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SEQ Roadside Burning Project

Final Project Report

October 2012

1.0 Fire Management on Roadside Reserves

1.1 Project Background and Justification

In 2011, the South East Queensland (SEQ) Catchments Members Association (SEQCMA) considered a proposed policy paper on the issue of fuel load management on council-controlled roadside reserves (Dale, 2011). Specifically, the issue of private landholders wishing to burn council or state managed roadsides (adjoining their own private properties), for hazard reduction purposes. It was communicated to the SEQCMA that landholders frequently find themselves being hindered due to a lack of council procedure to deal with the issue; onerous and lengthy application processes that do not lend themselves to the limitations of a burning season; and/or very high financial costs for insurance that most landholders cannot afford. Of major concern to the SEQCMA are those heavily wooded or grassed sections of roadsides that adjoin properties on which grazing and dairying are primary pursuits and landholders are potentially exposed to arson and/or wildfire spread from heavy roadside fuel loads.

The SEQCMA, in recognizing that this was a critical community, fire and biodiversity, issue asked SEQ Catchments to refer this matter to the South East Queensland Fire and Biodiversity Consortium (SEQFBC). The CEO of SEQ Catchments, Mr Simon Warner, then asked the SEQFBC to meet with the relevant bodies and draft a procedure that councils and other land managers could use (and/or amend as needed) to more efficiently manage requests for burning on roadside reserves. Further to this, SEQFBC Manager, Dr Samantha Lloyd, was asked to present on this project at workshop on roadside management, organized by the Upper Brisbane Region Catchment Network on August 30, 2012.

1.2 Workshop Outcomes

On April 18, 2012, the SEQFBC held a workshop on the issue of fuel load management on roadside reserves or 'roadside burning' at the Samford Rural Fire Station. The workshop was attended by 24 representatives from 18 different organisations (including local government, Queensland Fire and Rescue Service, the Department of Transport and Main Roads, the former Department of Environment and Resource Management, other state agencies and SEQ Catchments). The group agreed that this issue differs in importance, dependent upon the location within South East Queensland. For example, many of the coastal Councils did not feel that this was a key issue for them and therefore, whilst supportive of the process, they would likely not play a significant role. For many of the inland councils, it was widely recognized that this is an important issue, but the frequency of requests to burn, and concern from landholders varied across the council areas. This variation, however, may not reflect the true magnitude of the problem, as many landholders who feel frustrated with the current situation may no longer voice their concerns or submit formal requests to burn, therefore making it difficult to quantify community concern. Moreover, it was recognized that in some areas, on occasion, burning has "escaped" from private property onto council or state managed roadside land and that this posed two problems: (1) Councils were unable to fully assess landholder desire to better manage roadsides for fire if it is unreported and (2) fire "escaping" onto council or state managed land poses a serious safety and insurance risk for land managers and the public.

The SEQFBC is proudly sponsored by: Brisbane City Council, Gold Coast City Council, Ipswich City Council, Lockyer Valley Regional Council, Logan City Council, Moreton Bay Regional Council, Redland City Council, Scenic Rim Regional Council, Somerset Regional Council, Sunshine Coast Regional Council, Toowoomba Regional Council, Powerlink, Queensland Fire & Rescue Service, SEQ Catchments, the Department of National Parks, Recreation, Sports and Racing and the Department of Transport and Main Roads.

With this in mind, workshop participants discussed the issues and obstacles surrounding fuel load management on roadside reserves and agreed that the four key issues were:

- Responsibility, funding and resources;
- Insurance;
- Local laws; and
- Biodiversity values.

The options available to land managers, with respect to these issues have been discussed in more detail in Section 4. At this workshop, a presentation was also given by South Burnett Regional Council, outlining their current program for roadside fuel management. This is discussed in Section 3 and is proposed in this report as one of two options available to local governments wishing to adopt a formal roadside burning program.

On 30 August, 2012, the Upper Brisbane Region Catchment Network hosted a workshop on roadside management at Highfields. At this workshop it was identified that a coordinated agency approach already existed in the Toowoomba Regional Council area between officers from the Queensland Fire and Rescue Service (QFRS), the Department of Transport and Main Roads (DTMR), Queensland Parks and Wildlife Service (QPWS) and Toowoomba Regional Council. This Coordinated Agency Model illustrates an effective and efficient means of addressing roadside burning for hazard reduction purposes and is outlined in Section 2.

1.3 Project Aims and Objectives

In an effort to encourage discussion and provide land managers with the most up to date information on effective roadside burning, this report outlines two successful roadside burning programs and addresses the key issues identified at the April workshop. Moreover, the proposed roadside burning models outlined in this report are not intended to replace any local or state government policy, nor are they intended to place land managers under undue financial or resource strain. However, it is recognized that: (1) councils have an obligation to manage roadside fuel loads responsibly, in line with the preservation of biodiversity values, agricultural land uses and infrastructure; (2) private landholders wishing to mitigate wildfire or arson find they are unable to access reasonable processes for hazard reduction burning of roadsides in most SEQ council areas; and (3) a "do nothing" approach may create a substantial biodiversity, agricultural, personal property and safety issue for land managers and the community. Therefore, the overall objectives of the project are to:

- (1) Engage with the key stakeholders involved with fuel load management on roadside reserves to identify any current working models; and
- (2) Outline how such a process may be adopted by interested land managers, thereby allowing landholders to work in partnership with Rural Fire Brigades or apply to their local council to conduct burns, in a timely and efficient manner.

It is obviously essential that this process align with any existing mechanisms already in place, such as the 'Permit to Light Fire', which is administered by the QFRS.

2.0 Coordinated Agency Model - Toowoomba Regional Council Case Study

2.1 Background

In response to a need for a coordinated and efficient approach to assessing and processing requests to conduct hazard reduction burns within roadside corridors, on local government and state land, the Coordinated Agency Model for roadside burning was developed through collaboration between officers of many agencies. Initially officers met through their participation in the Regional Inter-departmental Committee (RIDC) on Bushfire for the QFRS Southwest Region. Ongoing interaction saw relationships develop, allowing the Coordinated Agency Model to grow in response to a shared responsibility for community safety and environmental sustainability.

The Coordinated Agency Model, as summarized herein, comprises key officers from the QFRS, QPWS, DTMR and Toowoomba Regional Council. The summary does necessarily reflect the situation with Southern Downs Regional Council, Western Downs Regional Council or Commercial Industry Stakeholders (ie, Gas, Powerlink, Queensland Rail), although these agencies also fall within the QFRS South Western Region.

2.2 The Coordinated Agency Model Process

As part of the Coordinated Agency Model, Toowoomba Regional Council issue the QFRS with an annual permit to “Undertake works within the road reserve”, allowing QFRS (or a Rural Fire Brigade) to conduct a roadside burn once a Fire Management Plan has been written and ‘Permit to Light Fire’ has been issued.

As described in the diagram below, requests to conduct a burn are received by the QFRS via local Rural Fire Brigades and/or are assessed as a result of predetermined regional priorities. Importantly, the Coordinated Agency Model also allows private landholders to approach their local Rural Fire Brigade and make a request for a hazard reduction burn to be conducted on the roadside corridor adjoining their property. In any one year there may be multiple areas identified as being a priority for roadside burns, however, resourcing, weather and geography will all influence what sites receive a roadside burn.

On receiving a request to conduct a hazard control burn on a roadside corridor, the QFRS officer prepares a Fire Management Plan¹ (the Plan), which also looks at risk management, and ultimately determines whether a ‘Permit to Light Fire’ is issued. The QFRS officer sends the Plan to the QPWS to assess the request based on biodiversity and environmental issues and constrains (e.g. threatened species and endangered ecological communities). The QPWS then sends the Plan, with any relevant comments, back to QFRS. The QFRS officer contacts DTMR, to provide traffic management assistance such as detailed Traffic Management Plans and to provide traffic controls to conduct the hazard reduction burn safely. The DTMR will provide the Traffic Management Plan to the QFRS with any further environmental concerns specific to the area to be included into the Plan. Once these comments are received and any necessary amendments are made or risks mitigated, the QFRS officer sends the final Plan to Toowoomba Regional Council with 72hour notice of an intention to burn. Toowoomba Regional Council will only get in contact with the QFRS officer if there are any issues. The QFRS officer is then able to issue a ‘Permit to Light Fire’ and the relevant Rural Fire Brigade can conduct the roadside burn, with the assistance of DTMR when appropriate. The ‘Permit to Light Fire’ must be issued in the name of the landholder, but the permit issued to the QFRS by Toowoomba Regional Council allows Rural Fire Brigades to conduct burns on council managed roadsides, when requests are processed via the Coordinated Agency Model. The Rural Fire Brigade conducting the burn is covered by QFRS indemnity insurance, thereby minimizing insurance risk to both Toowoomba Regional Council and private landholders.

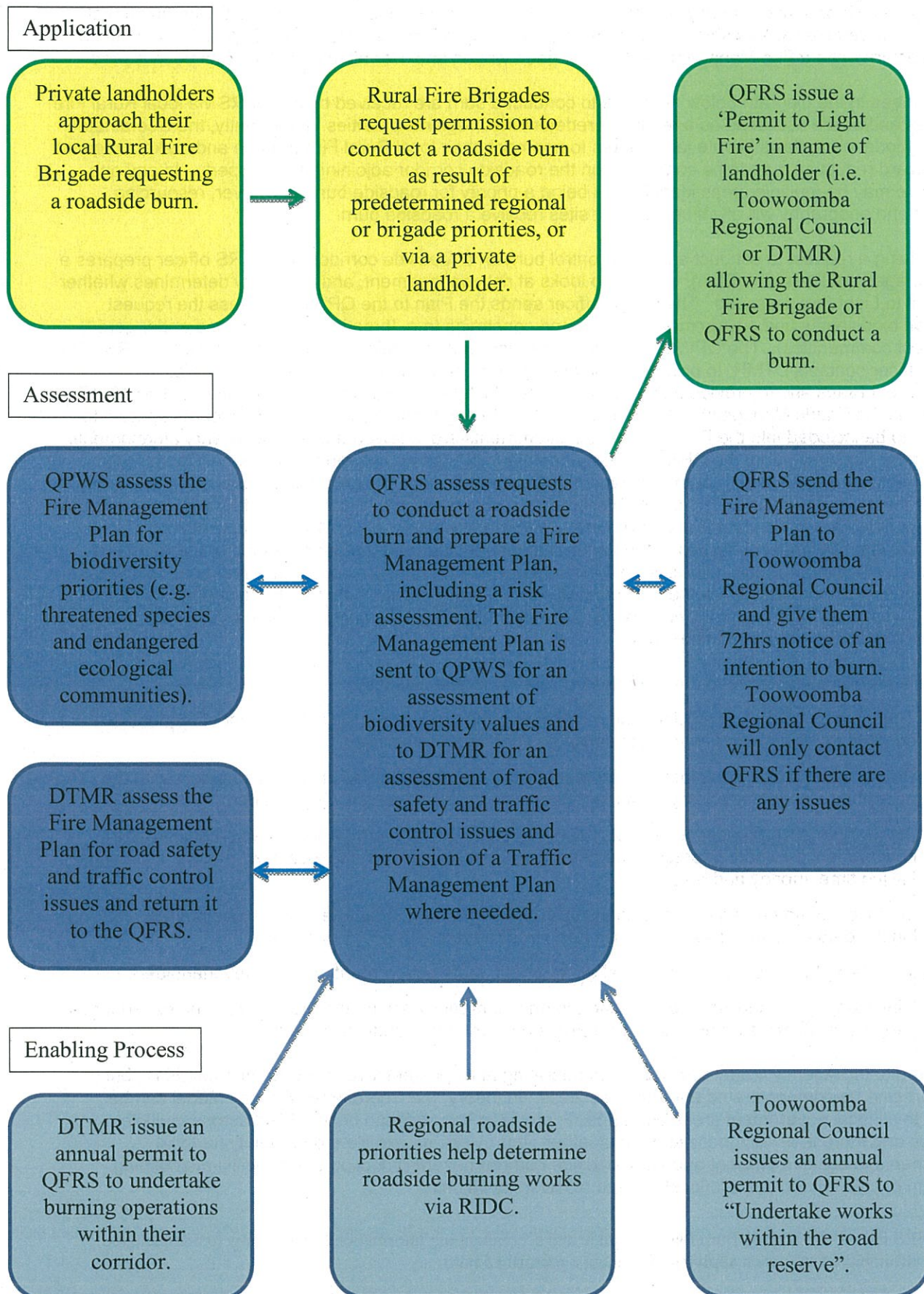
There are several advantages to the Coordinated Agency Model, including:

- The development of an efficient and relatively simple process for the assessment of requests to conduct roadside burns, where otherwise no such process existed;
- Providing state agencies, local government, Rural Fire Brigade and private landholders with the opportunity to identify priority areas for burning and make requests when needed;
- Achieving maximum benefit for public land managers, private landowners, road safety and the environment by working together, across state agencies and with the local government, including saving time, money and resources;
- Improved communication and relationships between QFRS/Rural Fire Brigade and private landholders, who may have otherwise been frustrated due to a lack of process;
- Minimising the insurance risk to local government, state government and private landholders;
- Minimising the risk to life, property and the environment by having the most skilled and experienced people (i.e. QFRS staff and Rural Fire Brigade volunteers) conducting the burn.

The Coordinated Agency Model has only been operating at its present level since September 2011, but in this short time has demonstrated enormous success. In theory, the Coordinated Agency Model can be applied to all local government areas across SEQ, provided key staff can be identified across multiple agencies and there is a willingness to work together. It provides an excellent opportunity for local governments to achieve efficient and safe roadside corridor hazard reduction burns, whilst maintaining important private landholder relationships and biodiversity values.

¹ The QFRS have a “Prescribed Burn Plan” template and accompanying information sheet on how to complete the template available for use when applying to conduct a prescribed burn.

2.3 Flow Chart: Summary of Process



3.0 The South Burnett Model

3.1 South Burnett Regional Council Roadside Burning Program

South Burnett Regional Council (SBRC) have developed what is broadly accepted as a successful and efficient process for landholders to apply for permission to conduct hazard reduction burns on council-controlled roadsides, adjoining private property - referred to in this document as the 'South Burnett Model'. SBRC developed a package of information related to this application process comprising:

- An information fact sheet entitled "Roadside Burning in the South Burnett Region", which includes information on the procedure for 'burning off' on local road and other council road reserves and also some general information on fire management in roadside reserves;
- A one page application form entitled "Application for approval to burn a rural road reserve or other council controlled reserve"; and
- An information sheet outlining the general conditions that a council approved 'burn off' is subject to, entitled "Controlled Roadside Burning Conditions".

At the April 18 workshop, Denise Whyte, from South Burnett Council, gave a presentation on the process, including issues of risk and how council manages the program. Despite a lack of resources and funding SBRC recognise that they have a legal responsibility to adequately manage roadside reserves and not doing so potentially exposes them to a number of serious risks, including (but not limited to):

- Damage to, and/or loss of property and/or infrastructure;
- Loss of species and biodiversity value from inappropriate fire management; and
- Reduced willingness and interest of landholders to be involved in fire management and potentially other environmental programs administered or supported by council.

With this in mind, SBRC established a process that allows landholders (with assistance from RFBs) to manage roadside fuel loads. Council provides assistance to landholders in complying with relevant legislation and an approval is not issued without a valid 'Permit to Light Fire'. In establishing this process, SBRC used Regional Ecosystem mapping, threatened species mapping, aerial mapping and ecological burning guidelines to identify areas of potentially high conservation value when assessing applications to burn. This mapping exercise identified six *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) and *Nature Conservation Act 1992* listed species and Endangered Ecological Communities at most risk. SBRC then commissioned a study to map these species and communities in its council area in an effort to more clearly define areas of high conservation value. SBRC also assessed all roads within its area with a medium to very high fire risk, based on fire risk, property/infrastructure, life and biodiversity values. This mapping and fire risk data was used to develop a list of roads that do not contain high biodiversity values, these areas are deemed to have preapproval for fuel load reduction burning for a period of 12 months. All other roads are deemed to contain a high biodiversity value and therefore require individual assessment by Council.

The application process is as follows:

- A landholder submits an application form with any necessary supporting documentation.
- SBRC conduct a desktop analysis to determine if the area is of high conservation value.
- A site inspection may occur, dependent upon the outcome of the desktop analysis.
- If the area is not of high conservation value and the application meets SBRC conditions an approval is issued, with a set of 'general conditions'. If the area contains a high biodiversity value a site inspection is conducted and specific conditions attached. The approval is valid for 12 months and the landholder is responsible for applying for a 'Permit to Light Fire' from the local Fire Warden.
- The burn location, outcome and date are added to the SBRC GIS layer.

3.2 Key Issues with the South Burnett Model

A few key issues were raised at the workshop after Denise's talk, including:

- Conducting burns - SBRC don't actually conduct any burns, therefore, if a landholder requests assistance, SBRC refer them to their local Rural Fire Brigade. In some cases if SBRC request the services of the local Rural Fire Brigade or the site contains high biodiversity values and special conditions apply, SBRC may make a donation in return for assistance. Rural Fire Brigade members present expressed concern that if all councils in SEQ were to do this it would place many brigades under serious pressure and may not be a viable option. Furthermore, given Rural Fire Brigades are largely voluntary, some may not have the personnel or resources to assist landholders. There was a general recognition that if a council was interested in adopting this approach it would need to be done in consultation with the relevant QFRS Rural Operations Area Officer and local brigades.
- Insurance - Landholders who get approval from SBRC to conduct a burn are covered by SBRC insurance for the purpose of the burn. Many people at the workshop expressed concern with this approach. However, SBRC recognise that they are responsible for appropriate management of roadside reserves regardless (and are thereby liable) and consider there to be a lower risk in allowing landholders to burn on council-controlled land under strict conditions, than taking a "do nothing approach".
- Mapping - Most other councils in SEQ do not have all their roadsides mapped for fire risk and biodiversity value and voiced concern of the reality of this happening and therefore the difficulty in assessing applications without a site visit (see section 4.2 for further discussion). NB: prior to SBRC having threatened species mapped or roadside assessments, Regional Ecosystem mapping, Regional Ecosystem Descriptions Database and Google Earth was used to determine whether a site assessment was required.
- Local Laws - SBRC recognise that this process is an approval, not a permit process and thereby council are unable to fine landholders as such, if they do not adhere to the guidelines and conditions given with the approval. However, as expressed by Denise, any landholder who does not adhere to these conditions, is most likely breaking the law under a number of Acts, especially with reference to the *Fire and Rescue Service Act 1990* and the *Local Government Act 1993* and they may also be breaking the conditions of their 'Permit to Light Fire'. In the event that a landholder did not comply with the conditions of approval, SBRC may choose to deny future applications requiring the landholder to establish a fire break within their boundary.

Despite some concerns around insurance and mapping, workshop attendees were encouraged by the SBRC program and acknowledged its success to date. Appendices 1, 2 and 3 provide proposed draft versions of a "Procedural Fact Sheet", "Application Form" and "General Conditions", respectively.

4.0 Key Issues Surrounding Roadside Burning and Options for Land Managers

4.1 Responsibility, Funding and Resources

The issue of responsibility was discussed with the group and this issue was considered less complicated with regard to who was legally responsible and more complicated with regard to funding and resource availability. It is understood that councils are obligated to maintain road safety for the travelling public and manage road reserve fuel load (in an effort to mitigate wildfire and arson) and for biodiversity conservation values, agricultural uses and infrastructure protection. Local Government responsibility with respect to fire management of roadside reserves is essentially determined by legislation and the relevant legislation may be summarized as²:

² The following information has, in part, been referenced from legal advice provided to Kilkivan Council, in 2004, by King and Co legal firm, via the Queensland Local Government Association.

- *Local Government Act 1993*: In relation to council-controlled roads, a council is empowered to burn off on roads and authorise other persons to do so, under s.901.
- *Transport Infrastructure Act 1994*: With respect to state-controlled roads, s.45 of the *Transport Infrastructure Act 1994*, enables council to exercise its road control jurisdiction over state-controlled roads and s.46 (6) states that an exercise of local government jurisdiction on a state-controlled road is not a contravention of the Act.
- *Fire and Rescue Service Act 1990*: The lighting of fires for the purpose of fuel reduction is subject to Part 7 of the *Fire and Rescue Services Act 1990* and therefore, the land owner (or land manager in the case of council or state-controlled roads) must apply for a permit to "Light a Fire" from their local Fire Warden.
- *Land Protection (Pest and Stock Route Management) Act 2002*: Under s.180 of the *Land Protection Act 2002*, where a proposal to burn along a stock route is made, consent is required from the local council and a 'Permit to Light Fire' must be obtained from the local Fire Warden, via the relevant RFB.
- *Vegetation Management Act 1999*: Clearing protected vegetation for fire management purposes generally requires the landholder to obtain a development permit through the Department of Natural Resources and Mines (DNRM), or notify DNRM to demonstrate code compliance. However, certain activities may be conducted without the need for a permit or notification. These include clearing protected vegetation for the establishment of fire management lines and the establishment/maintenance of fire breaks around infrastructure. For more information on fire management with respect to the *Vegetation Management Act 1999* see the SEQFBC Fact Sheet "Fire Management for Protected Vegetation".

More complicated and difficult to resolve is the issue of funding and resource availability. Whilst it is clear local (and state government) have a responsibility to manage roadside land, most councils do not currently have a dedicated program of roadside burning and therefore, the funding required is not part of current operational budgets. Moreover, most council representatives at the April workshop believed any request for council to conduct regular roadside burning would be rejected due to financial and resource constraints. The Coordinated Agency Model largely resolves this issue, with a multiple agency model reducing the cost for each of the agencies/ local governments involved. The other option would be a compromise, whereby councils approve (with conditions) landholder applications to burn roadsides, similar to the South Burnett Model. Dependent upon the council location, demographic and land use it does not appear as though that would result in an unreasonable number of requests per year. How councils (or state land managers) fund this responsibility was not resolved, but it was suggested that council supported roadside burns each year was likely to cost less than any potential legal action resulting from a wildfire (or arson) that may have been prevented with a well managed roadside burning program.

4.2 Biodiversity

The issue of how to deal with areas of high biodiversity value and threatened species was recognized at the workshop as very important. As mentioned previously, the Coordinated Agency Model addresses this issue by including relevant QPWS staff in the assessment phase. Local governments wishing to adopt the Coordinated Agency Model could approach their relevant QPWS staff and discuss potential involvement. Alternatively, with the South Burnett Model, SBRC have undertaken initial threatened species mapping and fire risk assessments, which allows them to make a thorough desktop assessment of most applications to burn that they receive. For local governments without this level of mapping, there are a number of free mapping resources available (listed below). The following resources have been identified as potentially useful when assessing applications to conduct hazard reduction burns, with respect to biodiversity and vegetation values:

- Biodiversity Planning Assessment mapping (version 3.5);
- Areas of ecological significance mapping (available via the new Department of Environment and Heritage Protection);
- Essential habitat mapping for the SEQ Bioregion - available for six SEQ species (administered by the new Department of Environment and Heritage Protection);
- Regional Ecosystem mapping;
- Threatened species point records (i.e. Wildnet and HerbreCs); and

- Council records of threatened species and endangered ecological communities.

Given local government has a legal responsibility to adequately manage roadside reserves and most local governments are under considerable financial pressure, a solution needs to be drafted that allows an assessment of biodiversity values without a significant cost to council. It is suggested that councils have three options:

- (1) Adopt the Coordinated Agency Model and establish an agreement with relevant QPWS staff;
- (2) Conduct or commission a roadside mapping exercise to identify areas of high biodiversity value based on threatened species and endangered ecological communities listed under the Queensland *Nature Conservation Act 1992* and the Commonwealth EPBC Act; or
- (3) Develop an internal process to assess the biodiversity value of land included in any applications to burn roadside reserves, using the available free mapping resources and information listed above.

4.3 Insurance

The issue of insurance is obviously very complicated. However, as with the issue of responsibility and biodiversity, it is believed that a "do nothing" approach poses the greatest risk. The main concerns at the workshop around insurance were that most landholders would not be able to afford insurance to conduct a burn on council-controlled roadside reserves. Moreover, they may not even be able to apply for insurance because they are not the landholder and there was general consensus that it was not reasonable to expect landholders to take out very expensive insurance and that any effort to do this would likely result in a breakdown of trust between landholders and council and potentially inhibit any process. However, in legal advice provided by King and Co legal firm, for the Queensland Local Government Association (LGAQ), in 2004, it was advised that despite the fact that obtaining insurance to conduct a burn on council-controlled land was likely difficult or "*prohibitively expensive*", landholders should be "*required to make enquiries of their insurer or insurance broker as to the availability of such insurance coverage*" (King and Co, for LGAQ, 2004). Presumably, this is to ensure that, in the event of a claim against council, the council in question could show that they took all reasonable steps to ensure the landholder possessed adequate insurance.

The advice goes on to recognise that if such insurance cannot be obtained, and provided any necessary permits are gained and the approval conditions are thoroughly adhered to, "*the actual risk of an accident or occurrence leading to a claim against council should be small*" (King and Co, for LGAQ, 2004) and therefore, council may still give approval for a burn to be conducted. It is also important to keep in mind that even if a landholder were able to obtain indemnity insurance, such insurance does not prevent claims from being made against a council. Rather, it means the person holding the insurance, in this case the landholder, must meet the cost of such claims.

It is important to remember that even if a council were to ask landholders to partner with their local Rural Fire Brigade (as SBRC does), in the absence of Rural Fire Brigade negligence, all legal responsibility and liability still lies with the landholder (council) and the council would likely be asked to sign an agreement with the Rural Fire Brigade regarding liability, called an Authorisation to Conduct Prescribed Burn. However, the Coordinated Agency Model again effectively addresses this issue, by working in partnership with a Rural Fire Brigade, thereby minimizing the insurance issue and streamlining an otherwise very difficult process.

4.4 Local Laws

At the April workshop, there was much discussion around the issue of model and subordinate local laws. The main point of the discussion was that some local governments may wish to issue permits to landholders applying to burn council-controlled roadside reserves. A permit would give council greater power to issue conditions and withdraw an approval where a landholder does not adhere to the set conditions. However, to issue a permit, there must be an appropriate model or subordinate local law under which such a permit system could "sit". At this stage, it appears the most appropriate option is *Model Local Law 3 (Community and Environmental Management) 2010* or *Subordinate Local Law No. 3 (Community and Environment Management) 2010*. The purpose of Model Local Law 3 is to "*protect the environment and public health, safety and amenity with the local government's area*" and includes reference to "*fires and fire hazards not regulated by State law*". The purpose of Subordinate Local Law 3 is to supplement Model Local Law 3. However, interpreting these model and subordinate local laws is not simple.

Part 4, Section 15 of the Model Local Law pertains to the “regulation of lighting and maintaining fires in the open”. It has two relevant points relating to regulating fires that read as follows:

- (1) *“This section does not apply to the lighting or maintaining of a fire that is authorised under the Fire and Rescue Services Act 1990.”¹¹*
- (2) *“The local government may, by subordinate local law, prohibit or restrict the lighting or maintaining of fires in the open in the whole, or designated parts, of the local government’s areas.”*

Footnote 11: *“See the Fire and Rescue Service Act 1990, Section 63, regarding fires authorised by notification, section 65 regarding fires authorized by permit and section 69, regarding notices requiring occupiers to take measures to reduce the risk of fire. For fires authorized under section 63, see the Notification by the Commissioner of Fire and Rescue Service published in the gazette on 6 August 2004.”*

Footnote 11 reads as though it covers all possible fires, i.e. those subject to the ‘Permit to Light Fire’ system and those exempt (e.g. less than 2 x 2 x 2m; burning of a beast etc.). However, we still believe Model Local Law 3 the most appropriate with regards to administering a permit system to light fires on roadside reserves because of the following:

- Point 2 of Section 15 (Part 4) of the Model Local Law 3 (above);
- Section 901 of the *Local Government Act 1993* describes how a local government may burn roadside reserves; and
- The following information printed in Edition 4 of the *Local Law Digest*:

“Local Law Jurisdiction

A local law may not deal with fires authorised by sections 65 or 69 of the FRSA. That is, a local law may not regulate fires authorised under a permit or notice issued by the Fire Commissioner or appropriately delegated officer.

However, where the Fire Commissioner has, by notice in the Gazette, permitted the lighting of particular types of fires, councils may adopt local laws regulating those types of fires if authorised by the notice to do so.

Notwithstanding the above, councils may regulate the lighting of fires on land under their control (eg roads, parks etc). In particular, councils may ban the lighting of fires on any land under their control. However, if a local law allows the lighting of fires on the council’s land, the lighting of the fires must also be authorised under one of the three methods in the FRSA.

In accordance with the provisions of the FRSA, any action taken by an authorised officer of the QRFS to bring under control a fire on council land or other lands is not subject to any local law or other law.”

We have already undertaken extensive research on this issue and are attempting to seek further clarification to determine whether Model Local Law 3 is the most appropriate law. Ultimately, councils have three options when it comes to this issue:

- (1) Adopt the Coordinated Agency Model, which bypasses this issue all together;
- (2) Investigate the option of using Model/Subordinate Local Law 3 to create a permit system around private landholders burning council-controlled roadside reserves, which allows council to issue formal conditions and potentially fine any landholder who does not adhere to the conditions; or
- (3) Adopt the South Burnett Model and manage the process as an approval system only, which is not linked to any local laws. SBRC still provide a set of strict guidelines with any approval, but they are unable to fine a landholder who does not adhere to the conditions. However, any landholder who did not adhere to the conditions provided by council may be in breach of several state laws, including the *Local Government Act, 1993*, the *Fire and Rescue Service Act 1990* and the *Vegetation Management Act 1999*.

5.0 Where to from here?

The SEQFBC are committed to best practice fire management and biodiversity outcomes for the SEQ region and as such will support local government and state agencies wishing to implement effective and efficient programs for managing roadside burning, as per this report. In particular, the SEQFBC are very supportive of Coordinated Agency Model as it involves all the relevant land managers, working together for a shared outcome and thereby reducing cost and resourcing, whilst protecting biodiversity values and minimizing insurance issues. Importantly, it also allows landholders to work with their local Rural Fire Brigade to manage roadside fuel hazards. The SEQFBC are also supportive of the South Burnett Model and congratulate SBRC for developing an effective, landholder friendly process that is time efficient.

The SEQFBC are interested in promoting the Coordinated Agency Model and South Burnett Model and will be providing a copy of this report to all SEQ local governments plus Powerlink and all Queensland Government agencies involved in the project. The SEQFBC will also be promoting this document through various networks, including Regional Interdepartmental Committees, Fire Management Groups, Local Disaster Management Groups and SEQ Catchments.

The SEQFBC recognizes the significance of the roadside burning issue and that private landholder concerns vary across the region. It is hoped, that this report will encourage land managers to assess their situation and make an informed decision regarding their roadside burning/fuel load management. Local government or state agencies wishing to implement a model similar to the Coordinated Agency Model or South Burnett Model are encouraged to contact the SEQFBC.

6.0 Authorship Disclaimer, Acknowledgments and References

6.1 Authorship

This document was prepared by Dr Samantha Lloyd, Manager of the SEQ Fire and Biodiversity Consortium. The information in this document has been prepared with due diligence and is based on the best available information at the time of publication. It does not constitute professional legal or legislative advice and land managers are advised to seek specific legal and legislative advice, as needed, with reference to the issues discussed in this document. All planned burning should be conducted in accordance with relevant laws and with a valid QFRS 'Permit to Light Fire'. The views presented in this document do not necessarily reflect the views of our supporting organisations.

6.2 Acknowledgements

Dr Lloyd acknowledges the significant contribution of Nick Domalewski, of the Department of State Development Infrastructure and Planning, in undertaking research and providing information for Section 4.3 (Insurance) and 4.4 (Local Laws). Dr Lloyd recognises the work of SEQCMA and SEQC Board Member, Mr Jim Dale and his proposed policy report to the SEQCMA entitled, 'Proposed Roadside Burning Protocol' and South Burnett Regional Council and Denise Whyte in developing and implementing their roadside burning program. Dr Lloyd acknowledges the assistance of Mark Ready (TRC), Julian Selke (DTMR) and Michael Patch (QFRS) in developing Section 2, on the Coordinated Agency Model. Dr Lloyd also acknowledges the contribution of the following people in providing comments or advice on earlier versions of this document – Kathryn Mahony (DTMR), Gary McCormack (QFRS), Peter Leeson (DNPRSR), Denise Whyte (SBRC), Simon Warner (SEQ Catchments), Jim Dale (SEQ Catchments) and Craig Welden (SEQFBC).

6.3 References

Dale, J. (2011) *Proposed Roadside Burning Protocol*, SEQ Catchments Members Association Policy Proposal.

King and Co. Legal Firm (2004) Advice provided to Kilkivan Council on the issue of "*Burning off on roads; Council's obligations under the Fire and Rescue Services Act 1990, application of the Vegetation Management Act 1999 and liability issues*".

SEQ Roadside Burning Project

Appendix 1 - Draft Procedural Fact Sheet

Hazard Reduction Burning on Council Managed Road Reserves

XXXX Council is responsible for the management of all local roads within its shire boundary and therefore plays a key role in the conservation and management of remnant vegetation that exists within roadside reserves. It is the responsibility of Local Government and State Government agencies, under the *Local Government Act 1993* and the *Fire and Rescue Service Act 1990*, to address potential vegetation fuel load problems in the road reserve. As such, XXXX Council has implemented a program whereby private landholders can apply to conduct hazard reduction burns on roadside reserves under a set of strict conditions and only with a 'Permit to Light Fire' from their local Fire Warden.

Residents are advised that the procedure for obtaining permission to conduct a hazard reduction burn on a local road reserve is as follows:

- 1 Ascertain whether the road reserve is a Main Road or Local Rural Road.
- 2 If it is a Main Road, please contact the Department of Main Roads – **add contact details**.
- 3 If it is a XXXX Council Local or Rural Road please contact Council's Department of XXXX.
- 4 If it is an Urban or Village area in the XXXX region please contact Council's Department of XXX.
- 5 Obtain an 'Application for Approval to Conduct a Hazard Reduction Burn on a Roadside' from XXXX Council.
- 6 Return completed form to XXXX Council for assessment. The site will be inspected and depending on climatic conditions and vegetation types, a letter of approval may be issued.
- 7 If Council approval is issued then make an application to the local Fire Warden for a 'Permit to Light Fire' (contact your local Fire Brigade/Station).
- 8 Take your letter of approval issued by XXXX Council and your completed application for a 'Permit to Light Fire' form to the appropriate fire warden.
- 9 Your local Fire Warden will assess your application and may issue you with a 'Permit to Light Fire', including the necessary conditions and procedures.
- 10 At all times the 'Permit to Light Fire' MUST be accompanied by a letter of approval from XXXX Council. Residents are advised that it is an offence to carry out any burn-off on a local rural road reserve or other Council controlled reserve without the appropriate permit.

Contact Details

Contact department or person

Phone:

Email:

Postal Address:

Acknowledgements

South East Queensland Fire and Biodiversity Consortium acknowledges the work of South Burnett Regional Council in developing and implementing their roadside burning program and thanks them for the use of their Roadside Burning Fact Sheet in drafting this document.

SEQ Roadside Burning Project

Appendix 2 - Draft Application Form

Application for Approval to Conduct a Hazard Reduction Burn on a Roadside Reserve

The following application **MUST** be completed prior to any burn-off activity to be undertaken on Council controlled property, in the XXX Council area. Council controlled property includes all local and rural road reserves and any other reserve that is the responsibility of the XXX Council. Without consent from the XXX Council, burning is prohibited and is an offence. Once approval has been obtained from the XXX Council, a 'Permit to Light Fire' **MUST** be obtained from the local Fire Warden.

Please complete the following application and return to:

Address: XXX Council
PO Box XXX
XXX Q XXXX
Phone: (07) XXXX XXXX
Fax: (07) XXXX XXXX
Email: XXX

1. Name of Applicant: _____

2. Contact Telephone No.: _____

Address: _____

3. Name of person/s to carry out burn: _____

4. Local Fire Warden District: _____

5. Please provide exact location details of the proposed area/s the burn will be carried out and attach a map showing the area you propose to burn:

Road and/or reserve name/s: _____

Adjacent Property ID No.: _____

6. Please describe why you believe a hazard reduction burn is needed i.e. area dominated by exotic grasses/weed species, wildfire hazard for your home or property.

7. Date & Time of Proposed Burn: _____

(weather permitting)

8. Is there any council infrastructure present in the area of the proposed burn?

(please circle): Yes No

If yes, please give a brief description _____

9. Have you contacted your neighbours regarding the proposed burn?

(please circle): Yes No

10. Have you contacted your local Fire Station/Brigade regarding the proposed burn?

(please circle): Yes No

Signed: _____

Date:

Acknowledgements

South East Queensland Fire and Biodiversity Consortium acknowledges the work of South Burnett Regional Council in developing and implementing their roadside burning program and thanks them for the use of their Application Form and General Conditions document in drafting this document.



SEQ Roadside Burning Project

Appendix 3 - Draft Roadside Burning General Conditions

NB: The following conditions are proposed where a council or state agency gives permission for a private landowner to conduct (i.e. manage and carry out) a hazard reduction burn on council or state managed land. Council/state agency may wish to include information here about insurance and liability. If a council does not have a Local Law regarding burning then it may need to investigate whether it has formal jurisdiction to set 'conditions'. Council is also required to obtain a 'Permit to Light Fire' for the portion of the planned burn conducted on Council managed land. Councils/state agencies need to especially consider the wording of points:

- 5 and 6 - traffic control and the safety of road users.
- 7 and 8 - protecting council infrastructure, rubbish removal and pollution. For example, what happens if council infrastructure is damaged during the burn? Where there is other property located in the road reserve burn-off area (e.g. electricity poles, Telstra infrastructure, etc), the appropriate authority should be notified and permission sought where needed.
- 9 - identifying and protecting habitat trees, logs and trees with highly flammable bark.
- 10 and 11 - issues of 'blacking out', the removal or felling of unstable or fallen trees due to the fire and monitoring the burn.

Please be aware that XXX Council has developed a policy regarding hazard reduction burns on road reserves and other Council controlled reserves. Council does not give approval to residents wishing to burn such areas for the purpose of 'tidying-up' and will only grant approval to conduct a burn where there is evidence of a high fuel load risk. By adhering to the conditions below, the burn will have a greater chance of achieving its purpose and the risk of damage to property, or injury to people will be minimised.

Approval to conduct a hazard reduction burn is granted subject to the following conditions:

1. The approval to burn is not valid during periods when a total fire ban is in force.
2. A 'Permit to Light Fire' is obtained from your local Queensland Fire and Rescue Service Fire Warden to conduct the burn on your property. Please note, many Fire Wardens are volunteers and you may need to book a time with them (at their convenience) to assess your application. The Fire Warden may then issue a 'Permit to Light Fire', subject to appropriate conditions. Occupiers of land directly adjoining the property on which you wish to conduct a hazard reduction burn must be given a minimum of 72 hours notice of your intention to apply to the Fire Warden for a 'Permit to Light Fire'. This enables them the opportunity to contact the Fire Warden and raise any issues or concerns they may have regarding the intended fire. To find your local Fire Warden, visit Fire Warden finder at: <http://gis.dcs.qld.gov.au/firewardenfinder/>
3. Landowners advise XXX Council/Land Manager 72 hours prior to their intention to burn.
4. Landowners must advise all neighbours within adjacent to the proposed roadside burn area of the intention to burn 48 hours prior to conducting the burn..

5. Approved signs to indicate a burn is in progress are to be installed at least 200 metres before the start of any possible smoke or flame hazard, in prominent locations, at least two (2) metres clear from the edge of the carriageway. Other signs may be installed, as necessary, to comply with the Manual of Uniform Traffic Control Devices, as issued by the local Fire Warden.
6. Measures must be taken to ensure that the safety of travelling motorists is not endangered by reduced visibility due to smoke from the burn-off - specific conditions, with regards to traffic control, may be provided with your approval notice.
7. Steps are to be taken to protect Council property (e.g. bridges, culverts, road signs, etc) and prevent burning trees falling across the carriageway. All combustible material in close proximity to the base of these structures/trees should be raked/removed such that the effects of heat are minimised.
8. The area of the proposed burn must be checked for any material that may pose safety or pollution problems, for example, tyres, drums, rubbish etc. Council is to be notified of any such materials prior to conducting the burn so that removal or disposal may be arranged.
9. The area of the proposed burn must be checked for habitat trees (a habitat tree is a tree with hollows of any size, scratch marks or with animal scats at the base) and logs, which are also essential habitat for ground-dwelling mammals, reptiles and invertebrates. Trees with flaky, falling or stringy bark (such bark may easily allow embers to travel out of the burn area causing a spot fire in another location). All loose leaf/bark/plant material must be raked away from the base of any such tree or log to ensure fire does not travel up the trunk of the tree or along the log, and the chance of travelling embers forming from bark is minimised. The distance to which this is required depends upon the vegetation present and will be advised by Council with your approval notice. If you are unsure of the presence of habitat trees in the proposed burn area contact XXX Council. Large or unstable hollow bearing trees should be monitored carefully and immediately extinguished if they ignite.
10. After the burn has been conducted, the area is to be checked and "blackened out"¹ to a distance of Xm from the fire control line, where needed, to ensure that there is no smouldering material remaining. *Council to include comments here about the removal and/or felling of unstable (or fallen) trees due to the fire..*
11. The burn should be monitored for its entire duration and should be restricted to the groundcover/understorey (i.e. surface grass and herb layer) ONLY for the permitted areas. At no time should the burn be allowed to spread to the midstorey or canopy layers of the vegetation, neighbouring properties or along the road reserve.
12. This approval is valid for period of twelve (12) months.

Acknowledgements

South East Queensland Fire and Biodiversity Consortium acknowledges the work of South Burnett Regional Council in developing and implementing their roadside burning program and thanks them for the use of their Application Form and General Conditions document in drafting this document.

¹ Blackened Out (or Blacking Out) - *"The process of extinguishing or removing burning material along or near the fire control line, felling stags, trenching logs to prevent rolling and the like, in order to make the fire safe."* (Australian Fire and Emergency Service Authorities Council, Bushfire Glossary, 2010)