

**COMMENT ON THE PLOT CLEARING POLICY OF THE
OVERSTRAND MUNICIPALITY (Revision: September 2018)**

BY THE KOGELBERG BRANCH OF THE BOTANICAL SOCIETY OF SA

INTRODUCTION

1. These comments by our organisation are based on more than 50 years of continued battle (commonly known as the “Hack”) in the Betty’s Bay and Pringle Bay areas to eliminate Invasive Alien Plants (IAP’s). To this extent we have been praised by the Dept of Environmental Affairs. The “Hack” or members thereof have been recipients of the Overstrand Municipality’s award for outstanding environmental efforts. Our comments must be seen as encouraging the lessening of fire risk in our Municipal area, but not at the cost of our rare botanical heritage.
2. The Constitution guarantees this. Section 24 (b) of the Constitution states:- *Everyone has the right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.* Similarly we can also expect under Sect 152 to live in a safe environment. While the draft policy gives effect to the latter, it cannot exclude the former.
3. It is hoped that these comments will receive the appropriate attention of the relevant Municipal officials. Previous public comments and contributions appear to have been undervalued. As an example of how little the Municipal officials seem to value public comment is the 5th of February 2018 public participation meeting in Kleinmond. At this meeting a number of issues were raised on the plot clearing policy, among them questions concerning: the period of warning to land owners to act; that unqualified inspectors cannot carry out the policy; that it is not possible to clear the lower part of the stems of most fynbos scrubs/trees without irreparably damaging them. The stated objective of the proposed policy is to lessen the fire risk posed by botanical growth. By definition ‘policy’ means “course of action adopted by government, party, etc”. (Oxford dictionary) The document does lay down what and how to clear municipal property yet exactly the same wording as appears in the previous plot clearing policy document is used in the new draft without reference to the questions and concerns raised at the public meeting in Kleinmond on the 5th February 2018.

COMMENTS

4. Function of the policy.
 - 4.1 The stated objective of the policy is to lessen the fire risk due to botanical growth. By definition policy means “*course of action adopted by government, party, etc*”. (Oxford dictionary) As such it is expected that the policy not only will spell out what, and how the clearing is to be done, but what progress is to be made, not only by the public, but also on public land by the Municipality/state. This is lacking in the policy.
 - 4.2 It would be senseless to expect that by having only vacant properties cleared that the fire risk will be reduced. The total area must be uniformly cleared. As the only mention of clearing by the Municipality mentioned is parks, resorts and road verges, the conclusion is reached that this policy excludes municipal and other state land. As such it will not achieve its intended purpose.
 - 4.3 In more than one place it is mentioned that it is applicable to vacant properties, or erven. Developed (built-up) properties are thus excluded. This makes 4.2 above the more ludicrous.
 - 4.4 All the municipal land is surrounded, especially close to mountains, by either dense growths of fynbos (and in some cases with heavy growth of IAP trees), which the municipality has no mandate over. It is therefore even more important to have a uniform policy applied within the areas where IAP’s can be controlled.

4.5 The draft seems to struggle with the naming of the various types of vegetation of our area. The following terms are used: - Alien, indigenous, Invasive Alien, desired trees or scrubs. This makes it extremely difficult to understand the aims of the policy. In essence the only forms of vegetation which are applicable are:-

4.5.1 Indigenous

4.5.2 Invasive Alien Plants, and

4.5.3 Non-invasive Alien Plants e.g. Norfolk Pines, Cycas, etc

4.5.4 It is strongly suggested that only these classification be used.

5. Doubtful Legality of Content of the Policy.

5.1 There are quite a number of requirements/statements in the draft document of questionable legality as it is contradictory to national acts, and or provincial ordinances, or would be difficult to legally enforce. For example

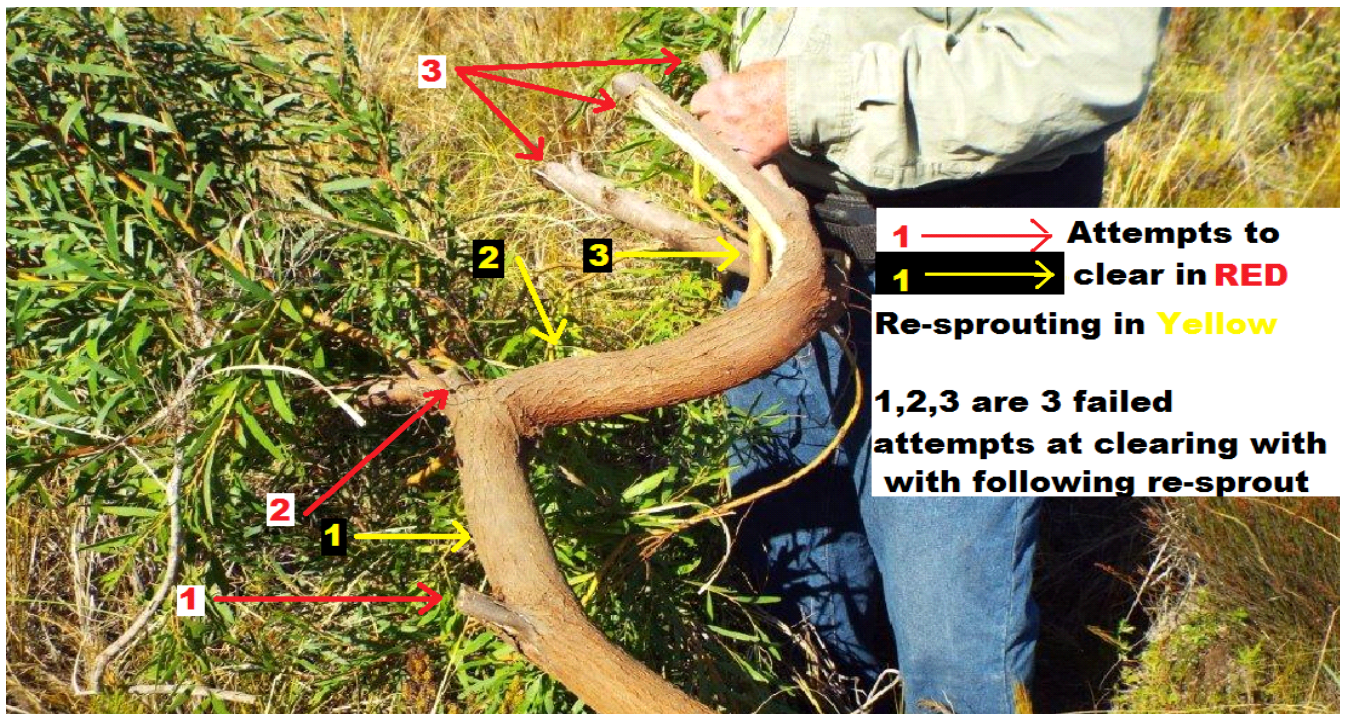
5.2 The policy only makes mention of vacant properties/erven. This means that land owners of built-up land are not subject to this policy. This fact has been verified with the estate agents. As the policy holds penalties for non-compliance, the land owners are not treated equally. This is contrary to the Constitution.

5.3 In practice the inspectors appointed in terms of the policy have no knowledge of plants, and will only approve of a cleared plot if it takes on the appearance a tennis court, including totally destroying the fynbos and protected and endangered plants. This has been witnessed, and confirmed by a contractor appointed by the municipality to carry out clearance on their behalf. The contractors are not paid unless they present a totally stripped plot for approval. The policy appoints firemen as inspectors with no knowledge of the vegetation. This "scorched earth approach" is contrary to:-

5.3.1 The requirements in NEMBA (Act 10 of 2004) which for our Municipal area requires an EIA to be carried out before an area larger than 300msq is cleared.

5.3.2 Section 24 (b) of the Constitution states:- *Everyone has the right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.*

5.3.3 In the policy it is stated that contractors appointed by the Municipality are not permitted to use herbicides without approval, and land owners may use it. Without the application of herbicides most of the Invasive Alien Plants (IAP) will re-sprout (coppice), and in general a coppiced IAP is two or three times more difficult to again clear than it was the first time. This is contrary to NEMBA Section 75 "(3) *The methods employed to control and eradicate a listed invasive species must also be directed at the offspring, propagating material and re-growth of such invasive species in order to prevent such species from producing offspring, forming seed, regenerating or re-establishing itself in any manner.*" Invasive alien trees coppice (re-growth) as a genetic defence against fire, cutting the stem and not applying an herbicide triggers this defence. (See below photo of coppicing of "clearing" done by municipal workmen without applying herbicide). Coppicing results in a vigorous sprouting of new trunks The result of this illegal restriction is that the plot owner will very soon have to have the same property cleared at greater expense because there is more to clear and remove. It also results in an increased volume of combustible material in the same area, which defeats the aims of the policy.



- 5.3.4 Similarly Chapter 10 allows the use of mechanical clearing (defined as: 'Means the removal of plant and other material with mechanical equipment such as tractor driven lawn mowers or bush-cutters (bossiekappers) in certain cases') This means that NEMBA Section 75 (3) is again ignored as invasive alien plants will re-grow as explained above, and, even worse, protected plants, and other fynbos, will also be decimated. Countless examples of re-growth of road verges after clearing with brush cutters can be pointed out. It must be pointed out that the use of mechanical clearing is a financially wasteful practise as the re-growth is then much more difficult and therefore expensive. Cutting the plant low down and applying herbicide is final and does not have to be repeated.
- 5.3.5 Nowhere is it stated that a botanical survey must be done in case of mechanical clearing as required by NEMBA as the total area cleared by far exceeds 300 sq m.
- 5.3.6 Chapter3, par2 of the policy states 'All land owners are obligated to maintain their properties in terms of Articles 34 & 54 of the Community Fire Safety By-law in such a manner that the land is maintained to the satisfaction of the Chief Fire Officer in that it does not constitute a fire hazard to the environment and community.' As the Chief Fire Officer has, on many occasions, stated that he does not know botany, it makes this requirement of the policy highly questionable, apart from the fact that his 'satisfaction' carries no legal weight as it is not based on clearly stated objective criteria.
- 5.3.7 Ch 4 par 1 states that officials who must identify fire hazards have the final decision for the clearing of a property. This is totally illegal as the firemen used for this role by their own admission are not trained botanists, and is thus purely subjective. The policy also explains that there is an appeal process against such actions by municipal officials. However, if their subjective decision is final there cannot be any appeal which is against act 32 of 2000 (Municipal Systems Act).
- 5.3.8 The definition of IAP's refers to Act 43 of 1998 (CARA). This Act (CARA, Act 43 of 1998, has been replaced by Act 10 of 2004 (NEMBA).
- 5.3.9 Ch 8 has vague reference to Milkwood trees/protected vegetation. What is urgently required is a definition of such vegetation, particularly protected plants. These are scarce, unique, or endangered species. Such plants are listed in the amendment R1187 of 14 December 2007 to NEMBA Act, as well as amendment R 908 of 21 Nov 2014 to the National Forestry Act, act 84 of 1998. There are also numerous plants which are endangered or rare which are listed by SANBI under their legal authorisation to do so.

6. Errors and Difficult parts to understand in the Policy. (Just a few as an example)

- 6.1 The definitions contain both the terms “Land Owner”, and “Land User” and the policy refers to property owners.
- 6.2 Why both the definitions of land owner and user? CARA contains an excellent definition to this purpose
- 6.3 There are a number of definitions which do not appear in the text of the policy e.g. Chainsaw or waste material (by definition waste refers to non-flammable material and thus has no impact on the fire risk thereof)
- 6.4 6.5 Mechanical and manual clearing is contained in the definitions, and virtually word-for-word repeated in Ch3 par 4.1, and 4.2. It makes no sense and makes understanding of the policy more difficult.
- 6.5 The term ‘Controlling Authority’ (Ch4 par 5) is not defined
- 6.6 Ch 7 par 2.1.11 is a repeat of 2.1.9.above it.
- 6.7 In various sections of Ch7 there is a requirement to remove vegetative refuse after clearing a property, yet if chipped it may be left on the property. Surely the latter defeats the object of lessening the fire risk.
- 6.8 In Ch 7 there is a requirement to reduce the vegetation by 50%. This is not a rational requirement because:
 - The inspector cannot prove that what is left of the vegetation on the property is more or less than 50% of the original.
 - If 50% of a property is cleared in year 1, then in year 2 it will have about 25% left, the year thereafter 12.5% (taking into consideration the slow growth rate of fynbos).
 - When, how and how often is 100% vegetation cover determined, from which 50% of vegetation cover must be removed?
- 6.9 Ch 7 par 2.2.9 state that heaps of chipping will cause combustion. Is there scientific proof of this? Do similar heaps endanger the dumps of the Municipality?

PROPOSAL

7. This submission must not be construed as totally opposed to the control of fire risk from vegetation. Far from it. Our concern is with regard to indiscriminate damage done to the natural vegetation by the present application of the policy.
8. Our submission is that the policy in its present form be scrapped and a coherent, legally sound and ecologically informed policy be drawn up by a team of people comprising officials of the Fire Department, Environmental Management Services Department and experts in sustainable veld management. Further, that the personnel of the Municipality responsible for administering the policy be trained in the identification of indigenous plants and IAP’s and appropriate clearing methods. Our organisation is willing to assist in such training.
9. It is furthermore urged that the Municipality consider appointing a suitable member of staff as a Competent Authority in terms of Section 42 of the National Environmental Management Act (Act 107 of 1998). The Competent Authority will have the power to order the removal of IAP’s from a property within the area of his/her jurisdiction. It is our considered opinion that only the removal of IAP’s from built up and vacant erven will go a long way towards lessening the fire risk, especially large trees like Pines, Blue gums, Acacia Elata, Rooikrans, Australian Myrtle etc. This will assist in bridging the gap until a new plot clearing policy is enforced.

10. The CSIR in their study of the fire which destroyed large areas of Knysna found that the greater causes of the damage was the non-reaction of the relevant organisations to a fire started by lightning in indigenous forest, and exacerbated by the presence of a large percentage of IAP's. Included here are some photos of built-up properties in Betties Bay showing how extensive the growth of IAP's can be on a single erf.





11. A paper, *Natural Fires and Plant Invaders, What is the Risk?* by the leading specialist on fynbos and fires, Prof Brian van Wilgen of University of Stellenbosch, underscores the above.
12. We are happy to assist the municipality in identifying the worst IAP fire risks in our area.

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