



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	24-055
Appellant:	Phung Thu Huynh
Respondent/Assessment manager:	Renee Gorman
Site address:	79 Mildmay Street, Fairfield Qld 4103 and described as Lot 3 on RP 37225 – the subject site

Appeal

Appeal under section 229 and schedule 1, section 1(5), table 3 against the decision of the Respondent assessment manager to give a Form 16 Inspection Certificate.

Date and time of hearing:	Wednesday, 20 November 2024 at 12.00pm
Place of hearing:	Site Inspection at the subject site 79 Mildmay Street Fairfield Qld 4103 and hearing at Level 4, 97 Boundary Street, West End
Tribunal:	Mark Chapple—Chair Andy Rowley—Member Thomas Bayley—Member
Present:	Phung Thu Huynh—Appellant Leopold Chorinsky of Booth Engineering & Associates— Supporter of the Appellant Adam Buckley of NJA Structural—Supporter of the Appellant Renee Gorman—Respondent

Decision:

The Development Tribunal (Tribunal), in accordance with section 254(2)(a) of the *Planning Act 2016* (PA) confirms the decision of the Respondent assessment manager.

Background

1. The Appellant and Vinh Phuong Le are the owners of the subject site.
2. The Appellant and Vinh Phuong Le have a contract with Leonard Homes to build a dwelling house and other improvements including a swimming pool and pool house on the subject site and at the time of the hearing the dwelling was under construction.

3. Kylie Walker of GMA Certification Group upon application by Leonard Homes issued a building permit, file reference No. 20231863 on 3 October 2023 for the dwelling house and improvements at the subject site.
4. The Respondent gave a Form 16 Inspection Certificate dated 11 October 2024, which stated that the framing was compliant with the Building Development Approval.
5. By way of a Form 10 Notice of Appeal, dated 30 October 2024, the Appellant appealed the decision of the Respondent to give the Form 16 Inspection Certificate on grounds including that there were non-compliant matters present at the time the Form 16 Inspection Certificate was given, which should have stopped the Respondent from giving the Form 16 Inspection Certificate.

Jurisdiction

6. Section 229(1) of the PA provides that schedule 1 of the Act, 'the schedule', states matters where there may be an appeal to the Tribunal.
7. Section 1(5) of the Schedule provides that the matters stated in table 3 of the schedule, 'table 3' are matters that may only be appealed to the Tribunal.
8. Item 2, Inspection of Building Work of table 3 provides –
An appeal may be made against a decision of a building certifier or referral agency about the inspection of the building work that is the subject of a Development Approval under the Building Act.
9. In the circumstances the Tribunal is satisfied that it has jurisdiction

Decision framework

10. The onus rests on the Appellant to establish that the appeal should be upheld (section 253(2) of the PA).
11. The tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against (section 253(4) of the PA)/
12. The tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the tribunal or any information provided under section 246 of the PA (pursuant to which the registrar may require information for tribunal proceedings).
13. In this appeal, the Tribunal determines that the appeal should be decided based on material before the Respondent as at the date when decision was made.
14. The Tribunal is required to decide the appeal in one of the ways mentioned in section 254(2) of the PA.

Material considered

15. The material considered in arriving at this decision was:
 - (a) Form 10 – Notice of Appeal and accompanying supporting document.
 - (b) Structural engineers report from Prof Engineering Consult – reference 27/2024 – Date of inspection, October 21, 2024.
 - (c) Form 12 – Aspect Inspection Certificate – Steel and timber frames for covering from Phung Thu Huynh of 29 September 2024, unsigned.
 - (d) Form 16 – Inspection Certificate – Framing, Renee Gorman – 11 October 2024.

- (e) Document from Cosmic Consulting with photographs of site inspection of 3 October 2024.
- (f) GMA Certification Group – Frame inspection advice – 15 August 2024.
- (g) Report – All Inspect with respect to inspection of 30 April 2024.
- (h) Email to self – Michelle Huynh – 18 October 2024 with photographs.
- (i) Langs Building Supplies quotation with truss specification.
- (j) Summary of meeting – 3 October 2024.
- (k) Email – Dan Oakley to Michelle Huynh -16 October 2024.
- (l) Email – Michelle Huynh to Peter Simpson – 30 August 2024.
- (m) Screenshot of message commencing with words ‘Hi Tima’.
- (n) Letter – Robinson Loch – Litigation Lawyers to Peter Simpson of Leonard Homes Pty Ltd – 27 September 2024.
- (o) Email – Peter Simpson to Michelle Huynh – 10 September 2024.
- (p) Email – Michelle Huynh to Leonard Homes Pty Ltd – 20 August 2024.
- (q) Email – Michelle Huynh to Leonard Homes Pty Ltd – 10 September 2024.
- (r) Email – Peter Simpson to Renee Gorman – 10 October 2024.
- (s) Email – Renee Gorman to Michelle Huynh – 24 October 2024.
- (t) Email – Michelle Huynh to Dan Oakley – 1 November 2024.
- (u) Email to self – Renee Gorman – 13 November 2024 with email from Peter Simpson forwarding email from Dr Harry Nguyem of 27 September 2024.
- (v) Form 12 Aspect Certificate steel and timber frames before covering – Song Ha Nguyen 29 September 2024.
- (w) Form 15 – Structural Design Certification 4261-SLO2_A for steel Beams Design - Song Ha Nguyen – 10 October 2024.
- (x) Form 15 – Compliance Certificate – Reinforcing as-built tall wall - Song Ha Nguyen – 18 October 2024.
- (y) Form 15 – Compliance Certificate – Rectification as per site inspection - Song Ha Nguyen – 23 October 2024.
- (z) Structural design certification letter – Ref: 4261 SLO4_A – Helena Engineers to Leonard Homes – 18 October 2024.
- (aa) Structural design certification letter – Ref: 4261 SLO21_A – Helena Engineers to Leonard Homes 10 October 2023 (sic).
- (bb) Site Inspection Report – Ref: 4261- SLO6_A – Helena Engineers to Leonard Homes – 22 October 2024.
- (cc) Form 12 Aspect Inspection Certificate – Internal framing and bracing prior to sheeting – Shoja Jamali – 16 October 2024.
- (dd) Form 12 Aspect Inspection Certificate – Timber and frame truss inspection, steel beam and posts – Simon Saied Maboudi – 18 October 2024.
- (ee) Development Application Decision Notice – GMA Certification Group

- (ff) Plans - Swimming Pool
- (gg) Plans – Proposed residence – 79 Mildmay Street, Fairfield approved by GMA Certification.
- (hh) Form 15 – Song Har Nguyen – 2 August 2023 – part of GMA approval.
- (ii) Site and soil classification – 14 October 2022 – part of GMA approval.
- (jj) Engineering drawing – Helena Engineers, VM Electrical – part of GMA approval.
- (kk) Quote – Langs Building Supplies with joist specifications – part of GMA approval.
- (ll) Form 15 – Nathan Scott – 30 May 2022 with respect to swimming pool.
- (mm) Firewall detail forming part of GMA approval.
- (nn) Energy Efficiency Assessment Report.
- (oo) Brisbane City Council Decision and Information Notice Permit, plumbing - 17 August 2023.
- (pp) Letter – GMA Certification Group to Leonard Homes – 4 October 2023.
- (qq) Form 12 – Aspect Inspection certificate – Song Har Nguyen – 30 October 2024.
- (rr) Form 15 – Compliance Certificate – Song Har Nguyen – 10 October 2023.
- (ss) Form 15 – Compliance Certificate – Song Har Nguyen – 18 October 2024.
- (tt) Form 15 - Compliance Certificate – Song Har Nguyen – 23 October 2024.
- (uu) Email Renee Gorman to Development Tribunals 14 November 2024.
- (vv) Email Peter Simpson to Renee Gordon 10 October 2024.
- (ww) Email to Self - Renee Gordon of 13 November 2024
- (xx) Curriculum Vitae – Song Ha Nguyen.
- (yy) RPEQ Register Extract – Song Ha Nguyen.
- (zz) Extract from Planning Regulation supplied by Renee Gorman.
- (aaa) Renee Gorman to Michelle Huynh – 24 October 2024.
- (bbb) Form 12 – Aspect Inspection certificate – Song Ha Nguyen – 30 October 2024.
- (ccc) Form 15 – Compliance Certificate – Song Ha Nguyen – 10 October 2023.
- (ddd) Form 15 – Compliance Certificate – Song Ha Nguyen – 18 October 2024.
- (eee) Form 15 - Compliance Certificate – Song Ha Nguyen – 23 October 2024.
- (fff) Curriculum Vitae – Ha Nguyen.
- (ggg) RPEQ Register Extract – Song Ha Nguyen.
- (hhh) Email Renee Gorman to Michelle Huynh – 24 October 2024.
- (iii) Email Michelle Huynh to Development Tribunals 6 November 2024
- (jjj) Email Michelle Huynh to Development Tribunals 14 November 2024
- (kkk) Email Michelle Huynh to Development Tribunals – 22 November 2024.
- (lll) Email Michelle Huynh to Development Tribunals - 26 November 2024.
- (mmm) Email Michelle Huynh to Development Tribunals – 26 November 2024

- (nnn) Email to self – Michelle Huynh – 23 November 2024 setting out text message image.
- (ooo) Email – GMA Certification to Michelle Huynh – 14 October 2024.
- (ppp) Email – Harry Nguyen to Michelle Huynh – 22 October 2024.
- (qqq) Email - Renee Gorman to Michelle Huynh – 8 November 2024.
- (rrr) Email - Michelle Nguyen to Peter Simpson – 10 September 2024.
- (sss) Letter – R L Litigation Lawyers to Peter Simpson – 11 October. 2024.
- (ttt) Email – Renee Gorman to Development Tribunals – 26 November 2024.
- (uuu) Email – Michelle Nguyen to Development Tribunals – 26 November 2024.
- (vvv) Email – Michelle Nguyen to Development Tribunals - 27 November 2024 forwarding email from Song Ha Nguyen with Withdrawal of Form 12 and Form 43 and site inspection report.
- (www) Email Michelle Nguyen to Development Tribunals – 27 November 2024
- (xxx) Email Michelle Nguyen to Development Tribunals – 27 November 2024
- (yyy) Email Renee Gorman to Development Tribunals - 28 November 2024 with attachments including submission.
- (zzz) Email Michelle Nguyen to Development Tribunals – 28 November 2024
- (aaaa) Email Renee Gorman to Development Tribunals - 28 November 2024
- (bbbb) Email Michelle Nguyen to Development Tribunals – 28 November 2024

Findings of fact

16. The Tribunal makes the following findings of fact:

- (a) That the Appellant and Vinh Phuong Le are the owners of the subject site.
- (b) That Kylie Walker of GMA Certification Group issued a development permit for building works including the building of a dwelling, pool house and swimming pool on 3 October 2023.
- (c) At all material times, the Appellant and Vinh Phuong Le had a contract with Leonard Homes, 'the builder', to build a dwelling house and other improvements including a swimming pool and pool house on the subject site and at the time of the hearing the dwelling was under construction.
- (d) At the time of the hearing, construction of the dwelling was in progress with the building substantially clad and internally lined.
- (e) On 15 August 2024, a frame stage inspection was conducted by a representative of GMA Certification Group, who found that parts of the work were not compliant in their opinion, and a frame stage report was prepared, and a Form 61 Notice of Non-Compliance was given consequent upon the inspection.
- (f) Around 3 October 2024, the builder of the dwelling asked GMA Certification Group to conduct a further frame stage inspection.
- (g) On 3 October 2024, a frame stage inspection was conducted by a representative of GMA Certification Group, who found that parts of the work were not compliant in their opinion, and a frame stage report document was created and given to the

Appellant as a result of an administrative error; however, a Form 61 Notice of Non-Compliance was not given consequent upon the inspection.

- (h) On or about 3 October 2024, Peter Simpson of the builder advised the Respondent that he would provide a Form 12 Aspect Certificate from an engineer certifying the compliance of the frame stage.
- (i) That at all relevant times, the Respondent was a Building Certifier as that term is defined in the Building Act 1975.
- (j) At all times, Song Ha Nguyen was a Registered Professional Engineer of Queensland (RPEQ).
- (k) The builder provided two Form 12 Aspect Inspection Certificates from Song Ha Nguyen dated 29 September 2024 to the Respondent. The Respondent advised the builder that the first of the two certificates provided with an email of 30 September 2024 was insufficient as it did not include a reference to Structural Certification Letter:4261-SLO2_A and on 10 October 2024, by way of email dated 10 October 2024, a second certificate also dated 29 September 2024 including that reference was provided.
- (l) Accepting and relying on the second certificate dated 29 September 2024 provided by Peter Simpson, the Respondent gave a Form 16 Inspection Certificate dated 11 October 2024.
- (m) That on or before 3 October 2023, Kylie Walker of GMA Certification Group, as part of the process for assessing the application for the development permit for building works, decided Song Ha Nguyen was a competent person for design and inspection help for the purposes of the Building Regulation 2021 section 34 after conducting a licence search showing that Song Ha Nguyen was a RPEQ, with no recorded complaints, considering the projects upon which Song Ha Nguyen had worked shown on his website and considering the Curriculum Vitae of Song Ha Nguyen supplied by the builder.
- (n) That consequent upon Kylie Walker deciding that Song Ha Nguyen was a competent person and before the Respondent made the decision under appeal, the licence details of Song Ha Nguyen taken from the RPEQ Directory were entered into the competent persons register maintained by GMA Certification Group.
- (o) The Respondent decided before giving the Form 16 Inspection Certificate that Song Ha Nguyen was a competent person for the purposes of the Building Regulation 2021 section 34 considering that Song Ha Nguyen had been entered in the competent persons register maintained by GMA Certification Group.
- (p) In giving the Form 16 Inspection Certificate with respect to the frame stage, the Respondent did not rely on the inspection of 3 October 2024 or the Inspection Report arising from that inspection.
- (q) That the entries in the Form 16 Inspection Certificate of 11 October 2024 given by the Respondent item 4 'Description of items certified framing Inspection Date: 03 Oct 2024' and item 5 'Basis of certification Visual Inspection' were made in error because of a system that automatically populates the form not because the visual inspection of 3 October 2024 was the basis for the certificate.

Reasons for decision

19. The decision appealed is the decision of the Respondent to give to the builder an '*Inspection Certificate*', that is a Form 16 pursuant to the *Building Regulation 2021* section 53.

The Form 16 Inspection Certificate of 11 October 2024 that was with the appeal documents is set out in **Figure 1** below.

Form 16 Inspection certificate



This form is the approved form that must be used in accordance with section 10 of the *Building Act 1975* and section 53 of the *Building Regulation 2021*. The relevant building certifier, another building certifier or an appointed competent person is stating a stage of work is compliant with the building development approval.

Explanatory information relevant to completion of this form is in the Appendix at the end of this form.

1. Stage of the building work See section 44 of the Building Regulation 2021 for what constitutes a stage of assessable building work.	List stage/s of building work (indicate the stage) Frame Stage Items														
2. Property description The description must identify all land the subject of the application. The lot and plan details (e.g. SP/RP) are shown on title documents or a rates notice. If the plan is not registered by title, provide previous lot and plan details.	Street address (include number, street, suburb/locality and postcode) 79 Mildmay St FAIRFIELD State QLD Postcode 4103 Lot and plan details (attach list if necessary) Lot 3 on RP 37225 Local government area the land is situated in Brisbane City Council														
3. Building/structure description	<table border="1"> <thead> <tr> <th>Building/structure description</th> <th>Class of building/structure</th> </tr> </thead> <tbody> <tr> <td>New Construction of Dwelling - 2 or More Storeys</td> <td>1a</td> </tr> <tr> <td>New Construction Of Pool House</td> <td>1a</td> </tr> <tr> <td>New Construction of Patio</td> <td>10a</td> </tr> <tr> <td>New Construction of Garage</td> <td>10a</td> </tr> <tr> <td>New Construction of Attached Porch</td> <td>10a</td> </tr> <tr> <td>New Construction of Attached Alfresco</td> <td>10a</td> </tr> </tbody> </table>	Building/structure description	Class of building/structure	New Construction of Dwelling - 2 or More Storeys	1a	New Construction Of Pool House	1a	New Construction of Patio	10a	New Construction of Garage	10a	New Construction of Attached Porch	10a	New Construction of Attached Alfresco	10a
Building/structure description	Class of building/structure														
New Construction of Dwelling - 2 or More Storeys	1a														
New Construction Of Pool House	1a														
New Construction of Patio	10a														
New Construction of Garage	10a														
New Construction of Attached Porch	10a														
New Construction of Attached Alfresco	10a														
4. Description of component/s certified Clearly describe the extent of work covered by this certificate, e.g. all structural aspects of the steel roof beams.	Framing Inspection Date: 03 Oct 2024														

Z

5. Basis of certification Detail the basis for giving the certificate and the extent to which tests, specifications, rules, standards, codes of practice and other publications were relied upon by the inspecting person.	Visual Inspection																														
6. Reference documentation Clearly identify any relevant documentation, e.g. numbered structural engineering plans or aspect inspection certificates.	GMA approved documentation showing File Reference No: 20231863																														
7. Building certifier reference number and building development application number	Building certifier reference number 20231863 Building development approval number																														
8. Building certifier or appointed competent person Under Part 6 of the Building Regulation 2021 a person must be assessed, by the relevant building certifier as competent to give inspection help for the stage work.	<table border="1"> <tr> <td colspan="2">Name (in full)</td> </tr> <tr> <td colspan="2">Renee Gorman</td> </tr> <tr> <td>Company name (if applicable)</td> <td>Contact person</td> </tr> <tr> <td>GMA Certification Pty Ltd</td> <td></td> </tr> <tr> <td>Business phone number</td> <td>Mobile number</td> </tr> <tr> <td>07 5578 1622</td> <td></td> </tr> <tr> <td colspan="2">Email address</td> </tr> <tr> <td colspan="2">admin@gmacert.com.au</td> </tr> <tr> <td colspan="2">Postal address</td> </tr> <tr> <td colspan="2">P.O. Box 2760</td> </tr> <tr> <td>NERANG</td> <td>State QLD Postcode 4211</td> </tr> <tr> <td colspan="2">Licence class or registration type (if applicable)</td> </tr> <tr> <td colspan="2">A</td> </tr> <tr> <td colspan="2">Licence class or registration number (if applicable)</td> </tr> <tr> <td colspan="2">A1045701</td> </tr> </table>	Name (in full)		Renee Gorman		Company name (if applicable)	Contact person	GMA Certification Pty Ltd		Business phone number	Mobile number	07 5578 1622		Email address		admin@gmacert.com.au		Postal address		P.O. Box 2760		NERANG	State QLD Postcode 4211	Licence class or registration type (if applicable)		A		Licence class or registration number (if applicable)		A1045701	
Name (in full)																															
Renee Gorman																															
Company name (if applicable)	Contact person																														
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P.O. Box 2760																															
NERANG	State QLD Postcode 4211																														
Licence class or registration type (if applicable)																															
A																															
Licence class or registration number (if applicable)																															
A1045701																															
9. Signature of building certifier or appointed competent person	<table border="1"> <tr> <td>Signature</td> <td>Date</td> </tr> <tr> <td></td> <td>11 Oct 2024</td> </tr> </table>	Signature	Date		11 Oct 2024																										
Signature	Date																														
	11 Oct 2024																														
LOCAL GOVERNMENT USE ONLY																															
Date received	Reference number/s																														

Figure 1

20. The Respondent told the Tribunal that in deciding whether to give the Form 16 Inspection Certificate she had accepted and relied upon a Form 12 Aspect Inspection Certificate (Appointed Competent Person) given pursuant to the *Building Regulation 2021* (BR) sections 74 and 77 by Song Ha Nguyen. Song Ha Nguyen is also known as and is referred to in some of the material as Harry Nguyen. The Tribunal saw numerous Form 12 Aspect Inspection Certificates from Song Ha Nguyen so for the sake of certainty the version of the Form 12 Aspect Inspection Certificate the Respondent told the Tribunal she relied upon and handed up at the hearing marked with the handwritten words 'Accepted Form 12' is set out in **Figure 2** below.

ACCEPTED FORM 12

Form 12 Aspect Inspection Certificate
(Appointed Competent Person)

This form is the approved form that must be used in accordance with sections 74 and 77 of the Building Regulation 2021 (appointed competent person statement that an aspect of work has been completed and complies with the building development approval).

Information about how to complete this form is in the Appendix at the end of the form.

1. Indicate the aspect of the building work <small>Examples of aspects of the stage of building work (and not limited to the examples provided below):</small> waterproofing, tiling, glazing, energy efficiency, emergency lights, exit signs, smoke detection, air-conditioning.	Aspect of building work (indicate the aspect) Steel and Timber Frames				
2. Property description <small>The description must identify all land the subject of the application.</small> <small>The lot and plan details (e.g. SP/RP) are shown on title documents or a rates notice.</small> <small>If the plan is not registered by title, provide previous lot and plan details.</small>	Street address (include number, street, suburb/locality and postcode) 79 Midway Street FAIRFIELD State QLD Postcode 4103 Lot and plan details (attach list if necessary) Local government area the land is situated in				
3. Building/structure description	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="border-bottom: 1px solid black;">Building/structure description</td> <td style="border-bottom: 1px solid black;">Class of building/structure</td> </tr> <tr> <td>Steel and Timber Frames</td> <td>1a</td> </tr> </table>	Building/structure description	Class of building/structure	Steel and Timber Frames	1a
Building/structure description	Class of building/structure				
Steel and Timber Frames	1a				
4. Description of the extent of aspect/s certified <small>Clearly describe the extent of work covered by this certificate, i.e. all structural aspects of the steel roof beams and location (i.e. what floors the work was on, the parts of a room).</small>	Steel and timber frames before covering				

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5. Basis of certification <small>Detail the basis for giving the certificate and the extent to which tests, specifications, rules, standards, codes of practice and other publications were relied upon.</small>	Timber Structures: AS1720.1-2010, AS1684.2-2010 Steel Structures: AS4100-2020.																		
6. Reference documentation <small>Clearly identify any relevant documentation, e.g. numbered structural engineering plans.</small>	Structural Drawings 4261-S01-S10_A Structural Certification Letter: 4261-SL01_A Structural Certification Letter: 4261-SL02_A Steel/Timber Frames Shop Drawings of Longs Building Suppliers (Job No. AQ0783TA dated 29/02/2024)																		
7. Building certifier reference number and building development approval number	Building certifier's name (in full) Building certifier reference number: Building development approval number																		
8. Details of appointed competent person	<table style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2">Name (in full) Song Ha Nguyen</td> </tr> <tr> <td style="width: 50%;">Company name (if applicable) Halina Engineers</td> <td style="width: 50%;">Contact person Song Ha Nguyen</td> </tr> <tr> <td>Business phone number 0402296323</td> <td>Mobile number 0402296323</td> </tr> <tr> <td colspan="2">Email address harry@halina.com.au</td> </tr> <tr> <td colspan="2">Postal address 30 Holden Street</td> </tr> <tr> <td colspan="2">ASHFIELD State NSW Postcode 2131</td> </tr> <tr> <td colspan="2">Licence class or registration type (if applicable) RPEQ</td> </tr> <tr> <td colspan="2">Licence class or registration number (if applicable) 24385</td> </tr> <tr> <td colspan="2">Date request to inspect received from building certifier</td> </tr> </table>	Name (in full) Song Ha Nguyen		Company name (if applicable) Halina Engineers	Contact person Song Ha Nguyen	Business phone number 0402296323	Mobile number 0402296323	Email address harry@halina.com.au		Postal address 30 Holden Street		ASHFIELD State NSW Postcode 2131		Licence class or registration type (if applicable) RPEQ		Licence class or registration number (if applicable) 24385		Date request to inspect received from building certifier	
Name (in full) Song Ha Nguyen																			
Company name (if applicable) Halina Engineers	Contact person Song Ha Nguyen																		
Business phone number 0402296323	Mobile number 0402296323																		
Email address harry@halina.com.au																			
Postal address 30 Holden Street																			
ASHFIELD State NSW Postcode 2131																			
Licence class or registration type (if applicable) RPEQ																			
Licence class or registration number (if applicable) 24385																			
Date request to inspect received from building certifier																			
9. Signature of appointed competent person	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Signature Song Ha Nguyen</td> <td style="width: 40%;">Date 29/09/2024</td> </tr> </table>	Signature Song Ha Nguyen	Date 29/09/2024																
Signature Song Ha Nguyen	Date 29/09/2024																		

LOCAL GOVERNMENT USE ONLY

Date received	Reference number/s
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Figure 2

21. It was common ground between the parties that representatives from GMA Certification Group, where the Respondent practises as a building certifier, other than the Respondent had inspected the frame at the subject site on 15 August 2024 and 3 October 2024 and found items that the representatives believed required rectification before a Form 16 Inspection Certificate could be given and that a Form 61 Notice of Non Compliance was issued with respect to the inspection of 15 August 2024 but not the inspection of 3 October 2024. The Respondent said at the hearing that a frame stage inspection document was created for the inspection of 3 October 2024 and sent to the Appellant by a junior member of staff at GMA Certification Group without authority.
22. The Appellant submitted that there were matters present at the building on 11 October 2024 when the Respondent gave the Form 16 Inspection Certificate that were not compliant with the Development Permit for Building Works and that the Form 16 Inspection Certificate should not have been given. The report of *Prof Engineering Consult Ref:27/2024* with the Appeal Documents includes matters the Appellant said were non-compliant when the Form 16 Inspection Certificate was given. In the submission of 25 November 2024, the Appellant said that these matters included '*Significant framing defects, such as overhang issues, steel posts, and timber misalignments*'
23. The relevant legislative provisions are included in Part 6 and Part 9 of the BR.
24. The BR Part 9 sets out when and how a building certifier may accept and rely upon a '*competent person certificate*' and the BR Part 6 sets out the provisions for deciding who is a '*competent person*'.
25. The BR Section 34 in Part 6 provides:

34 Building certifier may decide who is competent person

- (1) *A building certifier may, under this section, decide an individual is competent to the certifier with—*
 - (a) *design-specification help or inspection help generally; or*
 - (b) *design-specification help or inspection help limited to a particular aspect of design-specification help or inspection help; or*
 - (c) *design-specification help or inspection help for particular assessable building work.*
- (2) *The building certifier may decide that an individual is competent under subsection (1)—*
 - (a) *if a relevant law requires the individual to be registered or hold a licence or other qualification to give the design-specification help or inspection help—only if—*
 - (i) *the individual is registered or holds the licence or other qualification; and*
 - (ii) *the building certifier has assessed the individual, having regard to the individual's experience, qualifications and skills, and the certifier is satisfied the individual is competent to give the help; or*
 - (b) *otherwise—only if the building certifier has assessed the individual, having regard to the individual's experience, qualifications and skills, and the certifier is satisfied the individual is competent to give the help.*

Example—

A building certifier is deciding whether an individual is a competent person to provide help with assessing whether a building complies with the performance requirements for energy efficiency under the BCA, part 3.12. An individual with the skills to carry out appropriate computer modelling for the assessment has appropriate skills to give the help.

- (3) *The building certifier may decide an individual is a competent person (inspection), on and from the day the certifier made the decision.*
- (4) *The building certifier may decide an individual is, or has been, a competent person (design-specification), on and from a particular day.*
- (5) *The building certifier may decide an individual is a competent person (design-specification) and a competent person (inspection) at the same time or for the same matter.*
- (6) *A building certifier must have regard to the competent person assessment guidelines in making a decision under this section.*
- (7) *In this section—*

***relevant law** means a law applying in the State that is relevant to practising in the matter the subject of the help.*

26. At the hearing, the Respondent told the Tribunal that it had been decided that Song Ha Nguyen was a competent person for design and inspection help and that his name and particulars had been entered into the competent persons register maintained by GMA Certification Group as part of the process of issuing the building permit. In her submission with her email of 28 November 2024 the Respondent said:

In assessing Dr Harry, a license search was carried out through the RPEQ Directory. He had no complaints made against him, and his area of engineering is structural. His website was also checked for recent activity and projects.

In addition to this, the builder provided GMA with Dr Harry's CV.

Below is a screenshot of our engineering file for the development application at 79 Mildmay St, Fairfield. After carrying out the searches noted above, the certifier for the application, Kylie Walker, deemed Dr Harry as a competent person for design and inspection help on the 3rd October 2023 at 3.40pm.....

Additionally, GMA maintains a competent persons register to comply with BRs36 – certifier's obligations to keep record of decision. In our register we hold Dr Harry's licensing details, taken from the RPEQ Directory, and his CV.

27. The Tribunal finds that before Respondent decided to give the Form 16 Inspection Certificate Song Ha Nguyen's licence details from the RPEQ Directory were placed in the competent person register maintained by GMA Certification and that the Respondent had decided that Song Ha Nguyen was a 'competent person' in compliance with the BR section 34. The Tribunal places a significant weight on the consideration that material showed that Song Ha Nguyen was a RPEQ.
28. The BR section 36 provides:

36 Building certifier's obligation to keep record of decision

- (1) *If, under this part, a building certifier decides an individual is a competent person, the certifier must keep a record stating the following matters—*
- (a) *the competent person's name;*
 - (b) *the matters for which the person was decided to be a competent person;*
 - (c) *the day the decision was made;*
 - (d) *if, under section 34(4), the certifier decided the individual has been a competent person (design-specification) from a particular day that was before the day the decision was made—the particular day;*
 - (e) *details of the documents or information relied on by the certifier to make the decision;*
 - (f) *the certifier's reasons for the decision.*

Maximum penalty—20 penalty units.

- (2) *The certifier must keep the record for least 7 years from the day the decision was made.*

Maximum penalty—20 penalty units.

29. There is no material establishing that Respondent kept a record of her decision to decide that Song Ha Nguyen was a competent person however on the Tribunal's finding the licence details for Song Ha Nguyen had already been entered into the competent person register maintained by GMA Certification Group where she practised. The Tribunal finds that the participation by the Respondent in the system of maintaining the competent person register with other certifiers in the practice and the giving of the Form 16 Inspection Certificate after receipt of the Form 12 Aspect Inspection Certificate in Figure 2 discharge the Respondent's obligations under BR section 36.
30. The BR, Section 75 in Part 9 provides, provides –

75 Building certifier may accept competent person certificate.

A building certifier may, in performing functions under the Act for a building development application or assessable building work, accept and rely on a competent person certificate if -

- (a) *for an aspect inspection certificate – the competent person complied with section 74 and*
- (b) *the certificate complies with section 77.*

31. The BR, Section 74 in Part 9 provides –

74 Aspect inspection certificate

- (1) *A competent person (inspection) for assessable building work may give the building certifier for the work a certificate (an **aspect inspection certificate**) for an aspect of the work if—*
 - (a) *The competent person (inspection) inspects the aspect of the work: and*
 - (b) *The competent person is satisfied that the aspect of the work has been completed and complies with the building development approval.*
- (2) *The inspection under subsection (1)(a) must be carried out in accordance with best industry practice.*

- (3) *However, a competent person (inspection) must not give an aspect inspection certificate for an aspect of assessable building work for a single detached class 1a building, unless –*
- (a) *If the certificate is for the boundary clearances aspect of the building – the competent person (inspection) is a cadastral surveyor; or*
 - (b) *If the certificate is for the reinforcement of footing system aspect of the building – the competent person (inspection) is a registered professional engineer.*
- (4) *In this section –*

Boundary clearances aspect means the boundary clearances aspect as described in the inspection guideline called ‘Guidelines for inspection of class 1a and 10 buildings and structures’, published by the department.

Reinforcement of footing system aspect means the reinforcement of slab and footing system aspect for the reinforcement of slab and footing system aspect for the reinforcement of footings as described in the inspection guideline called ‘Guidelines for inspection of class 1a and 10 buildings and structures’, published by the department.

32. The BR, section 77 in Part 9 provides –

77 Requirements for Certificates

A competent person certificate must –

- (a) *be in the approved form; and*
- (b) *be signed by the competent person giving the certificate; and*
- (c) *state—*
 - (i) *The basis for giving the certificate; and*
 - (ii) *The extent to which the competent person has relied on tests, specifications, rules, standards, codes of practice or other publications.*

33. The BR section 75 potentially presents difficulties in application by providing that a certifier may accept an aspect certificate if the ‘*competent person complied with section 74*’, if those words are taken on their face value as it would mean that the certifier, to establish compliance with section 74, would need to know things that might not be in the certifier’s means of knowing, for example, if in terms of section 74(1)(b), that the ‘*competent person is satisfied*’. In the circumstances the tribunal finds that section 75(a) should be construed as if it read:

For an Aspects Inspection Certificate – the certificate informs the reader that the competent person complied with section 74; and...

34. Applying the foregoing construction to the Form 12 Aspect Inspection Certificate, the Tribunal finds that the Respondent relied upon as set out in **Figure 2** the Tribunal finds that Building Regulation 75(a) has been satisfied.
35. The form of the Form 12 Aspect Certificate Inspection Certificate the Tribunal finds that the Respondent relied upon is in accordance with that found at <https://www.business.qld.gov.au/industries/building-property-development/building-construction/forms-guidelines/forms>

36. In the circumstances, the Tribunal finds that *Building Regulation 2021* section 77(a) has been satisfied.
37. The Tribunal finds that the Form 12 Aspect Inspection Certificate was signed by Song Ha Nguyen and that accordingly that *Building Regulation 2021* section 77(b) had been satisfied.
38. The Tribunal finds that the words '*Timber Structures: AS 1720.1-2010, AS1684.2-2010 and Street Structures: AS4100-2020*' in item 5 of the Form 12 Aspect Certificate Inspection Certificate satisfy *Building Regulation 2021* section 77(c).
39. The Appellant argued that the Respondent should not have relied on the Form 12 Aspect Certificate from Song Ha Nguyen and should have conducted a further enquiry to establish if the items of potential non-compliance identified by GMA personnel inspections of 15 August 2024 and 3 October 2024, had been addressed.
40. The Appellant referred to Item 4 of the Respondent's Form 16 which refers to '*framing inspection*' dated 3 October 2024 and Item 5 of the Form 16 which states that the basis of certification was '*visual inspection*'. The Appellant argued that the contents of Items 4 and 5 of Form 16 represented that the non-compliant matters identified by the GMA inspections had been addressed and were compliant.
41. The Respondent argued that she had relied on Form 12 from Song Ha Nguyen as she was entitled to do under the legislation. The Respondent stated that she considered that Song Ha Nguyen had referred to timber structures AS1720.1 – 2010 as his basis of certification which meant that he had applied engineering principles in reaching his decision to sign the certificate.

42. In her submission with her email of 28 November 2024 the Respondent stated that:

The certificate includes, as the basis for certification the following standards –

- *AS1720.1 – Timber Structures Part 1: Design Methods (which sets out the limit state design principles of timber structures and elements)*
- *AS1684.2 – Residential timber framed construction – Non-cyclonic areas*
- *AS4100 – Steel structures*
 - *AS1684 has its limitations and is used by builders, carpenters and building certifiers to assess a frame's compliance against pre-set figures and requirements as they apply under particular circumstances. AS1720 governs the timber structures' design, emphasising the engineering principles necessary to gauge timber's structural capabilities. It provides for the limit state design of structural timbers. An engineer has the qualifications and skills necessary to design and inspect against AS1720.1, and in doing so, may determine some requirements of AS1684 not applicable to maintaining the structural integrity of the building. In regard to the bottom plate overhangs, from experience we know engineer's have previously determined up to one third of the plate as acceptable under AS1720.1.*
 - *All 3 of the standards referenced are deemed to satisfy provisions of the NCC Vol 2 for timber and steel framing.*

Below extract of the NCC Vol 2 H1D6 – Framing, satisfying H1P1- Structural reliability and resistance

(...)

During the inspection of the 3rd October 2024, GMA's inspecting certifier found areas of bottom plate overhang which exceeded the QBCC standards and tolerances guide (being 15mm for a 90mm frame). This would be consistent with what was found by the independent inspectors engaged by the building owner.

As previously mentioned, I am aware that an overhang of up to one third of the plate may be considered compliant by an engineer applying limit state design calculations. I acknowledge that I am not an engineer, and therefore would not make the decision, based on my own judgement, to approve an overhang exceeding the QBCC standards and tolerances guide. But an engineer may make this decision when applying AS1720

43. The Tribunal finds that considering the special knowledge and skill held by Song Ha Nguyen as a RPEQ, the Respondent was entitled to accept that he had used that knowledge and skill to assess matters of concern to others without that knowledge and skill and was entitled to accept and rely on the Form 12 Aspect Inspection Certificate from Song Ha Nguyen without further enquiry.
44. The Respondent conceded that Items 4 and 5 of Form 16 had not been completed properly and this was a result of a system which pre-populated form responses which had not been overwritten.
45. The Respondent told the Tribunal she had not relied on the Frame Inspection Report that had issued following the inspection by the representative of GMA Certification Group of 3 October 2024.
46. There is an email from Peter Simpson of Leonard Home to GMA Certification Group of 30 September 2024 attaching the first Form 12 Aspect Inspection Certificate from Song Ha Nguyen of 29 September 2024 and the Respondent pointed to an email of 10 October 2024 attaching the second Form 12 Aspect Inspection Certificate as evidence that the Form 16 Inspection Certificate was given in reliance on the Form 12 Aspect Inspection Certificate rather than an inspection by the Respondent.
47. Considering what the Respondent told the Tribunal and the email correspondence, the Tribunal finds that the Respondent did the Respondent gave the Form 16 Inspection Certificate in reliance on the second Form 12 Aspect Inspection Certificate from Song Ha Nguyen of 29 September 2024 as set out in **Figure 2** rather than an inspection by the Respondent.
48. The Appellant's further arguments in written submissions—and the Tribunal's findings in response, are outlined as follows:
 - (a) That the Form 12 accepted by the Respondent referred to additional structural beam drawings (4261-SL02A) dated 10 October 2023, which were not part of the original development approval. (Refer to the Appellant's submission of 22 November 2024 (updated on 25 November 2024)) — The Tribunal finds that structural beam drawings (4261-SL02A) dated 10 October 2023 were accepted before the frame stage commenced in accordance with the Building Act 1975 section 70.
 - (b) That on 30 October 2024 Song Ha Nguyen issued a further Form 12 which 'is obviously a response to the certifier actually examining the Form 12 basis of certification and realising that it does not cover actual work on site. She has given the certifier an opportunity to rectify that deficiency in the form 12' and that 'This demonstrates that the original Form 12 relied upon by the certifier was

fundamentally flawed, and her reliance upon it equally flawed.’ (Refer to the Appellant’s submission of 22 November 2024 (updated on 25 November 2024)) — The Tribunal has decided that this appeal should be decided on based on material before the Respondent at the time of her decision. Song Ha Ngyen’s further Form 12 of 30 October 2024 was not before the Respondent at the time of her decision.

- (c) That on ‘22 October 2024: The engineer retracted the original Form 12 and issued a new Form 43 with certifications listed. This action confirmed that the earlier Form 12 was flawed and incomplete’ (Refer Appellant’s submission of 22 November 2024 (updated on 25 November 2024)). — The Tribunal has decided that this appeal should be decided on based on material before the Respondent at the time of her decision. Song Ha Nguyen’s further Form 12 of 30 October 2024 was not before the Respondent at the time of her decision.
- (d) Item 5 of the Form 12 Accepted and relied upon by the Respondent ‘Timber Structures: AS1720.1-2010 and AS1684.2-2010, AS44040-2004’ were deemed to comply provisions that the Respondent knew that the work did not meet’. The Tribunal finds that as an RPEQ Song Ha Nguyen could be expected to have the knowledge and skill to assess the work against AS1720.1-2010, AS1684.2-2010 and AS4100-2020.
- (e) The Form 12 was insufficient in that it did not specify and state how the defects identified in the inspections of 15 August 2024 and 3 October 2024 had been addressed. — The Tribunal finds that as an RPEQ Song Ha Nguyen could be expected to have the knowledge and skill to assess the work as compliant using engineering principles that others did not have the knowledge or skill to apply.
- (f) That the process had been impacted by the failure of GMA Certification Group to issue a Form 61 Non-Compliance Notice with respect to the inspection of 3 October 2024. — The Respondent told the Tribunal that a Form 61 Notice of Non-Compliance was not issued as the builder told her that an engineer would be engaged to inspect the frame stage. The Tribunal does not make any finding whether or not the Respondent failed in her obligations to issue a Form 61 Notice of Non-Compliance but finds that any such failure does not impact the decision to give the Form 16 Notice of Inspection.
- (g) That the Form 12 relied accepted and relied upon was deficient as did not follow the ‘required steps detailed in Part A2.2(4) of the BCA for developing and verifying a Performance Solution were not undertaken. Furthermore, the certifications fail to provide evidence of compliance for steel beams designs and overhang defects and cold form posts.’ (Refer Appellant’s submission of 27 November 2024.) — The Tribunal is not aware of any obligation to include the steps in Part A2.2(4) of the BCA in the Form 16 and that The Tribunal finds that as an RPEQ Song Ha Nguyen could be expected to have the knowledge and skill to assess the work as compliant using engineering principles.

Mark Chapple
Development Tribunal Chair
Date: 20 December 2024

Appeal rights

Schedule 1, Table 2, item 1 of the *Planning Act 2016* provides that an appeal may be made against a decision of a Tribunal to the Planning and Environment Court, other than a decision under section 252, on the ground of -

- (a) an error or mistake in law on the part of the Tribunal; or
- (b) jurisdictional error.

The appeal must be started within 20 business days after the day notice of the Tribunal decision is given to the party.

The following link outlines the steps required to lodge an appeal with the Court.

<http://www.courts.qld.gov.au/courts/planning-and-environment-court/going-to-planning-and-environment-court/starting-proceedings-in-the-court>

Enquiries

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