, however, the obligation to pay the rental amount will not be affected. The Lessee is*

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however requesting that the obligation to pay rental in the amount of R117,735.80 (ONE HUNDRED AND SEVENTEEN THOUSAND SEVEN HUNDRED AND THIRTY-FIVE RAND AND EIGHTY CENTS (VAT included) per month also be postponed for a period as they have not been able to commence with any phase in the proposed development pending the outcome of the litigation.

- (b) If the Lessee complies with the amended timelines, the Municipality may not be entitled to terminate the lease agreement on the grounds of the Lessee's inability to fulfil the conditions of the lease agreement.

The Lessee is effectively requesting that the obligations imposed in terms of the lease agreement insofar as the development and payment of the tendered rental amount be postponed for a period of one year from 1 July 2026.

The lease in this regard also stipulates that if the Municipality and the Lessee cannot agree on the extent of the relief required, or the Municipality disputes that a Relief Event has in fact occurred or that the Lessee is entitled to an extension of the scheduled date of putting into operation the relevant phase of the development or continuing with the development and/or to claim relief from other obligations under the lease agreement, either Party may require that the matter be resolved in accordance with clause 18. Thus, the Lessee can commence with a dispute resolution process. During a dispute resolution process, the Municipality will not be able to proceed with any new process regarding the Property.

At this stage the Lessee is managing the operational / lease agreements of De Vette Mossel and Klein River Lagoon Park. If the Relief Event is not approved, and if no dispute resolution process is commenced with, the lease will be terminated. Council will then have to decide whether to deviate from the Administration of Immovable Property in order to enter into leases with the two sub-lessees or to request them to vacate.

The Lessee cannot be prejudiced in being forced to proceed with any capital expenditure on the Property, whether development wise or the submission of the required applications (e.g. site development plan), when they are not the cause of the delay in meeting their obligations. The fact that court proceedings were commenced with by a third party, not knowing what the outcome will be or when an outcome will be available, should be sufficient reason to approve the request for relief. As the development on the Property has not commenced yet and thus the proposed activity on the Property is not operational, it cannot be expected of the Lessee to pay the full offered rental amount. Again, the delay in developing the Property is not in control of the Lessee. The income the Lessee receives from its operators/lessees on the Property is also not sufficient to cover the full rental amount offered.

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However, the Lessee should still be liable for the payment of a reduced rental amount which must be agreed upon taking into account the Lessee's income and expenditure with regards to the Property. This information has been requested from the Lessee but not yet received at the time of preparation of this report.

Conclusion

Considering the above discussion, it is recommended that the request for relief as submitted by the Lessee be approved as follows:

- (a) obligations imposed in the lease agreement insofar the development and
- (b) payment of the tendered rental amount

be postponed for a period of one year from 1 July 2026, provided that the Lessee pays a reduced rental amount which must be determined by the parties taking into account the income and expenditure of the Lessee in relation to the Property.

7. Financial Implications

The Municipality will not be receiving a rental in the amount of R117,735.80 (ONE HUNDRED AND SEVENTEEN THOUSAND SEVEN HUNDRED AND THIRTY-FIVE RAND AND EIGHTY CENTS (VAT included) per month from 1 July 2026, but if approved, a lesser rental amount.

The Lessee is currently paying for the municipal services delivered to the Property. Some of these services are paid to the Lessee by their operator/lessee on the Property. Clarity must still be obtained as to what their financial contribution towards services to the Property is as all the information was not available at time of preparing this report.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Principal Legal Advisor- Mr J Wilkinson

"The Property Management Division, in some instances accompanied by the Legal Services and Contract Management Division, have had several meaningful engagements with the Lessee since the pending court proceedings were instituted. These engagements revolved around the obligations and rights of the parties to the lease agreement."

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It is submitted that the Lessee is well within its rights to request that a Relief Event be granted considering the ongoing legal dispute and the potential financial implications that the outcome of such litigation could have for the Lessee. This is subject to the Lessee honouring the remainder of the obligations in terms of the lease agreement, including payment of the rental amount, or such reduced amount as may be determined taking into account the income and expenditure of the Lessee in relation to the Property. It is important to note that the Relief Event, if granted, does not condone any breach of the lease agreement.”

10. Annexures

Annexure A : Locality map

RECOMMENDATION TO THE COUNCIL:

1. that the request for the following relief as submitted by Point Caravan Resort (Pty) Ltd in relation to the lease of municipal property, being a portion of Erf 5327 Hermanus ($\pm 0,70$ ha in extent) and a portion of Erf 4831 Hermanus ($\pm 9,94$ ha in extent) (total lease area of $\pm 10,64$ ha in extent):
 - (a) that the obligations imposed in the lease agreement insofar the development of portion of Erf 5327 Hermanus ($\pm 0,70$ ha in extent) and a portion of Erf 4831 Hermanus ($\pm 9,94$ ha in extent) (total lease area of $\pm 10,64$ ha in extent); and
 - (b) that the payment of rental in the amount of R117,735.80 (ONE HUNDRED AND SEVENTEEN THOUSAND SEVEN HUNDRED AND THIRTY-FIVE RAND AND EIGHTY CENTS (VAT included) per month

be postponed for a period of one year from 1 July 2026, **be approved**; and
2. that Point Caravan Resort (Pty) Ltd be liable for payment of a reduced rental amount from 1 July 2026, which amount must be calculated taking into account their income and expenditure on the Property.

RESPONSIBLE OFFICIAL :	A LE ROUX R KUCHAR J WILKINSON
TARGET DATE FOR IMPLEMENTATION :	17 APRIL 2026
TARGET DATE TO INFORM APPLICANT :	17 APRIL 2026
TARGET DATE TO INFORM OBJECTOR :	N/A

