

PREPARING FIREBREAKS

Purpose of firebreaks

- Anyone with experience of veldfires knows that a firebreak cannot stop every veldfire.
- There will inevitably be a time when conditions are so severe that a fire will cross a break, by spotting or otherwise.
- However, experience has shown consistently and repeatedly that firebreaks are useful:
 - in stopping many fires
 - in providing a line from which to combat veldfires by counterfiring or other measures
 - for protection of property generally.

The requirement to prepare 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.

The “reasonable person”

- Who is the reasonable person? This fictional person is:
 - the average man or woman
 - not reckless nor overcautious
 - aware of their surroundings and the dangers inherent in various activities.
- If the person concerned also has particular expertise, then his or her conduct is measured against that of the reasonable expert (e.g. electrician, mechanic, farmer).

Preparing firebreaks

- Firebreaks can be prepared in a number of ways, for example, by grading, ploughing, disking, hoeing or burning.
- S16 allows the owner to damage, destroy or remove any protected plants in making a firebreak, despite what the National Forest Act or any other law says. But the owner must transplant protected plants if possible or position the firebreak to avoid protected plants.
- The National Environment Management Act requires biodiversity to be protected, so remind landowners of this when advising them about firebreaks.
- The Act sets out a procedure for burning firebreaks.
- Neighbours can agree to reposition a firebreak on a common boundary.

Procedure for burning firebreaks when there is no problem with burning

Discuss with neighbours and reach agreement

- Determine mutually acceptable dates.
- Inform the FPA.
- Burn firebreaks on same day as each other **OR** be present or have agent present.

- Have enough people present to prevent it from spreading.
- If the neighbour is not present on the agreed day, you can burn in his/her absence.

Discuss with neighbours and do not reach agreement

- Give 14 days' written notice to neighbours and FPA of day/s on which you intend burning.
- Neighbour must burn firebreaks on same day/s as each other **OR** be present or have agent present.
- Have enough people present to prevent it from spreading.
- If the neighbour is not present on the notified day, you can burn in his/her absence.

Procedure for burning firebreaks: neighbours agree but on the day, burning can't go ahead

Discuss with neighbours and reach agreement

- Determine mutually acceptable dates.
- Inform FPA.

But burning cannot go ahead

- FPA objects.
- High fire danger rating.
- Conditions not conducive.
- Inform neighbours and FPA if there is one:
 - that burning cannot be done
 - of additional day/s you intend to burn.
- You do not have to give 14 days' notice of these additional days.
- Burn firebreaks on same day as each other **OR** be present or have agent present.
- Have enough people present to prevent it from spreading.
- If the neighbour is not present on the agreed day, you can burn in his/her absence

Procedure for burning firebreaks: neighbours do not agree and on the day, burning cannot go ahead

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Procedure for burning firebreaks

- If an owner will be absent for longer than 14 days during the period in which firebreaks are usually burnt, s/he must give neighbours an address and phone number where s/he can be contacted.
- An FPA may make rules different to what is in the Act if the Minister approves them. The new rules will apply to members of the FPA.
- But the FPA can always object to the burning of firebreaks by anyone within its area, whether the person is a member or not. In that way, the FPA enforces its own rules on members and non-members.

Requirements for firebreaks

- The Act doesn't specify requirements for firebreaks.
- This is because requirements will vary from one situation to the next. For example, on the Cape Peninsula, firebreak requirements would be different to what is needed in the eastern Free State.
- 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
 - be reasonably free of inflammable material (s13).

Exemption from preparing firebreaks

- An owner can apply to the Minister to be exempted from preparing firebreaks. The Minister can grant an exemption "for good reason" (s15).
- The FPA in the area (if one exists) must be consulted before granting the exemption.
- Many land owners are requesting an exemption. Most requests are blanket exemption requests e.g. Spoornet.

DWAF policy on exemptions: when we will not grant an exemption

1. For blanket requests as in the previous example.
2. When there is no alternative measure in place to mitigate against fire.
3. Where there is no or little risk of a fire arising on the property because a firebreak is not needed in the first place.
4. Where there is a risk of a veldfire and no FPA exists.
5. Where there is a risk of a veldfire and the land owner is not a member of an FPA but falls in an area where an FPA exists.

Under what situations we will grant an exemption

- Where the request forms part of an FPA's veldfire management strategy and the Minister is satisfied that there are alternative measures in place for mitigating against fires which protect the public interest.
- In addition, one or more of the following conditions must be met:
 1. The alternative measures in the veldfire management strategy have been agreed to by affected FPA members AND the FPO certifies that the alternative measures provide equivalent protection to what a firebreak would have given OR
 2. Affected owners agree to bear the risk and provide documented alternative ways they will use to bear the risk AND the FPO certifies that the public interest will not suffer.

Co-ordination with other legislation

- Burning of firebreaks must co-ordinate with other legislation and regulations.
- Conservation of Agricultural Resources Act (CARA):
 - Regulation 12 contains provisions dealing with prevention and control of veldfires, preventing land users from burning or grazing burnt veld without written permission from the executive officer
 - Rules of an FPA for burning veld (firebreaks and controlled burns) must not contradict the procedure set out in CARA.
- Atmospheric Pollution Prevention Act:
 - Although the Act does not apply to smoke caused by veld fires, it may apply to smoke caused by management practices such as burning firebreaks and controlled burns.
 - If occupiers of premises make representation to the local authority regarding smoke that is causing a nuisance, the authority is obliged to serve an abatement notice.
 - Failure to comply with the notice (i.e. failure to abate or stop) constitutes an offence.
 - FPA rules must take this Act into consideration when dealing with controlled burns.