

Overstrand Municipality

Director: Fire Chief

Re-Resubmit comments on Policy for creating and maintaining fire wise erven in urban and suburban areas of Overstrand Municipality.

The input remains much as it has been before because the Policy still has not changed much regardless of motivated input given by a number of people. The input included:

- ii) See **comments directly on Chapter 8** regarding the “Prescribed standards for clearing vegetation” below in **BLUE** and recommendations in **RED** in **Annexure 1**.
- (ii) **Recommendations for amended Prescribed Standards** referred to in point 12 and under the comments given on Chapter 8 at bottom of Annexure 1.

The Kogelberg Biosphere Reserve Company (KBRC) has carefully considered the September **2018** and April **2019**, September **2019** and February **2020** and **now the September 2021 Drafts** of the *Policy for Creating and maintaining fire wise erven in urban and suburban areas of Overstrand Municipality* (hereafter called the Policy). At a meeting on 18 October 2018 the KBRC has expressed a willingness to help amend the September 2018 draft Policy. The Municipality has given the assurance that they would draft the final Policy in consultation with the KBRC and others that have commented. At the meeting, in October 2018, with the KBRC it was reported that KRB comprises roughly 100 000 ha and that we need to find unique balance because we reside within a Biosphere. One of the main aims of the Biosphere is to find holistically approached ways, how human settlements can economically develop in sustainable ways, whilst preserving natural environment. It was suggested that a forum be established to write a policy together to ensure it gets accepted by everybody. Municipal **officials mentioned that over 100 submissions** are still being considered and that some amendments were already updated into the policy. It was envisaged to selected people that gave input will be conferred with to consolidate all input received and that input from Environmentalist perspective would be considered. General consensus at the meeting was that the Municipality will establish a Working Group from relevant contributors.

The detrimental consequences of plot clearing can clearly be seen in transformed habitat decades afterwards and that house owners have to establish gardens with mostly commercially available exotic plants. The purpose given in the Plot Clearing Policy is that it aims to comply with an Overstrand By-law (the Community Fire Safety By-law Provincial Gazette no. 5832 on 28 February 2002, Amended by Community Fire Safety By-law, P.N. 6545 on 29 June 2007).

The KBRC hereby wish to use the opportunity to provide input in the September 2021 Draft of the Policy. The KBRC hope that this Policy shall be amended to (i) be logic and reasonable, (ii) take account of the ecology and functioning of both invader plants and the indigenous veld, (iii) be brought in line with the obvious intent Overstrand Municipality’s Community Fire Safety By-law, P.N. 6454 of 2007, (iv) is integrated with the Overstrand IDP and SDF and (v) and in line with the requirements of other legislation i.e. NEMA, NEM:BA, CARA and the Forest Act if necessary.

This input is a summary and can be clarified with specific comments under each section of the February 2020 draft of the Policy which is not attached.

Comments on Process and Policy

1. Please note that it seems that the **promised process to amend the Policy, nor the minimum standards for a public participation process** were followed. Comments made were not responded to, to explain why it was irrational, wrong or unacceptable. We hope that this Draft Policy directly consulted with the more than 100 people that did comments on initial drafts. As this does not seem so, **it is suggested that those comments should be considered as well when finalising the Policy.**

We are concerned that in the absence of a clear recently approved Policy, people destroy the environment in order to play it safe (meaning to avoid getting bogged down in administration).

2. The change of the wording in the amended **Policy to address now includes an indigenous vegetation (including numerous threatened plant species) is alarming.** We believe the Community Fire Safety By-law No 6454 / 2007 was never intended to manage indigenous vegetation on vacant land. The state of well managed indigenous vegetation endemic to the area should be regarded reality and as an obvious standard for this policy because this is clearly the intent of the 2007 By-law. All the Plot Clearing Policies that has been approved namely; the 2013 and the current approved Policy of 2016 require the eradication/clearing of invasive alien trees and grass only. Just (i) deadwood of short-lived plants that have started dying off because of veldt age of more than 20 years old and(ii) fast growing alien invasive trees can be regarded as a proliferation of combustible vegetation.

3. The statement in the Preamble that devastating wildfires are resulting from “*The presence of highly combustible vegetation, alien and endemic,*” is bias and incorrect. The indigenous vegetation endemic to this area (when well managed) cannot be regarded as having an abundance of highly combustible material in the SA context. It has a relative low biomass compared to most other vegetation types. Houses and associated gardens and structures will increase fire risk more than that of local indigenous veldt on vacant land (Note the focus of the Community Fire Safety By-law No 6454 / 2007). **The biomass (fuel load) of well managed the indigenous vegetation endemic to the area should be regarded reality and as an obvious standard for such policy.** **The Policy of the Overstrand Municipality should focus on the main fire risks as intended by the By-law No 6454 / 2007, namely clearing of Alien Invasive trees and reducing the fuel load especially on public land and along road reserves and this was not done.**

4. For the Fire Department to have a detailed Policy for vacant **erven with a low fire risk** and for a material **(vegetation) that is not listed as Combustible Materials, Hazardous Materials or a Fire Frisk in the Community Fire Safety By-law No 6454 of 27 July 2007** is incomprehensible. We believe the Community Fire Safety By-law No 6454 / 2007 focus on build-up areas.

The emphasis of the Objectives of the Policy on **all vacant erven** disregard the (i) inherent property right that a land owner has when he invests in a plot with trees that may be hundreds of years old to choose how this fit into the garden envisaged (keep in mind that biomass natural vegetation should be compared to biomass plus combustible material “allowed” on a build up

plot) the (ii) conservation value that private urban space could and should play and (iii) the obligation of the private land owner and the Municipality to comply with all laws (i.e. NEMA, NEM:BA and others) and (iv) the cost, time frames and chance of refusal of licences application required under such legislation.

5. The September 2021 Draft Policy, is still not in line with the logic and obvious intent of the Overstrand Municipality's Community Fire Safety By-law, P.N 6454 of 2007.

5.1 It is questionable that the interpretation that the Community Fire Safety By-law No 6454 of 27 July 2007 has ever been intended to govern the clearing of local indigenous vegetation as local indigenous vegetation cannot be regarded as **Creating** Fire Hazards. The well managed **local indigenous vegetation can only be regarded as the norm** (reality – and it should be used to measure overgrown). Therefore, the norms and standards and the activity of clearing local indigenous vegetation as required by the Clearing of Vegetation Policy does not reflect the intent of the above By-law.

5.2 Both approved Plot Clearing Policies dated 2013 and 2016 focuses on clearing Alien Invasive Trees in support of other National legislation, showing what the intent of the By-law was and still is (that it in the Biosphere Reserve OR in a Conservancy).

5.3 The definition of a number of terms of "*combustible material*" in the Policy below is different to and vague, can be misinterpreted, different to and **has a different meaning and from the definition as given in the By-law** where it clearly is aimed at developed erven. Namely:

Combustible material Means combustible refuse, combustible waste or any other material capable of *being ignited manually* or spontaneously. **Note: No reference to vegetation.**

See the Definition for Combustible material from the By-law below:

"combustible material" means combustible refuse, combustible waste or any other material capable of igniting;

"combustible refuse" means combustible rubbish, litter or material that is discarded, refused, rejected, or considered worthless;

"combustible waste" means combustible waste material which is salvageable, retained or collected for scrap or reprocessing and may include all combustible fibres, hay, straw, hair, feathers, down, wood shavings, turnings, all types of paper products, soiled cloth trimmings and cuttings, rubber trimmings and buffing, metal fines, and any mixture of the above items, or any other salvageable combustible waste material;

Note: A Policy may never be used to make changes to the Law as is clearly what is happening here. A Policy may only interpret the Law. The words "*of being ignited manually*" must be removed.

5.4 The Definitions of **the Bylaw does not list vegetation as a "combustible material", "combustible waste", "combustible refuge", "dangerous goods", "fire hazard", "flammable solid", or "flammable store"** (See Annexure 1 below). **None of the Sections of Chapter 1 to 6 of the Bylaw vegetation is mentioned as a Fire-risk or source, nor in Chapter 8 under "Flammable Substances"**.

The word vegetation is mentioned once only and on page 23 of 33 pages of the Bylaw. The precise wording is:

Combustible material

34. (1) *A person may not store, transport, use or display or cause or permit to be stored, transported, used or displayed, whether inside or outside the premises, any combustible material or flammable substance in quantities or in a position or in a manner likely to cause or create a fire hazard or other threatening danger.*
- (2) *The owner or person in charge of the premises may not permit vegetation to grow or accumulate thereon, or other combustible material to accumulate thereon, in a manner likely to cause a fire hazard or other threatening danger.*

From the wording of Section 34(2) and the absence of listing vegetation as a combustible or flammable material or a fire hazard in the Definitions of the By-law, it should be clear that the emphasis of Section 34(2) is on **accumulate** “*in a manner likely to cause a fire hazard or a threatening danger*”. The type of vegetation is not specified because it is logical and reasonable to deduct that the species and density of the local indigenous vegetation is not referred to, but vegetation that can be regarded as **accumulating** on top of the *status quo* that may be considered to cause a fire hazard or a threatening danger (**thus; alien invader trees**). **Accumulate** - refers to vegetation (alien invasive trees) with much higher biomass (fuel load) than that of the local indigenous vegetation and that grow much faster. It is absurd to state that indigenous vegetation must be removed from open erven property, as it imply that local indigenous vegetation that developed over millions of years and is of global conservation significance, is protected by National laws and with a relative low biomass cover is wrong. The earlier **Policies i.e. the one dated 2013 as well as the currently approved 2016 one** clearly recognised this fact, and it **focus on eradication of Alien Invasive trees** but this has been detract from, to require a private individual to effectively clear the local indigenous vegetation (including all associated fauna) even against his judgement and/or will and the law.

5.5 It is recommended that:

- The norms and standards of the Policy should be changed so that it is complied with equally by municipality and private land owners on all land (vacant and build up). This is possible if the focus is on eradicating fast growing Alien Invasive trees and removing dead trees from old veldt.
- These norms and standards should be logical and clear. The only reasonable **standard** for open erven is **well managed natural vegetation**. The State cannot regulate that the natural environment is a fire risk. Authorities do and must accept the status (value, cost and benefit) of such indigenous vegetation as the reality they must deal with, the fact that vegetation cover is always changing.
- For vacant land, the standard could only be “The density of the well managed natural vegetation of the surrounding area (open parks/reserves as managed by the Municipality that set the standard)”.
- Fynbos – that is a fire driven environment requiring a fire cycle of 10 to 20 years. If the veldt is not burned at least every 20 years some species of the indigenous trees start dying and might cause “deadwood” to accumulate. Thus either burn (in parks or large erven) or remove only these individual dead trees.
- The vegetation of the region is adapted to the nutrient poor soils. Most plant species keep their leaves and twigs (green) on the plant. After fire the nutrients are released back into the soil where it is available for re-sprouting or re-seeders to grow again. Repeatedly removing all vegetation permanently changes the habitat and promotes alien invasive trees and grass, reeds and bulrushes. Do **not** remove all vegetation or all deadwood.

- A cover of natural vegetation will discourage alien invasive plants and fast growing indigenous pioneer plant species and grass and reeds (that is the great fire risk) to establish (as alien invasive trees require the disturbance and light to establish).
- A vegetation cover according to the density of the local indigenous vegetation of the surrounding park and reserve areas is the obvious standard and intention by Sec. 34(2) of the By-law. This perspective will also get the Municipal parks to be compliant as well as acknowledge value and contribution that urban land can play to the conservation of Biodiversity.
- That the Municipality develops and implements a **management plans** and strategys for the reserve areas, parks, road reserves and other public land within the municipal boundaries. This must differ area to area.
- **That the Policy should focus on the eradication of fast growing alien invasive trees and removal of dead trees from old veldt.**

6. The clearing of the indigenous vegetation from a plot covered with indigenous vegetation, results in alien invader trees and/or grass and/or reeds establishing and eventually dominating vegetation cover and in so doing cause an increase in the fire risk on the site.

The clearing of the local indigenous vegetation from a plot, removes the competition by the indigenous vegetation and open that location to the establishment of **pioneer** invader plants. **The dominant pioneer plants of the Overberg region are alien invasive trees species.** Once a plot is cleared, it stimulates quick growing alien invader trees (pioneers) that grow much faster and taller than the original indigenous vegetation. The accumulation of tall, fast growing invader trees and grass increase the fuel load on these previously open plots and in fact increases the fuel load and is the cause of the fire risk.

The fuel load on these open plots that is covered with indigenous vegetation is generally much less (similar to the natural veldt, reserves or parks) when compared to the fuel load of build-up plots or plots that was previously cleared.

The indigenous vegetation growing in the area generally grows much smaller than most plants people establish in their gardens, once it is cleared of indigenous vegetation. Keeping plots covered with indigenous vegetation should rather be promoted.

Photos and scientific papers to show this and/or references to explain and proof this, can be provided.

7. The Policy, and its implementation of the policy are not legally compliant with NEMA and NEM:BA or the Forest Act.

From the inclusion of section 2.3.8, included in the April 2019 Draft as well the **words in Chapter 10 namely; “destruction of protected trees and/or other protected/endangered plant species without a permit obtained from the relevant controlling authorit is a criminal offece”**; the Overberg Munisipality correctly admits that the implementation of the Policy as it stands here (clearing of indigenous vegetation) trigger NEM:BA and NEMA and shall require Authorisations in terms of these legislation. This is the result of the relentless insistence of the Municipality on clearing of the local indigenous vegetation and resulting in the transforming of the habitat to

such a degree that a large number of endangered plant and animal species are not only killed but can also not recolonise the area after repeated clearing.

The National Environmental Management Biodiversity Act (Act No. 10 of 2004) (NEM:BA) and NEMA require that if (i) listed Rare and Threatened plants or animals or (ii) Threatened ecosystems are impacted on, authorisations in terms of NEM:BA must be obtained. The presence of Threatened Ecosystems has certain environmental authorisation implications, in terms of NEMA and the 2010 EIA regulations. Activity 12 of Listing Notice 3 2010 of the EIA Regulations require that for the clearance of 300m² or more of natural vegetation, trigger a basic assessment within any critically endangered or endangered ecosystem listed in terms of Section 52 of the NEM:BA. This means any development that involves loss of natural habitat in a listed critically endangered or endangered ecosystem is likely to require at least a basic assessment in terms of the 2010 EIA regulations.

The Betty’s Bay, Rooi Els and Pringle Bay Municipal Area cover at least 2 vegetation types which are regarded as Threatened Ecosystem and classified as critically endangered and one classified and endangered in Government Gazette No. 1002, promulgated in terms of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) (NEM:BA) of 9 December 2011 covering the vast majority of the area (see Figures: 1 and 2 below) namely: Vegetation types which have been classified as **critically endangered**, namely

- Kogelberg Sandstone Fynbos - FFs 11 with ≥ 80 threatened Red Data List plant species and
 - Overberg Sandstone Fynbos FFs 12 with ≥ 80 threatened Red Data List plant species
- Vegetation types have been classified as **endangered**, namely:
- Hangklip Sand Fynbos FFd 6 A1 Remaining natural habitats ≤ (biodiversity target + 15%)

The quarter degree square Grid: 3418BD contain a large number Critically Rare-, Endangered- and Rare- plants and associated animals. According to POSA (<http://posa.sanbi.org>) the number of **plants** with a **Threat Status** for Grid 3418BD is **108 species** namely: Critically Rare- 5 plant species plus, Endangered – 45 plant species plus another Rare - 58 plant species.

Table 1: Threatened amphibian species that occur in region

Species	Common name	South African Red Data Book Category (Minter <i>et al.</i> 2004)
<i>Microbatrachella capensis</i>	Micro frog	Critically Endangered (B2ab)
<i>Poyntonia paludicola</i>	Marsh frog	Near Threatened
<i>Xenopus gilli</i>	Cape platanna	Endangered (B1ab+2ab)
<i>Capensibufo rosei</i>	Cape Mountain toad	Vulnerable (B1ab+2ab)
<i>Amietophrynus pantherinus</i>	Western Leopard toad	Endangered (B1ab+2ab)

NEM:BA also provides for species listed as threatened or protected species (Sec 56-57) in the accompanying regulation that: A permit must be acquired before conducting any “restricted activities” involving any protected species of flora or fauna (section 57(1)). These restricted activities include: - cutting, chopping off, uprooting, damaging or destroying any specimen;

Any land managed in accordance with the above requirement shall kill millions of insects, countless small animals such as chameleons, destroy all bird nests and eggs and kill most birds chicks and and destroy many plants (of species that do not re-sprout) many that may be declared threatened species. Most importantly it shall permanently change the habitat in such a way that these plants (especially re-seeders) and animals shall not be able to re-colonise the site. The current or future conservation value of this land would be lost.

From (section 2.3.8.) included in the April 2019 Policy the Municipality admits that the implementation of the Policy as it stands (clearing of indigenous vegetation) will trigger NEM:BA and NEMA and shall require Authorisations in terms of these legislation. The landowner will thus have to apply for and get the authorisations in terms of NEMA and NEM:BA before clearing vegetation in accordance with this Policy.




		
<p>All Strandveld and Fynbos vegetation cleared to below 0.5m (to allow for the word <i>maintain</i> in standard). The sort sharp sticks will soon be deadwood.</p>	<p>Strandveld and Fynbos vegetation cleared to below 0.5m with a number of a very common Tolbos kept. These short-lived trees will soon die and become deadwood.</p>	<p>A reasonable next step for a builder / owner is clearing all vegetation together with topsoil from such degraded plot. See the heap of topsoil in the background that was later removed at great cost.</p>

Figure 1: Plots recently cleared in accordance with the Policy are degraded to such extent that all vegetation together with topsoil is regularly removed. Note- 108 plant species in this area are classified as threatened plant species and protected in terms of NEM:BA numbers were most properly destroyed as result of the Plot clearing Policy. Most importantly the habitat will most probably permanently change as result of repeated such plot-clearing.

		
<p>Cockroach with 5 babies</p>	<p>Critically endangered Micro frog</p>	<p>Endangered chameleon</p>

Figure 2: A very small sample of the thousands of the animal species of which a number is protected in terms of NEM:BA that are killed and destroyed as result of the Plot clearing Policy.

The value and contribution of the habitat, the indigenous vegetation which is growing on all vacant and build-up plots and its associated animals to Biodiversity Conservation and the System Functioning must be acknowledged. In addition it is valuable asset as well as a blessing that attracts people to visit or settle in the region, as well as a responsibility to all (it is the reasons why many people move to Betty's Bay, Rooi Els and Pringle Bay). The public and officials should be educated and sensitised to see it in that light.

The April draft Policy acknowledges this fact as the last sentence of the Policy under Chapter 10 state “*Destruction of protected trees or natural forest or any other protected/endangered plant species without a permit obtained from the relative controlling authority is a criminal offence.*” but then ignore this statement.

The required procedure, cost, time frames for the implementation of National Forest Act, NEMA and NEM:BA however have not been incorporated in Chapter 10. **If the Municipality insists** on the eradication and transformation of local indigenous vegetation of all vacant erven and from Municipal land **the Municipality must insist** that such authorisations must be all in place **before** they allow the clearing of any plot.

However the period given for compliance with a compliance notice “*in respect of the removal of hazardous conditions prescribed by this policy*”, is only **28 working days**. This time frame does not allow for the minimum of 180 days that such authorisations take nor does it take into account the chance that National Government may refuse such licence applications.

What the Municipality does not seem to take into account is (i) the cost of such application (ii) the time frame that can be longer than 6 months and (iii) the fact that there is a great chance that applications shall be refused/rejected and (iv) that the Municipality must also apply for all these authorisations before clearing in accordance with the minimum standard of the Policy.

Recommendation: Do not try to force private landowners to eradicate all local indigenous veldt from vacant erven as it is illogic and unreasonable and not intended under the Bylaw. *It is highly likely that such permits will not be granted.* **The removal of alien invasive trees and old dead trees or bush do not require these authorisations and will address the most important fire risks** (as it was intended in the Bylaw). Remove Section 2.3.8 of the Policy together with the requirement to eradicate well managed indigenous veldt.

8. Sections 3.2 (under chapter – Principles... section 4.2 (under chapter Rights of the Municipality) state: “All land owners are obligated to maintain their vacant erven ... *in such a manner that the land is in a satisfactory condition as determined by the Chief Fire Officer...*” and “the identification of fire hazards *shall have the final decision on the standard for the clearing of property....*”.

These statements and powers effectively award unlimited powers to these officials even if the norms and standards are simple and clear. It is of critical importance that “the *standard*” referred to, is very clearly defined. The fact is that these standards as described in this Policy is (i) not a standard that any rate payer can follow, (ii) it practically exempts the Municipality from compliance, (iii) in conflict with the intent of the Community Fire Safety By-law, (iv) with requirements of PAJA and other laws and (v) see all arguments under point 9 of this input.

9. **The norms and standards as prescribed by this Policy are vague and ambiguous, arbitrary, irrational, unreasonable, not applied equally to all landowners, does not acknowledge the rights of landowners to make use of the valuable natural assets present on the property and leave too much discretion to the Fire Chief and most importantly it is not in accordance with the intent of the By-law of 2007 and therefore is not lawful.**

See point 5 and specific input on the standards of Policy itself in Annexure 1 below.

See comments below in **BLUE** and recommendations in **RED** in Annexure 1 on the Chapter 8 regarding the “Prescribed standards for clearing vegetation”. Both the currently regulated standards and prescribed standards as described in this Policy are:

- Not in accordance with the intent of the Community Fire Safety By-law of 2007;
- illogical with reality and the dynamic nature of living plants;
- ignore the structure of Fynbos and Strandveld vegetation and tree species;
- are ambiguous and subjective and thus;
- leaves too much discretion to the authorities and
- the land that is the responsibility of Overstrand Municipality does not comply to these prescribed standards (correctly so).

The standards of the Policy are **not integrated** with:

- the ecology of invasive plants and the area;
- undisturbed cover of natural vegetation will discourage alien invasive plants as well as grass (which is the great fire risk) to establish while disturbance **shall increase fire risk**;
- the ecology, survival strategies, functioning and growth form of the indigenous vegetation of the area;
- the conservation opportunities and responsibility of the Municipality and all the citizens;
- the actual overall fire risk and reality that the biomass of well managed indigenous vegetation is low in comparison to grasslands and other high rainfall areas in South Africa and lower than the fuel load of build up erven;
- value that indigenous plants may have to the landowner;
- the property rights of a landowner who choose to make optimal use of a valuable natural resources on a plot;
- the requirements, cost, time frames to get authorisations for other legislation that are applicable and
- the SEF and SDF of Overberg below.

These norms and standards should be logical and clear. The only reasonable standard for vacant erven is well managed natural vegetation. The Local Authority cannot order that well managed natural environment (regarded as of Global significance) is a fire risk and require that it should effectively be destroyed. Authorities (all of us) must accept the status of such indigenous vegetation as the reality which they must deal with, as well as the fact that vegetation cover is always changing.

Section 8.2.3. Does not acknowledge the different purposes of land in any town and property rights of a landowner and seems to treat all land as if the sole purpose thereof is to control fire. This is not rational and the point should be removed.

Recommendation: For vacant land, the standard could only be “A vegetation cover according to the density of well managed natural vegetation is the obvious standard and intention of Sec. 34(2) of the By-law as it acknowledges value and contribution that urban land can play to the conservation of Biodiversity and the relative fire risk of build up area. In practice vegetation clearing should focus only on the cutting down and removal alien invasive trees and deadwood.”

10. The Policy, and the way it is implemented seems to be contradicting the widely and broadly consulted approved Overstrand Municipality’s Integrated Development Framework (IDP) Spatial Development Framework (SDF) and Strategic Environmental Framework (SEF).

The Overstrand SEMF states that “Without informed management and development decision-making tools, the Overstrand could very easily lose its appeal and attraction to investors, tourists and new homeowners, leading to disinvestment. Therefore, this SEMF strives to integrate land-use and development planning decision making in support of the provisions of NEMA, and relevant local and provincial spatial planning imperatives, without compromising the inherent sensitivity of the environment.”

These plans and the EMF recognise the requirements of NEMA and NEM:BA and the importance of the freshwater ecosystem (NFEPA). See the two maps (Plan 3 and Plan 4 below out of the Overstrand strategic documents. The area (Betty’s Bay, Pringle Bay and Rooi Els) borders onto the Kogelberg Nature Reserve. The total area (Betty’s Bay, Pringle Bay and Rooi Els) is included **in** the transitional zone of the Biosphere reserve.

The urban area (particularly the open erven and portions left natural after development) is rich in Rare and Critically Rare plants and animals.

11. Section 3.9 of the Policy that require that “ Areas such as road verges, *municipal gardens, public commons and parklands, fire breaks or sport fields where continuous maintenance occurs, is subject to compliance with the minimum standards of this policy*”

The management of land with such different objectives cannot be managed to the same or this standard. These areas **should all be managed in accordance to specific management plans** that the Overstrand Municipality hopefully have and that it should include a controlled burning regime and alien eradication programme.

The municipal parklands, green areas and the larger portions of road reserves are not, cannot, have never been and should NOT be managed in accordance with the minimum standards of this policy as it stands. If so, all such areas would cease to be gardens, green areas or parklands. Municipal land zoned as “road verges, municipal gardens, public commons and parklands” may act as firebreaks, but are not primarily firebreaks and can only be managed as if it is solely firebreaks if it is re-zoned as such.

The prescribed standards of this policy are (i) not in accordance with intent the Community Fire Safety By-law of 2007, (ii) illogical with reality and the dynamic nature of living plants, (iii) ignore the growth form and survival strategy and structure and ecology of Fynbos and Strandveld and (iv) are ambiguous and subjective and (v) may increase fire risk and thus (vi) leaves to much discretion to the authorities.

Any “publicly owned vacant erven” **land managed in accordance with the “minimum standards” of this Policy shall permanently change the habitat and its conservation value. The Municipality will have to apply for the authorisations in terms of NEMA and NEMBA before clearing vegetation publicly owned vacant erven /public common areas in terms of this Policy.**

This “Principle” is in contradiction to the 2007 By-law, does not acknowledge the different purposes of land in any town and seems to treat all land as if the sole purpose thereof is to control fire. This is not rational and point 3.9 should be removed.

This “standards” are in contradiction to the 2007 By-law, does not acknowledge the different purposes of land in any town and seems to treat all land as if the sole purpose thereof is to

control fire. This is not rational and point 3.9 should be removed and the standards amended.

The value and contribution of the habitat, the indigenous vegetation which is growing on Municipal land and its associated animals, to Biodiversity Conservation and the System Functioning as well as the beauty thereof must be acknowledged. The Municipal officials should take this responsibility and rather set the example to holistically manage land and sensitised others.

The appeal of the diverse environment as one of the main drivers of the economy of the region is acknowledged in the SDF (direct use, people moving into, tourists visiting the area) but the destruction of the habitat may undermine this value to the point that it will collapse. This environmental degradation will change the profile of people moving to the area to people that focus on/and demand broad tarred roads, street lights and high fences and walls and such.

12. The Prescribed Standards of Chapter 8 of the Policy should:

- Be in accordance with intent the Community Fire Safety By-law of 2007.
- Logical and not compatible with reality of the dynamic nature of living plants.
- Take in account the structure and ecology of Fynbos and Strandveld.
- Clear and subjective and thus easily implementable by owners or contractors.
- Implementable on most land without requiring costly authorisations in terms of any other Law (in fact it complies to NEM:BA and NEMA by eradication declared weeds).
- Efficient by focusing on the main fire and conservation risks.

The norms and standards as prescribed by this Policy are vague and ambiguous, illogic, unreasonable, cannot be not applied equally to all landowners, it does not acknowledging rights of landowners to make use of the valuable natural assets present on the property and most importantly are not in accordance with the intent of the By-law of 2007 and lawful.

Implementing the requirement of this Policy to cut down well managed indigenous veldt shall (i) eradicate many protected and endangered plant and impact on animal species (ii) change the habitat permanently to such a degree that these species will not be able to colonised the area again and may therefore trigger an EIA process as required by NEMA.

See comments made on an extract of the Policy Standards in Annexure 1 below as well as the recommended prescribed standards.

CONCLUSION

The Plot Clearing Policy (and the way it is implemented) has a significant high, short and long-term negative effect on the environment (biodiversity, social and economic).

The Policy is **not in accordance with the intent of Sec 34(2) of the Community Fire Safety By-law, P.N 6454 of 2007** and compels a landowner to contravene the law and degrade his/her land against his/her will.

The norms and standards as prescribed by this policy are not clearly described, illogic, unreasonable, not the same too all landowners, ignores the growth form and survival strategy and ecology of Fynbos and may increase fire risk therefore confer too much discretion regarding land management on municipal officials, as well as not acknowledging rights of landowners to make use of the valuable natural assets present on the property.

Vacant land managed in accordance with the “*minimum standards*” of this Policy shall permanently change the habitat and its conservation value and negatively impact on a number of endangered plant, animal species and vegetation types. The municipality or owner will have to apply for authorisations in terms of the Forest Act, NEMA and NEM:BA before clearing a plot in terms of this Policy.

Land covered with well managed local indigenous vegetation is reality, as well as the best basis/aim or objective for vegetation cover on all vacant plots (it is obvious and has the greatest benefit to the environment and community). The policy should not require authorisations under other legislation, but support them.

It is recommend that plot clearing should ONLY amount to eradicating and removal of alien invasive trees from land as well as excess deadwood of old trees and that it will be in accordance with the intent and wording of the Bylaw and support of National legislation. Draft Standards that (i) can be implemented on most land with the KBRC’s support, (ii) will address the main fire risks, (iii) is clear, logic and defensible easily understandable standards, (iv) that will not harm but restore the environment and therefore shall (v) not require any authorization given under Point 12 above.

For: Kogelberg Biosphere Reserve Company.

Director: KBRC

JH Briers

3/3/2022

Annexure 1: Specific comments on standards set in Section 8 of Feb 2020 Draft Policy and Recommended Prescribed Standards.

1. This is comments on the wording used left **BLACK** on Chapter 8 (Point 8.1 and 8.2) of the Policy because “Prescribed standards for clearing vegetation” is the crux of Policy.
2. Recommended changes are made in **RED**
3. Explanations / motivations are made in **BLUE** - Please Note that explanations are repeated as far as possible each time it was necessary. It is therefore lengthy and repetitive.
4. Recommended Prescribed Standards.

Chapter 8 Prescribed standards for clearing vegetation

Chapter 8 is the crux of the Policy. It is incomprehensible for a Fire Department to have a detailed Policy that only addresses (i) “Vegetation” and (ii) “VACANT ERVEN”, because (i) vacant erven has a relatively low fire risk and (ii) for a material (vegetation) that is not listed as a “combustible material”, “combustible waste”, “combustible refuge”, “dangerous goods”, “fire hazard”, “flammable solid”, or “flammable store” or Fire risk in the Community Fire Safety By-law No 6454 of 27 July 2007. None of the Sections of Chapter 1 to 6 of the Bylaw vegetation is mentioned as a Fire-risk or source, also not in Chapter 8 under “Flammable Substances”. In section 34(2) on page 23 of the 33 pages of the Bylaw “vegetation” is mentioned only once under the heading Fire hazard. From the wording of Section 34(2) and the absence of reference to vegetation as combustible or flammable material or a fire hazard in the definitions thereof, it should be clear that the emphasis of Section 34(2) is on **“accumulating”** and **“in a manner”** *“likely to cause a fire hazard or a threatening danger”*. The type of vegetation is not specified or mentioned because it is, logical and reasonable to deduct that the local indigenous vegetation is not referred to, but vegetation that can be regarded as **accumulating** on top of (**in a manner**) the *status quo* which may be considered to cause a fire hazard or a threatening danger (**thus; alien invader trees**). **Accumulation** in the Bylaw clearly refers to alien invasive vegetation which has been well scientifically documented as a fire risk, grows faster and has a much higher biomass (fuel load) than that of the local indigenous vegetation. Only invasive alien trees and short-lived indigenous plants which have started dying off, because of veldt age older 20 years, can be regarded as a accumulating of **“proliferation of combustible vegetation”**. **The earlier Policy dated 2013, clearly recognised this, and focus on clearing of Alien Invasive trees.**

The Community Fire Safety By-law No 6454 / 2007 focus on build-up areas manmade hazards and was never intended to manage indigenous vegetation (God given environment infrastructure). The state of well managed indigenous vegetation endemic to the area, should be regarded reality and as an obvious standard for this policy because this is clearly the intent of the 2007 By-law. This misguided new focus on indigenous vegetation and vacant erven therefore ignores and detracts from the more important work and fire risks that a Fire Safety Bylaw of the Fire Department should address.

- 8.1 Contractors appointed by the Municipality for the clearing of erven are not permitted to use any herbicides on private erven, unless specified by the landowner, but may, under direction of the relevant municipal departmental manager, use suitable herbicides and application methods to control invasive species on municipal property. **Remove.**

Landowners are not permitted to use herbicides that are not legalized for use in wetlands. The statement gives no direction to OM staff, Contractors or Landowners at all. Herbicides will not be an appropriate method to “control invasive species on municipal property”. Select (such as Garlon) is appropriate to stop alien invasive trees that were cut down from re-sprouting.

8.2 The clearing of vegetation creating fire hazards shall be in compliance with the following prescribed standards:

The norms and standards as prescribed by this Policy are vague and ambiguous, illogic, unreasonable, cannot be not applied equally to all landowners, ignores the growth form and survival strategy and ecology of Fynbos, it does not acknowledging rights of landowners to make use of the valuable natural assets present on the property, are ambiguous and subjective and may increase fire risk and thus will lead to conferring to much discretion to Municipal officials and **most importantly are not in accordance with the intent of the By-law of 2007 and lawful.**

Implementing the requirement of this Policy to cut down well managed indigenous veldt shall (i) eradicate many protected and endangered plant and impact on animal species (ii) change the habitat permanently to such a degree that these species will not be able to colonise the area again and may therefore trigger an EIA process as required by NEMA.

8.2.1 All erven shall be cleared of all of deadwood including other combustible material not associated with the growth of vegetation;

8.2.2 All invasive alien vegetation shall be eradicated (cut down) and removed from the erven. Remaining stumps which were not uprooted, shall be treated with suitable herbicides and application methods under the direction of the landowner or appointed supervisor to prevent re-growth, according to national Legislation: Cara and NEM:BA. **Yes, agreed. This action was the intent of the 2007 Bylaw and main focus actions in initial Policies.**

~~8.2.3~~ Grass and indigenous ground covering plant species must be maintained at a maximum height of 500mm (0.5m); **Include - Following the required NEMA, NEM:BA and NFA processes to clear protected and endangered plant and kill- or ruin the habitat of animal species if this standard is not removed..**

From (section 2.3.8.) included in the April 2019 the Municipality admit that the implementation of the Policy as it stands (clearing of indigenous vegetation) trigger NEM:BA and NEMA and shall require Authorisations in terms of these legislation. The landowner will thus have to **apply for and get** the authorisations in terms of NEMA and NEM:BA **before** clearing vegetation in accordance with this Policy.

Any land managed in accordance with the above requirement shall kill millions of insects, countless small animals such as chameleons, destroy all bird nests and eggs and kill most birds chicks and & destroy many plants (of species that do not re-sprout) many that may be declared threatened species. Most importantly it shall permanently change the habitat in such a way that these plants (especially re-

seeders) and animals shall not be able to re-colonise the site. The current or future conservation value of this land would be lost.

The value and contribution of the habitat, the indigenous vegetation and associated animals which is growing on all open plots and its associated animals to Biodiversity Conservation and the System Functioning must be acknowledged. It is valuable asset as well as a blessing that attract people to settle in the region as well as a responsibility to all (it is the reasons why many people move to Betty's Bay, Rooi Els and Pringle bay). The public and officials should be educated and sensitised to see it in that light.

Section 8.2.3. is in contradiction to the 2007 By-law, does not acknowledge the different purposes of land in any town and property rights of a landowner and seems to treat all land as if the sole purpose thereof is to control fire. This is not rational and point should be **Removed**.

Once the regular clearing has transformed the vegetation to **grass or reeds** dominated veldt, grass and reeds may easily grow back to heights more than 500 mm in less 3 months. **Creating/causing a fire risk** and moving target for the land owner as a result of this Policy.



Grass dominated erf as result of Restios that were cut too low and was replaced by grass. Small patch of Restios still present in background (reddish brown).

Restio dominated veld in Municipal reserve that had not been cut since 2005 (older than 14 years). Prime habitat for the endangered micro frog.

Figure 2: Prime habitat of the **Critically endangered** Micro frog that has been permanently degraded as result of plot clearing and creating a site that is a much greater fire risk.

The clearing of plots in the manner required in this Policy leaves numerous short sharp stems of dead and dying bush (all species that do not re-sprout). These sharp sticks cannot be left standing as it is dangerous. Thus this requirement is not consistent with the reality as the results of clearing effectively compel a landowner to remove all vegetation from the plot together with a large amount of topsoil using a bulldozer.

Recommendation: Remove.

8.2.4 The area around trees shall be cleared of growth to a minimum height of 1.5m on the underside of the canopy with all ground level deadwood removed from the area around trees.

Clearing of “trees” is not consistent to how natural vegetation in the area is or should be managed nor the way how the Municipality manage the trees in their parks. Trees are not defined and most Fynbos trees (Protea’s , Leucospermum’s, Leucadendron’s, etc.) cannot be cleared in this manner.

For most indigenous trees and shrubs growing in the area it is irrational to clear up to any specific height as they grow wide with a large number of stems at the bottom with only a few stems higher than 2m (this was explained during the meeting I attended). Previous plot clearing shall permanently reduce most Fynbos and Strandveld trees to multi stemmed bushes.



How would these Sand Olive and Candle wood trees of about 1.5m be cleared? Note: With Proteas and other Fynbos species answering this question will be more of a problem

How would this very old multi stemmed tree of about 1.5m high be cleared?

It is not clear what is meant with the words “*cleared of growth*”. Does it mean all leaves or stems? If a multi-stemmed tree is encountered – and one out of the 20 stems of the i.e. a *Protea* plant is 1.6m high, must all other stems then be removed and if all stems are shorter than 1.5m the tree must be cut down to 0,5m?

Suggestion: Remove.

8.2.5 On erven that are surrounded by 1.8m or higher boundary walls the density of indigenous vegetation must be reduced by a minimum of 50% of the density and must be cut down to at least 500mm below the top level of the walls.

What number of vacant erven are there with 1.8m boundary walls around it?

Such standard cannot be a standard as (i) a clear consistent density is not defined, (ii) the state/density on the property is not taken (iii) a % as standard is impossible to measure and a moving target (why not reduce it another 50% the

next month). The relation with % cover and wall height in one condition seems to be unnecessary and irrational.

Suggestion: Remove.

8.2.6 Fire breaks must be provided on properties larger than the standard size even as determined by the Chief Fire Officer.

A requirement for “the standard size even” is irrational and not defined. These fire breaks should be the same or similar to the fire breaks specified in the management plan for similar size property belonging to the Municipality and along the Urban Edge. Recommendation:

Remove and/or give a size of a plot so that it can be clear and open for discussion.

8.2.7 Erven that are located within 50m of thatch roofed structures shall be cleared of vegetation to the minimum standard at all times, irrespective of vegetation species and location, with the exception of trees, which must be trimmed in accordance with section 8.2.4 of this chapter.

Suggestion: Remove as it entails complicated legal and logical ramifications (How can a person who chooses to erect a house with a thatch roof, affects the rights and be a fire risk to all his neighbours? Why should a Municipality effectively promote thatch roofs in an area with such high winds?) The Municipality should rather discourage thatch roofed dwellings or outbuildings in the area, not promote it.

8.2.8 The clearing of erven shall be done in a manner that will prevent soil erosion.

The clearing of plots in the manner required in this Policy effectively compel a landowner to remove all vegetation (short dead stems and all) from the plot together with a large amount of topsoil using a bulldozer. See real consequence in photo below. The numerous short sharp stems of dead and dying bush (all species that do not re-sprout) cannot be left standing as it is dangerous. Thus this statement is not consistent with consequence of the implementation requirements of the Policy.

Suggestion: Remove all the requirements that effectively compel the landowner to remove all vegetation; i.e. Points 8.2.4 and 8.2.5 and 8.2.7.



Sharp sticks remaining are removed together with a large amount of topsoil.



Plot cleared of all vegetation and topsoil from boundary to boundary. Will likely be replanted with fast growing exotic plants.

8.2.9 All vegetation refuse produced in the clearing of erven must be removed from cleared erf and may not be left on an erf or on the verge for longer than 3 (three) days. **Yes, assuming that the plot is cleared in accordance with a rational standard (cut and remove alien trees only). If indigenous plants are removed large numbers of animals such a chameleon's will be transported and pass through the chipper at the dump.**

Search and rescue should be done and suitable habitat for release be sought for threatened animals (micro frogs, lizards, chameleon's, etc.)

8.2.10 Cuttings may be chipped into pieces not larger than 100 x 100mm in size, which may either be removed or distributed over the cleared erf but may not be left as heaps that will give rise to spontaneous combustion.

The chips left on site totally **transform the environment**, and only a small number weedy pioneer plants can establish in such substrate. Building regulations require the removal of organic material from the location of the house itself. These chips are the same as "dead wood" in point 8.2.1 and/or vegetation refuge in section 8.2.8 garden refuge in point 8.2.11 that should be 100% removed. Such wood when it caught fire will burn for a long time and burn/kill the soil as well as smoulder for long times after a fire has been contained and thus substantially increase fire risk.

Suggestion: That all chips be removed.

~~8.2.11~~ Garden refuse, cuttings and excess combustible material (including that created by the clearing process) shall be removed from the property and disposed of at the relevant municipal refuse transfer stations.

This is already dealt with under 8.2.9.

Most vacant erven do not have any of these materials but that created by the clearing process only. Why should wood chips above not be removed as it is combustible material? The condition is therefore contradictory and illogical.

Remove

8.2.12 For purposes of removal of garden refuse, cuttings and combustible material it is recommended that private landowners make use of the registered contractors available on the Municipal database or contractor list supplied on request from the relevant administrators as they are aware of the minimum requirements and terrain.

Why (vacant plots do not have garden refuse)? What substantiate this claim? Training by OM? Cost? None of the more than six contractors that I have spoken to had any idea of the intricacies of the approved Policy. **Remove.**

8.3 The standards for properties located in proclaimed biosphere must be **Removed as it omitted the requirement to eradicate alien invasive trees (8.2.2) and added to additional destructive activities that is not required in other erven. See points 8.3.3 and 8.3.4 below. Both these 3 additional requirements are all destructive, illogical and impractical.**

- 8.3 The following minimum requirements are applicable to erven located in proclaimed biospheres and other protected areas in urban and suburban areas that are zoned for development, with the exception of erven situated within 50m of any thatched roof dwelling or structure:**
- 8.3.3 Reduce (thin out) the density of vegetation by a minimum of 50% across the total area of the erf.
 - 8.3.4 Provide for a safe distance between the vegetation and any structures on abutting erven by making certain that that vegetation does not encroach over the standard 2m building or other scheme lines;

The following **Prescribed Standards are Recommended by the KBRC** to replace the above standards for both Points 8.2 and 8.3. This should be backed up by a clear guideline document/ brochure with photos.

The aim for clearing of vegetation is to remove vegetation that **accumulates beyond** that of well managed Fynbos or Strandveld vegetation and/or that of the plants in gardens of surrounding area. This leaflet attempt to prescribe a standard (i) that shall be approved if adhered to by contractors or plot-owners and (ii) that should be sufficient for at least 4-5 years because it removes fast growing, short-lived pioneer plants and leave long-living slow growing trees that prevent alien from re-establishing of pioneers. **The crucial requirement of the standard is for all private erven therefore Point 1 to 9 below (final result shown in Figure 1.)**

1. Clear **deadwood** and any other combustible material not associated with the growth of vegetation, from the plot.
2. **Eradicated** (cut down as low as possible) **all alien invasive trees** and remove from the erf because it is known to be most important cause of vegetation build-up by far. The remaining stumps must be treated with herbicide in accordance with National Legislation: CARA and NEM:BA). See photos in attached brochure that show the main species of concern in the Hangklip area.
3. Cut and remove fast growing, **short lived pioneer** shrubs, reeds or trees which are more fire prone and have established as a result of previous disturbance at the site:
 - 3.1. **Blombos** (Methalasia species), madder (*Anthpospermum species*) and such species taller than 0.5m high ought to be cut and removed.
 - 3.2. **Fluitjies reeds and bulrush** (*Typha capensis*) can be cut short (down to less than 10cm) and removed. These two species probably grow prolifically because of eutrophication and will re-grow very fast (within less than one month). See Photos in attached brochure.
 - 3.3. **Short-lived trees and shrubs that have started to die** off (i.e. more than 50% of plant is dry) could be cut and removed. This would mostly be Tolbos, gonnabush, renosterbos bitou, keurboom and such species. See Photos in attached brochure.
4. Leave the following:
 - 4.1. All low and slow growing old **water- and fire-wise trees** (big or small) – i.e. Waxberry, Milkwood, Meythenus, *Cassine*, *Colpoon*, Dune Spoonwood, Cherrywood, Bergbas, Dune Guarri and Sand Olive unharmed. The associated flowers, sedges, renosterbos,

- proteas and pincushions and fynbos should be left unharmed. See Photos in attached brochure.
- 4.2. Leave all slow growing old water-wise **Restio's and Seges**. Cutting down these plants shall promote the establishment of Reeds, Bulrush and Grass species that are much more fire prone / fire unwise vegetation cover and nearly impossible to control without disturbing and removing the soil. See guideline.
 - 4.3. Leave **low growing Fynbos heath** and herbs that have not started to die off, unharmed because it prevents invasive weeds from establishing.
 5. The **indigenous vegetation in the roads verges** does not need to be cut or disturbed at all, as it is a valuable public asset. The **alien invasive vegetation** in the road verges needs to be cut and removed and is the responsibility of the Municipality.
 6. On plots larger than 1000m² make an **access path of not less than 2m** and no more than 3m wide through the vegetation from the municipal road reserve into the plot up to 10m from the back boundary of the plot, avoiding/or leaving large rocks and "old" trees (big or small) mentioned in point 5, unharmed. *Try to follow the route the owner or future owner would use to gain access to the plot. Remember that the owner of a vacant erf does not know where the access road to the garage will be before building plans are submitted and options should be kept open.*
 7. **Topsoil** may not be removed at all or disturbed as far as possible.
 8. All vegetation litter produced in the clearing of erven **must be removed from cleared erven and may not be left on an erf or on the verge for longer than 5 (five) working days.**
 9. Cuttings may be chipped into pieces and must be removed from the plot.

The species mentioned under any of the categories are not a conclusive list of species, but constitute more than 80% present. **The focus of the clearing must simply focus on which species must be eradicated (alien invasive trees and dead short-lived plants)** and not what could and may be removed.



Figure 1: Diastella road- with the height of most vegetation below 1m and trees below 1.8m high (the pole is 2m high).

Annexure 2

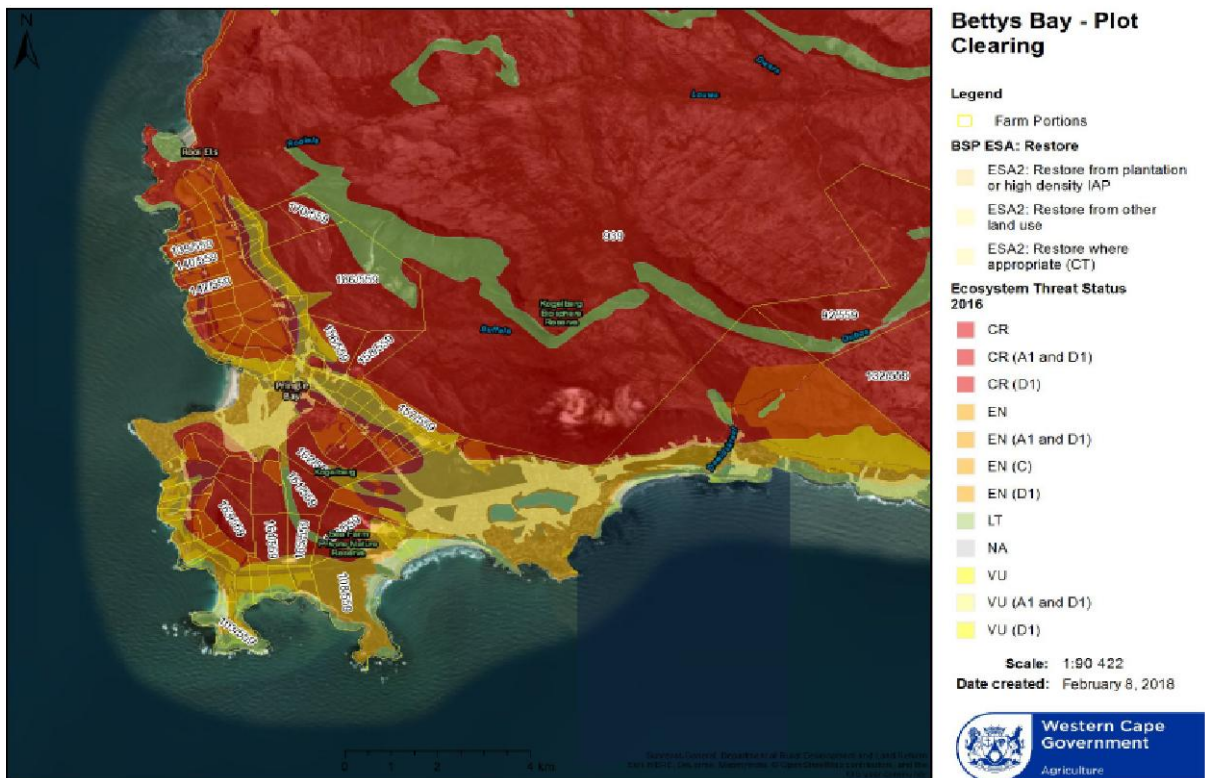


Figure 1: Ecosystem Threat Status of area.



Figure 2: Vegetation Map of Region (Mucina & Rutherford 2006)



