

# Building newsflash

## Adoption of Australian Standard 3959—2009 Construction of buildings in bushfire-prone areas

### Purpose

To advise that the proposed adoption date for the 2009 version of Australian Standard 3959—Construction of buildings in bushfire-prone areas in Queensland is 1 October 2009 and to remind local governments of the need to maintain up-to-date bushfire mapping for their areas.

### Background

Australian Standard 3959—1999 Design and construction of buildings in bushfire-prone areas is currently adopted by the Building Code of Australia (BCA). AS 3959 has been the subject of ongoing review by Standards Australia and the Australian Building Codes Board (ABCB) for a number of years.

After the recent Victorian bushfire tragedy, the review of AS 3959 was accelerated and a revised AS 3959 was published on 10 March 2009. The ABCB met in March 2009 and unanimously agreed to adopt the revised AS 3959 for residential buildings in BCA 2010 from 1 May 2010. In light of the recent bushfire events in Victoria, both the Victorian and Australian Capital Territory Governments have already adopted the revised AS 3959 through their building legislation.

### What is being proposed?

#### Adoption and review of AS 3959—2009

Queensland is proposing to adopt Australian Standard 3959—2009 before the next version of the BCA commences on 1 May 2010. A new Queensland Development Code, (QDC) Part MP 2.4—Buildings in bushfire-prone areas, will be published on the department's website, with a proposed commencement date of 1 October 2009.

Even though AS 3959—2009 will be adopted before 1 May 2010, BCQ will continue to review certain aspects of the standard that need further refinement to reflect Queensland's varied climatic conditions and vegetation. The main aspect to be reviewed is the Fire Danger Index (FDI) which, for the whole of Queensland, is set at 40 under AS 3959—2009. Empirical data is being compiled by the Queensland Fire and Rescue Service for the south east regions of Queensland which may indicate a need for a higher FDI in some areas.

BCQ officers will be participating in regional training sessions to inform stakeholders about the operation of AS 3959—2009. BCQ will also be hosting consultation sessions in partnership with QFRS to seek feedback on the review of FDI levels for the south east regions of Queensland.

#### State planning policy 1/03

Under the *Integrated Planning Act 1997*, the state planning policy 1/03—Mitigating the impacts of floods, bushfire and landslide (SPP) has an impact on the assessment of particular development applications.



These include applications for material change of use and reconfiguration of lots. The SPP also has an impact on planning schemes when they are made or amended and when land is designated for community infrastructure.

[Newsflash 288](#), issued on 10 October 2007, explained the application of the SPP in assessing construction standards for buildings in designated bushfire-prone areas. The newsflash also explained that the quantitative and qualitative methodology of the SPP may be used where a bushfire protection design is proposed as an alternative solution to BCA deemed-to-satisfy provisions.

The revision of AS 3959 now includes a comprehensive site assessment methodology with tailored construction standards. Due to the significant changes to AS 3959 and some reports of industry uncertainty on how the SPP relates to building applications, the SPP will be reviewed to more clearly articulate its purpose and limitations. Therefore, Newsflash 288 will no longer be applicable when AS 3959—2009 is adopted.

### Local government bushfire mapping

Analysis of designated bushfire-prone areas should be conducted by local governments on an ongoing and regular basis. This is to ensure local planning instruments reflect the current conditions of the areas relating to vegetation, land slope and the extent of any completed land developments. In light of the changes to AS 3959—2009 and the review of the SPP, local governments are encouraged to ensure their bushfire maps are up to date.

### Legislation

- *Building Act 1975* (the Act):
  - Section 13—What is the QDC
  - Section 30—Relevant laws and other documents for assessment of building work
  - Section 35—Relationship between the BCA and the QDC
  - Section 36—When building assessment provisions must be applied
  - Section 37—Provision for changes to building assessment provisions
  - Section 61—Alterations to safe existing work may be approved on basis of earlier building assessment provisions

### Interpretation

The QDC consolidates Queensland-specific building standards. The standards cover Queensland matters outside the scope of the national BCA or matters that are of specific interest to Queensland.

Under section 30 of the Act, the QDC forms part of the building assessment provisions. All building assessment work and self-assessable work under the Act must comply with relevant parts of the QDC.

Currently, BCA 2009 references AS 3959—1999 for class 1, 2 and 3 buildings, and provides an acceptable construction practice for class 1 buildings in designated bushfire-prone areas. The acceptable construction practice is deemed-to-satisfy requirements set out in the body of the BCA Vol 2. The proposed new QDC Part MP 2.4 will adopt AS 3959—2009. This will result in an inconsistency between MP 2.4 and the BCA. Under section 35 of the Act, if there is an inconsistency between the BCA and QDC, the QDC prevails, meaning that the 1999 version of AS 3959 and the acceptable construction practice will no longer provide deemed-to-satisfy solutions.



Under section 36 of the Act, all building assessment work must comply with the building assessment provisions in force when the application is approved. However, section 37 of the BA generally provides building certifiers with discretion to apply an earlier version of building laws following an amendment to the building assessment provisions.

Section 37 of the Act provides for the assessment of building work following an amendment to the building assessment provisions if the building work:

- started before an amendment commenced
- approval was given but work was not started before an amendment commenced
- an application is made but not decided before an amendment commenced
- planning started before an amendment and the building certifier is satisfied that replanning would impose financial hardship.

Section 61 of the Act provides building certifiers with discretion to apply an earlier version of building laws for building work that relates to alterations to existing buildings.

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