

OVERSTRAND MUNICIPALITY



POLICY FOR: CREATING AND MAINTAINING FIRE WISE VACANT ERVEN IN URBAN AND SUBURBAN AREAS OF THE OVERSTRAND MUNICIPALITY

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Preamble

The Overstrand municipal region has over the years experienced many devastating fires. The presence of highly combustible vegetation, alien and endemic, combined with a rapidly increasing population and continuing urban and suburban development, poses a heightened risk of fires occurring. The Overstrand Municipality has a responsibility in terms of the Constitution to provide a safe and healthy environment by managing and reducing the risks of fires in and around urban and suburban areas. This is a responsibility which landowners share.

Fires result in the destruction of property, cause socio-economic hardship and have a negative impact on the welfare of communities. For this reason, strategies are needed to protect against the ravages of fire. Such strategies are an important part in developing a sustainable economy and in creating safe living conditions.

If the devastation that results from vegetation fires is to be mitigated, it is important to acknowledge that the condition of vacant erven in urban and suburban areas has to be maintained in collaboration with communities in a manner that instils fire-wise consciousness

Chapter 1

Definitions and Abbreviations

Administration Fee	Means a tariff as approved by Council and provided for in the tariff list of the Overstrand Municipality
Appeal Process	Provisions of section 62 of the Local Government: Municipal Systems Act, (Act 32 of 2000) which <i>inter alia</i> provides that a person, who feels that his/her rights have been affected by a decision taken by a staff member in terms of a power or duty delegated, may appeal against that decision by giving <u>written notice of the appeal and reasons</u> to the Municipal Manager <u>within 21 days</u> of the date of the notification of the decision.
Brush Cutter	A hand held mechanical tool, powered by an electrical or petrol motor, and used to cut down shrubs and small trees.
Bush-cutter (Bossiekapper)	A machine drawn behind a tractor, powered by a power take-off (PTO) from the tractor, and is used to cut down shrubs and large areas of vegetation
Chain Saw	A hand-held mechanical saw powered by an electrical or petrol motor, and used to fell trees and cut logs
Combustible material	Means combustible refuse, combustible waste or any other material capable of being ignited manually or spontaneously.
Community Fire Safety By-law	Means the Overstrand Municipality By-Law relating to Community Fire Safety P.N. 6454 of 2007
Contract	Means a formal written agreement between 2 (two) or more parties to provide for the execution of a specific task under specific conditions as set out in the contract document
Contractor	Means a person, natural or juristic, who undertakes to execute a contract to render a service that is awarded by the Overstrand Municipality under the terms and conditions stipulated therein.
Conservation Use	Means the use or maintenance of land in its natural state, or rehabilitation to its natural state, with the objective of preserving the biophysical and heritage characteristics of the land including flora and fauna on the land.
Environmental management overlay Zone Regulation	Means the regulation of land use management in addition to existing statutory land use controls, whereby Council may give effect to specific guidelines in a spatial development framework or policy plan or address a specific management issue.
Erf (erven)	A plot(s) of land in urban and suburban areas zoned for the development of residential, commercial and industrial buildings.

Fire Brigade Services Act	Means the Fire Brigade Services Act, No. 99 of 1987
Fire hazard	Means any situation, process, material or condition which may cause a fire or explosion or provide a ready fuel supply to increase the spread or intensity of the fire and which poses a threat to life or property.
Green Belt (s)	Means a land use designation for areas set aside as undeveloped natural areas surrounding or within urban areas.
Hazard	Means any physical situation with the potential to cause a fire or the accumulation of excess waste material
Herbicide	Means a chemical substance (weed killer) that is registered under relevant legislation to control or destroy specific plants in accordance with the directions for the use of such a weed killer.
Indigenous Vegetation	Means a species that occur, or has historically occurred, naturally in a free state in nature within the borders of South Africa, but excludes a species that has been introduced into South Africa as a result of human activity (as per the NEM:BA)
Invasive Alien Vegetation	Means vegetation declared invasive in terms of NEM:BA that landowners are legally required to remove from their property and which is deemed to be a verified fire hazard in terms of this policy.
Land	For the purposes of this policy, means all undeveloped land, whether owned privately or by the state, province or municipality.
Land clearing	Means actions required to ensure that fire hazard conditions are minimized on all land; that rubble, dead and dry vegetation and waste material are removed
Land owner	Means any person, natural or juristic, including land owned by the State, in whose name land is registered, or if such land has been purchased but not yet registered in the Deeds Registry, the purchaser. It may also mean a person who has the right of ownership even though the land has not yet been registered in his/her name in the Deeds Registry. If the owner does not reside in South Africa or cannot be found, a representative of the owner may be regarded as the owner.
Land user	Any person, natural or juristic, including the State, who is the owner of the land, or who leases the land or who has any legal right to use the land or the vegetation or other organic material from the land, irrespective of whether that person resides on the property or not.
Manual clearing	The removal of plant and other material by hand or with hand-held tools.
Mechanical clearing	The removal of plant and other material with mechanical equipment such as tractor driven lawnmowers or bush-cutters ('bossiekappers').

Municipal service provider	A person, natural or juristic, who undertakes to execute a contract awarded by the Overstrand Municipality under the terms and conditions stipulated in such contract.
Municipality	The Overstrand Municipality, which is a local authority duly established in terms of the Local Government: Municipal Structures Act, No. 117 of 1998 and whose head office is situated at Magnolia Street, Hermanus, Western Cape.
NEM:BA	National Environmental Management: Biodiversity Act, 2004 (Act 10 of 2004), and the Alien and Invasive Species Regulations, promulgated under NEM:BA (1 August 2014) for the management of invasive species.
Nature reserve	A national park or environmental conservation areas declared or registered as a nature reserve in terms of legislation whether in public or private ownership, for the purpose of conserving and managing wild life, flora and fauna, in a natural habitat.
Public Open Space	Land which is in public ownership, used primarily for outdoor play, recreation, or as a park area or nature area, and includes associated infrastructure and uses.
Open Space Zone 1	Refers to land used primarily for Nature Reserve or Conservation use.
Open Lands	Undeveloped land with insignificant or no vegetation cover
Park	Land with or without trees and shrubs and lawn areas, used mainly for recreation purposes.
Playing Field	A privately, state or municipal owned facility where various sporting activities take place.
Procedure	A dedicated single process to complete a required task, with as many steps or tasks, responsibilities, regulations or requirements, involving a number of people as required.
Protected area	An area that has been declared a Protected Area in terms of the National Environmental Management: Protected Areas Act, No. 57 of 2003.
Public Garden	A garden that is open to the public for botanical and recreation purposes.
Responsible fire safety official	An official of the Overstrand Municipal Fire Brigade Service who is responsible for ensuring compliance with fire prevention standards.
Roadside Verge	A strip of soil and/or grass and/or other vegetation, which may include trees, owned by the state, province or municipality, situated between a roadway and the boundaries of properties.
Suburban area	Development areas situated on the outskirts of a city or town.

Waste material	Superfluous, discarded or unstable matter: combustible or non-combustible rubble, rubbish, or debris accumulated on a property.
Urban area	Area situated within a city or town

Chapter 2

Intent and Objectives of the Policy

- 2.1 This policy is specific to municipal and privately owned vacant land within residential areas and bordering urban edges.
- 2.2 The Community Fire Safety By-law, pertaining to overgrown vegetation, does not distinguish between alien and endemic/indigenous vegetation and as such it is the main objective of this policy to provide the Municipality and private land owners with the minimum standards and guidelines for managing and controlling fire hazards presented by overgrown erven and includes mechanisms to combat the proliferation of combustible vegetation on vacant erven, in order to mitigate or remove the threat and danger of fires in residential areas.
- 2.3 This policy gives effect to the following legislation:
 - 2.3.1 Section 152(d) of the Constitution of the Republic of South Africa, 1996 - the promotion of a safe and healthy environment;
 - 2.3.2 Sections 4 and 34 of the Overstrand Municipality Standard By-law relating to Community Fire Safety P.N. 342/2006 (Provincial Gazette 6454, 27 July 2007) – Prevention of fire hazards on properties;
 - 2.3.3 Fire Brigade Services Act, No. 99 of 1987 and amendments up to and including Act No. 14 of 2000 – Prevention of fires.
 - 2.3.4 Local Government: Municipal Finance Management Act, No. 56 of 2003 – Prescribed regulations with regard to financial aspects of local government,
 - 2.3.5 Local Government: Municipal Systems Act, No. 32 of 2000 – Prescribed regulations with regard to the functions of a municipality.
 - 2.3.6 The National Veld and Forest Fire Act, No. 1998 101 of 1998 – Duty to prepare and maintain fire breaks.
 - 2.3.7 The National Forests Act of 1998 (Act No. 84 of 1998) – Protection of certain tree species declared as protected under the Act.
- 2.4 The objectives of the policy are:
 - 2.4.1 To prevent the outbreak and spread of fire by the removing and reducing fire hazards presented by an overgrowth of combustible vegetation on erven irrespective of the type of vegetation.
 - 2.4.2 To provide for the identification of fire hazards on all vacant erven within the urban areas of the Overstrand Municipality, excluding, Open Space 1 and 2 properties that are managed by the Municipal Environmental Management Services Department and described in the Environmental management Overlay Zone Regulations as areas of conservation concern.

- 2.4.3 To enable the process of notifying owners of the fire hazards presented by overgrown erven and of their obligation to comply with the relevant legislation to prevent such situations from arising.
- 2.4.4 To ensure that fire hazards are controlled and reduced in accordance with prescribed standards.
- 2.4.5 To ensure that all privately and publicly owned vacant erven, including public common areas within urban borders, continuously conform to the minimum standards.

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Chapter 3

Principles of the Policy

- 3.1 All officials and contractors of the Overstrand Municipality, and all residents, land owners and appointed agents shall be subject to the provisions of this policy and shall be required to follow the procedures and any processes as prescribed.
- 3.2 All land owners are obligated in terms of sections 34 & 58 of the Community Fire Safety By-law to maintain their vacant erven in such a manner that the land is in a satisfactory condition, as determined by the Chief Fire Officer, in that it does not present a fire hazard to the surrounding environment and community.
- 3.3 Land owners must comply with the standards determined by the Municipality.
- 3.4 Only manual clearing methods shall be used for reducing fire hazards in areas proclaimed as protected. Mechanical clearing shall be permitted in areas that are not proclaimed as protected in accordance with the relevant legislation.
- 3.5 **Manual clearing** is done using hand tools such as bow-saws, pruning scissors, motor operated hand held chain saws or motor operated hand held brush cutters.
- 3.6 **Mechanical Clearing** is done using industrial driven motorised lawnmowers or tractor drawn bush cutters ('bossiekappers').
- 3.7 Fire Breaks free of combustible material shall be created on urban perimeters where necessary, as determined by the Chief Fire Officer in order to assist in preventing fires from spreading and to provide the necessary access for firefighting vehicles of all types to control fires.
- 3.8 Where permitted, driven motorised lawnmowers or tractor drawn brush cutters ('bossiekappers') may be used at the discretion of a land-owner, who is encouraged to consider the protection of animals and natural vegetation in the process.
- 3.9 Areas such as roadside verges, public gardens, parks, fire breaks or sports/playing fields where continuous maintenance takes place, are subject to compliance with the minimum standards of this policy.

Chapter 4

Responsibilities, procedures and rights of the Municipality

- 4.1 Any delegated official of the Overstrand Fire, Rescue and Disaster Management Service is empowered, in terms of section 4 of the Community Fire Safety By-law and section 19 of the Fire Brigade Services Act, to enter upon any erf to ensure compliance with the requirements of the

Community Fire Safety By-law and to order the removal of any hazard if it is found that there is a violation of any regulated Fire Safety standard. Non-compliance will result in the municipality exercising its statutory powers of enforcement.

- 4.2 In accordance with the Municipality's by-laws, policies and directives as to when and how an erf shall be cleared officials with delegated authority for the identification of fire hazards shall have the final decision on the standard of clearing of an erf. If an erf is not identified as a fire hazard, but is in breach of other municipal legislation, the matter will be referred to the relevant department(s) for further action.
- 4.3 Compliance notices will be served on land owners by registered mail through the South African Post Office in terms of section 6(2) of the Community Fire Safety By-law and **will only be served by e-mail as a courtesy where accurate contact information is provided to the Municipality and captured (held) in its data base. Despatch of the Notice by pre-paid registered post to the address of the owner together with proof that it reached the correct post office nearest to where the owner resides will constitute sufficient proof that the Notice had come to the attention of the land owner.**
- 4.4 A clearing compliance notice period of 28 working days in the case of owners who reside in South Africa and 40 days in the case of owners who reside beyond the borders of South Africa, shall apply in respect of the removal of hazardous conditions prescribed by this policy.
- 4.5 The minimum standards for the clearing of vacant erven are determined by the controlling authority, as reflected in this policy.
- 4.6 This policy may be reviewed from time to time. Any amendments shall be subject to council approval after public participation and council work-shopping.
- 4.7 The process for the acquisition of municipal clearing contractors shall be in accordance with the Municipality's Supply Chain Management Policy.
- 4.8 The appointed contractor(s) will be provided with specific instructions, including plot numbers and time frames for the clearing of erven.
- 4.9 The contractors shall be paid for work done only after their submitted invoices have been verified and cleared erven have been inspected to ensure that the work has been completed according to the prescribed standards of this policy and the specifications of the tender contract.

Chapter 5

Obligations of Land Owners

- 5.1 Land owners must comply with the provisions of section 34 of the Overstrand Municipality's Community Fire Safety By-law, P.N 6454 of 2007.
- 5.2 Clearing of property shall be in compliance with the norms and standards as prescribed by this policy.

- 5.3 Failure to comply with the requirements of a clearing notice will result in the institution of legal proceedings in terms of section 58 of the said By-law.

Chapter 6

Recovery of Costs

- 6.1 Should it be necessary for the Municipality to institute legal proceedings as contemplated in section 5.3 of this Policy the full cost thereof shall be recoverable from the land owner which shall include the cost of the contractor's service and the administrative fee as determined in the municipal tariff structure, and shall the said cost be billed against the defaulting owner's municipal account as provided for in section 4(4) of the Community Fire Safety By-law.

Chapter 7

Appeal Process

- 7.1 Section 62 of the Local Government: Municipal Systems Act No. 32 2000 provides that a person who is of the opinion that his/her rights have been affected by a decision taken by a staff member in terms of a delegated or sub-delegated power or duty may appeal against that decision by giving written notice of the appeal and reasons to the Municipal Manager within 21 (twenty one) days of the date of the notification of the decision.

Chapter 8

Prescribed Standards for Clearing Vegetation

- 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.
- 8.2 The clearing of vegetation that constitutes a fire hazard shall be in compliance with the following prescribed standards:
- 8.2.1 All erven shall be cleared of all deadwood and any 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. In accordance with National Legislation: CARA and NEM:BA, stumps not uprooted, shall be treated with suitable herbicides and application methods under the direction of the landowner or appointed supervisor to prevent re-growth.

- 8.2.3 Grass and indigenous ground-covering plant species must be maintained at a maximum height of 500mm (0.5m);
- 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 said area.
 - 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% and vegetation must be cut down to at least 50mm below the top level of the walls.
 - 8.2.6 On properties larger in extent than the standard single residential erven, adequate fire breaks must be provided as determined by the Chief Fire Officer.
 - 8.2.7 Erven that are located within 50m of thatched roof 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.
 - 8.2.8 The clearing of erven shall be done in a manner that does not contribute to soil erosion.
 - 8.2.9 All vegetation refuse produced as a result of the clearing of erven **must be removed from the cleared erf and may not be left on an erf or on the verge for longer than 3 (three) days.**
 - 8.2.10 Cuttings may be chipped into pieces not larger than 100 x 100mm in size, which may either be removed or spread uniformly over the total area of the cleared erf but may not be left as heaps that will give rise to spontaneous combustion.
 - 8.2.11 Garden refuse, cuttings and excess combustible material (including that produced during the clearing process) shall be removed from the property and disposed of at the relevant municipal refuse transfer station.
 - 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.

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:

- 8.3.1 Remove all combustible deadwood, and any other ground level fire hazards.
- 8.3.2 Retention of desired trees is subject to them being cleared of growth from ground level to a minimum height of 1.5m below the canopy.
- 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;
- 8.3.5 Maintain grass and indigenous ground-covering plant species at a maximum height of 500mm (0.5m).
- 8.3.6 All vegetation refuse produced in the course of clearing an erf **must be removed from the cleared erf and may not be left on an erf or on the verge for longer than 3 (three) days;**
- 8.3.7 Erven that are located within 50m of thatched roof 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.
- 8.3.8 The clearing of erven shall be done in a manner that does not contribute to soil erosion.

- 8.3.9 Cuttings may be chipped into pieces not larger than 100 x 100mm in size, which may either be removed or spread uniformly over the total area of the cleared erf but may not be left as heaps that will give rise to spontaneous combustion.

Chapter 9

Prescribed Procedures of the Plot Clearing Management Process

NO.	ACTION	RESPONSIBLE DEPT
Standard procedures		
1.	1 st Compliance inspection	Chief: Fire Services or delegate
2.	Controlling Authority for the administration and Issue of Compliance Notices.	Offices of the Respective Area Managers
3.	2 nd Compliance Inspection	Chief: Fire Services
4.	Issue summons on owner to appear in court in case of non-compliance as determined by the relevant controlling authority.	Additional Court /Law Enforcement
Procedures for remedial action		
1.	Appointment of contractors through the Supply Chain channels	Chief : Fire Services
2.	Instruction to private contractor	Chief : Fire Services – Hermanus Area Managers – Hangklip/Kleinmond & Gansbaai
3.	Inspection with certification of clearing done	Chief : Fire Services
4.	Invoice for payment of contractor	Finance
5.	Payment of contractor	Finance
6.	Billing of owner	Finance

Chapter 10

Milkwood Trees and other Protected / Endangered Plant (Also see DAFF information document appended hereto)

Milkwood trees such as the White Milkwood (*Siderxylon inerme*) are protected in terms of the National Forests Act, No. 84 of 1998. Pruning of the canopy of these trees is permitted to a maximum of 25% only, as provided by exemption published in Government Notice No. 773 (Government Gazette 30183 of 24 August 2007), but topping is not permitted. No topping or excessive pruning for sea views is permitted.

Pruning of milkwood trees from ground level to a maximum height of 1.5m shall be considered to meet the allowable 25% beneath the crown and may be necessary where the trees provide potential cover for illegal activities if they are located on erven within the urban and suburban areas, but no pruning shall take place where these trees are part of a natural forest, i.e. along the coast line, in green belts and proclaimed reserve areas.

Destruction of protected trees and/or natural forest and/or any other protected/endangered plant species without a permit obtained from the relevant controlling authority is a criminal offence.

GN 773: THE EXEMPTION READS: '*3. Pruning or de-limbing of trees on private property in established urban areas and around any homesteads. Up to a maximum of 25% trimming of the crown, without mutilating the tree. Topping of tree crowns i.e. obstructing views, and trees growing in a natural forest ecosystem, are excluded from this exemption.*'

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