

The *Working for Water* Programme

Circular

APPROACH TO WORK ON PRIVATE LAND

July 2008

Rationale for a shift in approach to work on private land

1. The *Working for Water* programme (WfW) has taken a policy decision to phase out managing working directly on private land, and rather to use incentives and disincentives to get private land-owners to manage invasive alien plants on their property themselves. This decision has been taken to facilitate:
 - 1.1 ownership of the problem of invasive alien plants by the land-owners;
 - 1.2 accountability for the management of the control of the invasives by the land-owner (including risks such as wildfires);
 - 1.3 a structured approach that focuses on priority species in terms of the control plans envisaged in the CARA and NEMBA Acts and Regulations;
 - 1.4 long-term sustainability in the control of the invasive alien plants;
 - 1.5 building relationships between the land-owners and the contract clearing teams (thereby boosting exit strategy opportunities for the contract team workers);
 - 1.6 a greater sharing of costs between WfW and the land-owners (and other bodies);
 - 1.7 reaching more land-owners with the resources available to WfW;
 - 1.8 partnering with local authorities to use rates and other incentives and disincentives to encourage compliance with policy and regulation regarding invasive alien plants;
 - 1.9 facilitating a broader engagement with land-owners, including using incentives and disincentives that can build on other priorities, such as *LandCare*, protection of threatened habitats, wetland conservation and wildfire management;
 - 1.10 facilitating the development of payments for watershed services by involving land owners and WfW contractors in the restoration and maintenance of the natural water capital of the country; and,
 - 1.11 facilitating a general condition for payments for ecosystem services.

Shift in management responsibilities in WfW

2. The shift in approach will have significant consequences for the management capacities, roles and responsibilities within WfW. There will be a continued need for project management for the control of invasive alien plants on public land (including communal land). There will also be a need for an ability to project manage on private land, such as when land is cleared at the land-owner's cost and risk, in terms of the law (including in the case of absentee land-owners). While that capacity will need to be retained, the extension and the monitoring and evaluation roles of the Project Managers will need to be significantly enhanced, in order to facilitate the approach to work on private land.

Pilot Project

3. A pilot project will take place in the Western Cape, through the WfW Regional Office, and a second pilot will be conducted through the KZN Invasive Alien Species Programme, in partnership with the WfW Regional Office in KwaZulu-Natal. These pilots will take place during the 2008/9 financial year.

Prioritization of work

4. The species to be controlled in the pilot projects, and later through all aspects of the programme, will be in line with policy positions, notably with respect to the following broad priorities:
 - 4.1 Prevent the introduction of new alien plants that have a potential to become invasive.
 - 4.2 Eradicate any new invasion by an emerging alien plant species, where possible and affordable.
 - 4.3 Prioritize and contain the spread of emerging invasive alien plant species.
 - 4.4 Prioritize species to be brought under control, focusing upon high-impact invaders, and with a strategy to contain all invasive alien plant species within the bounds of affordability and impact.
 - 4.5 Hold land-owners (including land-users, who are taken to be the legal persona responsible to the owners of the land) accountable for invasive alien plant species on their land.
 - 4.6 Adopt *polluter-pays*, *user-pays* and *beneficiary-pays* principles in apportioning responsibilities and costs relating to the management or eradication of invasive alien plant species (within broader Government policies on land and water reform).
 - 4.7 Acknowledge that Government has a general obligation to ensure that invasive alien plant species are brought under control.
 - 4.8 Acknowledge that land-users require significant guidance, assistance and motivation to bring invasive alien plant species under control (to be encouraged through incentives, advocacy and research, and reinforced through the strategic use of disincentives).
 - 4.9 Implement management interventions to control or eradicate invasive alien plant species in a systematic, equitable and empowering approach.

Enforcement of Regulations

5. The Conservation of Agricultural Resources Act (CARA) and the National Environmental Management: Biodiversity Act (NEMBA), and their draft Regulations, give significant powers to hold land-owners accountable for invasions of alien plants on their land. Central to the policy position for WFW's approach to work on private land is that these obligations must be enforced. In particular, there is a need to have a coherent and comprehensive approach to the control of specific invasive alien plants in specific areas, and for directives to be issued to land-owners to comply with the approach. It is essential that there is co-operative governance to use the DoA (Conservation of Agricultural Resources Act) and DEAT (National Environmental Management: Biodiversity Act) Regulations. It is not clear that there will be the capacity in these parent Departments to issue directives as is necessary. Delegated powers to issue such directives will be sought under the Acts and Regulations, under the co-ordination of the parent Departments. The issuing of directives must be done in a fair manner.

Support of District and Local Government

6. The ability to work with District and Local Government authorities to use rates and other measures as incentives and disincentives to manage invasive alien plants on private land, will be sought. This can strengthen compliance, especially if Regulations are passed regarding the need to control selected invasive alien plants in selected areas, before private land may be sold or otherwise transferred.

Support by water-users through Trading Account

7. Allied to this will be using the water pricing strategy and using the Trading Accounts managed by DWAF (and later, Water Management Authorities supported by Water-User Associations), to charge water-users for watershed management, whereby invasive alien plants that use more water than the species they displace will be cleared. This will be done on key invasive alien plant species, and in key areas (whether public or private land).
 - 7.1 Incentives for the private land-owners in the case of Trading Account funding for terrestrial invasive alien plants that use more water than the plants they displace, will ensure long-term control of the plants. This is outlined in section 14.
 - 7.2 The control of aquatic invasive alien plants (waterweeds) on all public water bodies (rivers, lakes, estuaries, public dams and public-land wetlands) will be the responsibility of the Government, and the funding will be sought through the Trading Account from water-users. Waterweeds on private dams and private-land wetlands will be the responsibility of the private land land-user. Where possible and affordable, the Trading Account or other sources may be used to assist the private land-owner to take control of the waterweeds, in line with the approaches outlined in section 12.

Support for payments for ecosystem services

8. Over and above the specific options for payments for watershed services through the Trading Account, a focus will be developed for a more general payment for ecosystem services.

Factors used in deciding to whom support will be given

9. The allocation of resources by WfW to private land-owners will be based on an area-wide approach to specific species (and where private and public land may be simultaneously cleared). In addition to taking a systematic approach for the control of invasive alien plants, in terms of its planning and prioritization, WfW may use the following factors in deciding to whom support is given:
 - 9.1 The extent to which the land-user has kept the invasive alien plants under control.
 - 9.2 The extent to which the land-user is a victim of invasions as a result of the activities of others.
 - 9.3 The intended land-use practices that follow the clearing of the invasive alien plants.
 - 9.4 The extent to which the land-user is contributing to water charges, as a water-user.

Land-owner contracts

10. Private land-owners will have to apply to WfW for assistance. Where assistance is provided to private land-owners, contracts must be signed between WfW and the land-owner outlining roles, responsibilities and obligations.
 - 10.1 The timing of follow-up clearing must be completed by the land-owner within the period stipulated by WfW in the contract, or where agreed to in an addendum to the contract. A failure of the land-owner to clear invasives within the stipulated time-frame will be taken as a breach of contract, and the land-owner will be held accountable for all of the additional costs incurred as a result of the delay. Similar charges will be applied regarding biological control agents (see #21).
 - 10.2 Where a land-owner fails to maintain the land in a cleared state (in terms of the species controlled in this work), WfW will be entitled to claim back its full costs, plus interest, or to require the land to be cleared, or to clear the land at the land-owners full cost and risk.
 - 10.3 Should private land that has been cleared of invasive alien plants be sold or transferred, or the owners be liquidated, the responsibilities associated with the contract agreement will be passed on to the new owners. This will be stipulated in the contract agreement between WfW and the land-owner, and legal advice will be sought as to whether stronger measures are necessary.
 - 10.4 Land-owners will not be unfairly penalized if WfW is not able to honour its obligations in terms of the signed contract.

Affordability of measures for land-owner

11. In the case of the cost to control invasive alien plants being unaffordable for the land-owner, and/or being greater than the value of the land, the programme may consider doing the work, and attaching the cost to the title deed of the property, in consultation with the Land Bank. In extreme cases (such as failing to do follow-up work following clearing assistance from WfW), expropriation of land may also be considered through the Department of Land Affairs.

Responsibility of land-owner to contain invasives prior to assistance

12. In the case where WfW (including through the Trading Account) does not have the budget to assist the land-owner in a particular financial year, the land-owner will be obliged to contain the existing levels of invasion on his or her land. WfW may provide herbicides to assist the land-owner. However, whether or not herbicides can be provided, the land-owner must contain the further spread of invasion on his or her land. (The responsibility to control invasive alien plants will always rest with the land-owner.)
 - 12.1 If WfW does provide assistance in future years, this may exclude assistance on land on which the invasives have spread as a result of the land-owner failing to contain their spread (taken from the time of surveying/mapping the land, or by the age of the plants that are invading).

Advocacy to build support from private land-owners

13. It is crucial that the programme and its partner Departments embark on a structured and resourced advocacy programme, to win the support of private land-owners to take control of invasive alien plants on their land. This ownership of the problem is central to the success of the programme.

Incentives to resource-poor farmers

14. Any additional incentives to resource-poor farmers, in relation to their contributions to the control of invasive plants on their land, will be at the direction and with the support of the Dept of Agriculture and/or the Department of Water Affairs and Forestry.

General conditions for work on private land: Land-owner responsible for management

15. Where affordable and prioritized, WfW will give incentives to private land-owners to control invasive alien plants on his or her land. The land-owner will be responsible for the compliance management of the contracts on his or her land, and for all legal requirements related to this responsibility. The contract teams will thus be professional service providers to the land-owners.
 - 15.1 In the event of absentee land-owners, or unco-operative land-owners, WfW may manage the teams on the land-owners land.
 - 15.2 In such cases, the full expenses (including management costs) and risks will be for the land-owner's account, in accordance with the legislation.
 - 15.3 Compliance management extends to ensuring the use of herbicides is in accordance with the laws of the land.

General conditions for work on private land: Land-owner responsible for all risks

16. All risks associated with the work on the private land will be the responsibility of the land-owner, including the risk of wild fires.

Initial clearing: Incentives for support of labour costs

17. WfW may cover 100% of the labour cost of contract teams for the initial clearing of invasive alien plants on the private land, for the number of persondays of work determined by WfW as reasonable in the setting of the tasks, subject to the following conditions:
 - 17.1 WfW's norms and standards will be used to gauge the appropriate number of persondays necessary to do the work. The land-owner may apply his or her own approach, norms and standards to do the work, but (a) they must be acceptable to WfW and (b) they will not increase the number of persondays paid for by WfW.
 - 17.2 Contract rates will be set according to WfW's wage levels, irrespective of how they may differ from those paid by the land-owner to his or her own labour. These will be contracts for a task, albeit set against WfW's daily-wage equivalent wage levels.
 - 17.3 WfW will be responsible for the training of the WfW contract teams. If any other team is appointed, they will have to have had technical training at least equivalent to that of the WfW teams. (WfW is part of the Government's Expanded Public Works Programme, and the use of open contracts must still ensure work opportunities that reduce unemployment.)
 - 17.4 Should the work be done in a period shorter than the determined number of persondays, the personday budget will be paid out to the workers.
 - 17.5 Should the work be done in a period longer than the determined number of persondays, the private land-owner will be responsible for any additional costs, should the contract team have a legitimate claim to additional wages or other costs.
 - 17.6 In the initial phase of the introduction of this new policy on work on private land, WfW will pay the contract teams directly. The approach whereby WfW pays land-owner for the agreed-upon labour costs at agreed-upon milestones, and the land-owner will then pay the contract team, will later be piloted. Where this happens, payment arrangements for the contract teams must be approved by WfW, and the land-owner must provide WfW with signed receipts from the contractor in terms of proof of payment against work completed. WfW will audit these payments.
 - 17.7 WfW will remain responsible for the current policy of a 20% capital build-up payment to the contract teams. This policy is being reviewed, and any changes will be incorporated into the approach to work on private land. For example, as the intention is to ensure that the land-owners contribute toward the replacement and repair costs for equipment and PPE, this portion will be deducted from the capital build-up percentage. On the other hand, liability insurance and payments to the Compensation Commissioner will need to be covered out of this amount.
 - 17.8 WfW's requirements regarding the composition of contract teams will have to be met (eg, BBBEE, gender, disability, etc), whether they are WfW teams, exited WfW teams or Open Contract teams.

- 17.9 WfW's health and safety requirements will have to be adhered to, notwithstanding the land-owner's Occupational Health and Safety Act: Section 16.1 responsibility.
- 17.10 The physical conditions under which the contract teams work must be signed off by the Project Manager, such as with regard to suitable ablution facilities.
- 17.11 Land-owners will have to sign contracts with the contract team that stipulates the employment conditions under which the teams will work.
 - 17.11.1 The land-owner will not be permitted to use the teams for any work other than the stipulated contract work, except if the contract stipulates a price for such services, and if the land-owner pays the full labour costs for such additional work. Should a land-owner abuse this condition, WfW shall retain the right in the contract to withdraw from the contract, and to claim back all monies given to assist the land-owner.
 - 17.11.2 The land-owner will be permitted to withhold payment to the contract team, if they fail to perform in terms of their contract with the land-owner.
- 17.12 Teams must wear WfW t-shirts and any other branded clothing supplied by WfW.
- 17.13 Where provided by WfW, signage must be erected to advertise the support by WfW.
- 17.14 WfW may institute a schedule of payments for the work, which will only be paid if WfW is satisfied that the work stipulated in terms of each milestone has been adequately completed. No advance payments will be made.
- 17.15 Private land-users may provide additional benefits to the contract team, such as food, at their own costs. No alcohol may be provided to the contract teams.

Technical Advice

- 18. WfW will provide expert advice on clearing methods, activity sampling and other aspects relating to the programme's norms and standards, for consideration by the land-user.
 - 18.1 WfW may assist the private land-owner with the training and other support that may be necessary for him or her to manage invasive alien plants on his or her land.

Equipment and protective clothing

- 19. The contract teams must wear WfW protective clothing (PPE) and use appropriate equipment to do the work.
 - 19.1 The equipment being used by contract teams will be paid off from the capital build-up amount, after which it becomes the property of the contract team.
 - 19.2 PPE will similarly become the property of the individual contract team members after being paid off from the capital build-up allowance.
 - 19.3 The private land-owner will pay the contract team a daily rate agreed upon with the team, for the equipment and PPE, to cover depreciation, wear and tear, and replacement costs, consistent with the costs being paid by WfW for this purpose. (The land-owner may rather choose to provide the contract team with his or her own equipment.)

Herbicide incentives

- 20. WfW may provide the herbicides necessary for the work to be done. This will be done for the initial clearing, and three follow-up clearing applications. Additional support may be possible, in terms of the herbaceous species, as listed in the **Appendix**. WfW will audit the use of herbicides, and hold the land-owner accountable for any abuse in the use of herbicides (eg, more than a stipulated percentage of re-growth will be taken to mean that the herbicide has not been properly applied).
 - 20.1 As mentioned in point 12, WfW may provide herbicides to land-owners, in cases where it is unable to provide any other incentives. The same condition stipulated above will apply.

Biological control incentives

- 21. Where appropriate, WfW will provide biological control agents to the land-owner, who will be responsible to follow the required management practice (eg, maintaining biological control reserves) and report back to WfW on the impact of these agents against key performance indicators. Where the land-owner fails to honour the requirements, s/he may be accountable for the costs.

Transportation of contract teams

22. The private land-owner must pay the transportation of the contract teams, at WfW rates. The land-owner may negotiate with the contract team for the land-owner to provide the transport him- or herself. If the land-owner does provide the transport, WfW's transport and safety requirements must be fully met.

Planning and mapping incentives

23. WfW may provide the private land-owner with the planning and mapping support, including the template for the plan, but the land-owner will be responsible for the final long-term clearing plan on his or her land.

Data management and reporting

24. The land-owner will be responsible for reporting to WfW on all key performance indicators required by the programme, for data management. The reporting template, which may be linked to invoices by the land-owner for payment, will be outlined in an **Appendix**. WfW will be entitled to claim the hectares cleared and persondays of work as outputs against its expenditure (critical for future funding, and therefore future support to private land-owners).

Monitoring and evaluation

25. WfW will be responsible for monitoring and evaluation of the work. The land-owner will be obliged to permit WfW or its agents to assess the work done at any time in the future.

Advocacy and communications

26. WfW will be responsible for advocacy and other communication regarding this work. Resources permitting, WfW may undertake advocacy and extension work with surrounding land-owners, to encourage appropriate responsibility and accountability for invasive alien plants on their land.

Follow-up clearing: Incentives for support of labour costs

27. WfW may pay 75% of the labour costs for the first follow-up clearing work, and 50% of the labour costs for the second follow-up clearing work, subject to the same conditions as set out in points 16.1–15. The Table at the end of the document summarizes the different ways in which payments will be made.

27.1 For specific herbaceous species, to be listed in an **Appendix**, WfW may pay the stipulated percentage of labour costs for the stipulated amount of additional follow-up clearing work. This will make allowance for species that require very high follow-up maintenance.

Specific conditions for work on private land: Secondary invasions

28. Where it is established that there is likely to be secondary invasions (ie, other invasive alien plants that are known to invade cleared areas), WfW may pay 50% of the labour costs and the full herbicide costs for an initial clearing of these secondary invasion species. WfW may further pay the full herbicide costs for additional follow-up work of the secondary invasions species. This support will only be for species listed in the **Appendix**. This support must also be stipulated in the land-owner contract / directive.

Specific conditions for work on private land: Emerging species

29. WfW may provide the full labour, herbicide and other costs for species listed as “emerging species” in a particular area, in terms of a list to be added in an **Appendix**, as part of its prioritization of early detection of and rapid response to emerging invasive alien plant species. It must be noted that WfW reserves the right to shift the status of an invasive alien plant in a particular area from being an “emerging species” to an “emerged species”, where the full costs are then no longer provided.

Specific conditions for work on private land: Payment from Trading Account

30. For terrestrial invasive alien plants that use more water than the species they displace, within key areas (and particularly riparian areas, mountain catchments and wetlands), additional funding will be sought from Trading Accounts to provide annual incentives to land-owners for half of the labour costs for follow-up work, and for the herbicide costs, subject to the conditions as set out in points 13.3.1–13.3.12

Specific conditions for work on private land: Uncontrolled wild fires

31. In the event of a wild fire where a private land-owner has taken the necessary precautions in terms of the National Veld and Forest Fire Act and Regulations, and where there is (or is a threat of) germination of fire-prone invasive alien plants, WfW may provide incentives to the land-owner of half of the labour costs and all of herbicide costs, to facilitate a timeous response to manage these plants.

Specific conditions for work on private land: Land registered for conservation purposes

32. In the case of any portions of private land that have been set aside for registered conservation purposes, WfW may provide half of the labour costs and all of the herbicide costs for on-going follow-up control of invasive alien plants. Should the private land later be de-registered for conservation purposes, the funding provided by WfW will have to be repaid with interest. (Should the land be sold, and the new private land-owner de-registers the land for conservation purposes, the funding will have to be repaid, with interest, by the new land-owner. Should de-registration be at the behest of the authorities, and not the fault of the land-owner, then no additional payment will be required.)

Possible additional charges for private land-owners

33. The use of disincentives may extend to charges for seed pollution, or a general charge for the control of invasive alien plants, as determined by WfW's parent Departments through its Executive Committee.

Specific conditions for work on private land: Land used for commercial purposes

34. WfW will not pay towards any work on those parts of private land that are used for commercial purposes (eg, ploughed land, commercial forests, orchards, property development, golf courses and the like are all taken as commercial purposes), except where registered for conservation purposes.

34.1 Should land cleared with assistance from WfW be used for commercial purposes within five years of that assistance, the private land-owner will be required to repay the full amount to WfW, including interest. Sustainable utilization of untransformed land shall not be deemed to be being used as "Commercial purposes".

Specific conditions for work on private land: Extraction of biomass for value-added industries

35. WfW reserves the right to extract cleared biomass to offset its assistance, through value-added industries. Should WfW not use the biomass, it remains the land-owners responsibility.

Specific conditions for work on private land: Repair work

36. The necessity of any repair work following the clearing will be assessed by WfW, in consultation with the Department of Agriculture and its *LandCare* programme, and/or the *Working for Wetlands* programme. Where repair is considered essential, support may be provided following the approaches outlined in section 16, as well as the following considerations:

36.1 Whether its impact (eg, on soil erosion) is more positive than if using the budget in question for additional clearing of invasive alien plants.

36.2 The intended land-use practices for the land that has been repaired.

Specific conditions for work on private land: Burning of vegetation or cleared biomass

37. Should there be a need to burn invasive alien plant vegetation and/or cleared biomass, WfW will facilitate the engagement of the *Working on Fire* programme, which may assist the private land-owner with technical advice, and which may contract with the land-owner to undertake the burning at the expense of the land-owner.

37.1 The general requirement will be that the land-owner is responsible for the costs of stacking, removal from site and burning. The exception will be where the clearing occurs in the riparian zone, where WfW will cover the labour costs of removing the biomass out of the riparian zone.

Responsibility for work not prioritized by WfW

38. Work done on private land with WfW's support must be in line with priorities set by WfW, particularly with respect to the species to be controlled, and the specific areas in which they are controlled. Should a private land-owner choose to clear additional species, these will be costs for his or her own account. In particular, work done with support from the Trading Account derived from water-users, must meet the requirements of the water-users.

Research

39. WfW will be responsible for research necessary to optimise the approach to work on private land.

Provision for additional natural resource management agreements

40. The agreement between private land-owners and WfW may make provision for additional agreements relating to natural resource management, including:

40.1 wetland management (in partnership with the *Working for Wetlands* programme);

40.2 wildfire management (in partnership with the *Working on Fire* programme);

40.3 land management (in partnership with *LandCare*);

40.4 species and habitat conservation (in partnership with conservation agencies and Non-Governmental Organizations); and,

40.5 other aspects and partners.

These agreements will make provision for district and local government partnership and support, including through the application of rates and other incentives and disincentives, and will be considered on a case-by-case basis.

Refusal to assist private land-owners to clear invasive alien plants

41. Where WfW or other Government support has been given to private land in the past, and where the obligations of this support have been met by WfW or other Government agencies, and where the land has been re-invaded with the same invasive alien species, then WfW may not assist the private land-owner with further support.

Right to withdraw support to private land-owners to clear invasive alien plants

42. WfW retains the right to withdraw its support should the land-user fail to adhere to the provisions of its contract, including if there are human rights abuses involving the contract teams or WfW staff. The land-owner will similarly be protected in terms of any abuse by the contract teams.

Work on public (including communal) land

43. As mentioned in #2, there will be a continued need for project management for the control of invasive alien plants on public land (including communal land). Until so directed by its principals, WfW will continue to take responsibility for the long-term clearing of invasive alien plants on public land, including communal land. Should that decision be amended, WfW will deal with the requirements in a separate policy document.

Summary Table

44. The Table below indicates the approaches to work on public (including communal) land. This is still being debated.