

To The Board of Directors – Hermanusdoorns
Shareblock Limited

From Dawid Malan

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Subject National Veld and Forest Fire Act, 1998

Memorandum

Message

Dear Board of Directors,

I have been requested by Mr. Attie du Plessis to prepare a short paper on the provisions of the National Veld and Forest Fire Act, 1998 (the “Act”) as they apply to Hermanusdoorns Shareblock Limited (the “Company”) its members and visitors to the farm. This paper is not intended to be an exhaustive discussion of the Act and its provisions, but rather an overview of its most important provisions as they relate to Hermanusdoorns.

The three most important Chapters of the Act for purposes of this paper are the following:

- Chapter 4 – Veldfire prevention through firebreaks;
- Chapter 5 – Fighting Fire; and
- Chapter 7 – Offences and penalties.

I shall deal with each Chapter separately below.

Veldfire prevention through firebreaks

Landowners are required to prepare firebreaks on their side of the boundary where there is a reasonable risk of veldfire (section 12(1)). How do we know what a reasonable risk is? The courts use the “reasonable person test”:

- if a reasonable person in the position of the landowner would foresee that by not preparing a firebreak, a veldfire could start or spread across his or her land, causing harm to someone else,
- and therefore would prepare one,
- then the landowner should also prepare one.

Firebreaks can be prepared in a number of ways, for example, by grading, ploughing, disking, hoeing or burning. However, any soil disturbance is subject to the Conservation of Agricultural Resources Act, 1983. The Company should ensure that firebreaks are positioned and prepared in such a way as to cause the least disturbance to soil and biodiversity.

The Act sets out a lengthy and fairly complicated procedure for burning firebreaks, which falls outside the scope of this paper. Should the Company, however, wish to prepare burning firebreaks (I cannot recall ever having seen this being done at Hermanusdoorns) it should pay close attention to the relevant provisions of the Act.

The Act doesn't specify requirements for firebreaks. This is because requirements will vary from one situation to the next. Local practice and local issues must determine what the requirements are. The Act states that the owner must pay attention to weather, climate, terrain and vegetation in deciding on how to prepare the break. The break must be wide enough and long enough to have a reasonable chance of stopping the veldfire, not cause soil erosion and be reasonably free of inflammable material (section 13).

An owner can apply to the Minister to be exempted from preparing firebreaks. The Minister can grant an exemption "for good reason" (section 15).

Fighting Fire

Every owner on whose land a veldfire may start or burn or from whose land it may spread must have such equipment, protective clothing and trained personnel for extinguishing fires as are:

- prescribed in the regulations; and
- if there are no regulations, as are reasonably required in the circumstances.

To determine what is reasonable in the circumstances, you will have to behave as the reasonable person would behave. For example, the reasonable person on the Highveld in summer will not need workers on standby to fight fires. Readiness requirements should be proportional to the risk that an owner must manage.

The Act also requires that if the owner is absent, s/he must have a responsible person present on or nearby his/her land to:

- extinguish a fire if one broke out or assist others to do so;
- take all reasonable steps to alert the neighbours and the Fire Protection Association ("FPA") for the area, if there is one.

The owner may appoint an agent to act on his/her behalf, and to do all that he is required to do under section 17.

Owners need to ensure that their personnel are trained in fire fighting to an acceptable standard. The Department of Water Affairs and Forestry (the "Department") can provide advice on required standards.

Offences and penalties

The Act contains a whole host of offences and their corresponding penalties that may be applied. For purposes of this paper and its relevance to the Company, its members/home owners and visitors, a list of the most relevant offences is included here:

- Any person who lights, uses or maintains a fire in the open air in contravention of a fire warning by the Minister;
- Any person who, in the open air—
 - leaves unattended a fire which he or she lit, used or maintained before that fire is extinguished;
 - lights, uses or maintains a fire, whether with or without permission of the owner, which spreads and causes injury or damage;

- throws, puts down or drops a burning match or other burning material or any material capable of spontaneous combustion or self-ignition and, by doing so, makes a fire which spreads and causes injury or damage;
- lights, uses or maintains a fire in a road reserve—
 - other than in a fireplace which has been designated by a competent authority; or
 - for a purpose other than the burning of a firebreak in terms of sections 12 to 16; or
- smokes where smoking is by notice prohibited.
- Any person who—
 - fails to prepare a firebreak when obliged to do so in terms of the Act;
 - fails to give notice of intention to burn a firebreak in terms of the Act (section 12(2)(b));
 - burns a firebreak when an FPA has objected thereto; or
 - fails to inform adjoining owners of the matters referred to in section 12(5), which relates to the postponement of the burning of a firebreak.
- Any person who—
 - fails to meet the standards of readiness for fire fighting referred to in the Act (section 17(1));
 - fails to notify the persons referred to in section 18(1)(a), being the FPA, the fire protection officer and owners of the adjoining land;
 - refuses to assist a fire protection officer or a forest officer in terms of section 18(3)(b) or 18(4)(b) of the Act; or
 - hinders or obstructs any person referred to in section 18(2) or any fire protection officer referred to in section 18(3) or any forest officer referred to in section 18(4).
- Any owner, occupier or person in control of land on which a fire occurs who fails to take reasonable steps to extinguish the fire or to confine it to that land or to prevent it from causing damage to property on adjoining land.
- Any person who—
 - prevents a fire protection officer, forest officer, a police officer or an officer appointed in terms of section 5 or 6 of the Fire Brigade Services Act, 1987 from acting in terms of section 27, 28 or 29 (search and seizure provisions) of the Act; or
 - in any way interferes with him or her in the performance of his or her duties in terms of section 27, 28 or 29.

I trust that the above overview is of assistance to you. I have found the website of the Department to be most helpful in the preparation of this paper. The answers to most questions in regard to the Act can be found there.

Finally, please note that this memorandum does not constitute legal advice and is provided to the Board of Directors of the Company for information purposes only.

Kind regards
Dawid Malan