

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2023/0626
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<b>Responsible Officer:</b>	Nick England
<b>Land to be developed (Address):</b>	Lot 376 DP 19651, 35 Norma Road PALM BEACH NSW 2108
<b>Proposed Development:</b>	Modification of Development Consent DA2020/0132 granted for Alterations and additions to a dwelling house
<b>Zoning:</b>	C4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	David John Bracey Anna Maria Bracey
<b>Applicant:</b>	David John Bracey

<b>Application Lodged:</b>	17/11/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	24/11/2023 to 08/12/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The proposed modification is made pursuant to Section 4.55 (1A) of the Environmental Planning & Assessment Act 1979, and proposes the modifications to the existing consent, DA2020/0132, issued by Council on 3 June 2020, for the "alterations and additions to a existing dwelling house".

In detail, the proposed modifications consist of:

- excavation (34m<sup>2</sup>) of existing foundation space underneath garage for storage;
- widen garage by 1m (within existing approved footprint);
- install internal lift adjoining stairs to access all levels of house;
- remove seven (7) windows on the east (side) elevation;

- relocation of one (1) window on the west (side ) elevation; and
- reduce width of 1<sup>st</sup> floor balcony by 2m / 16m<sup>2</sup>.

## ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Pittwater 21 Development Control Plan - D12.5 Front building line  
 Pittwater 21 Development Control Plan - D12.6 Side and rear building line  
 Pittwater 21 Development Control Plan - D12.8 Building envelope

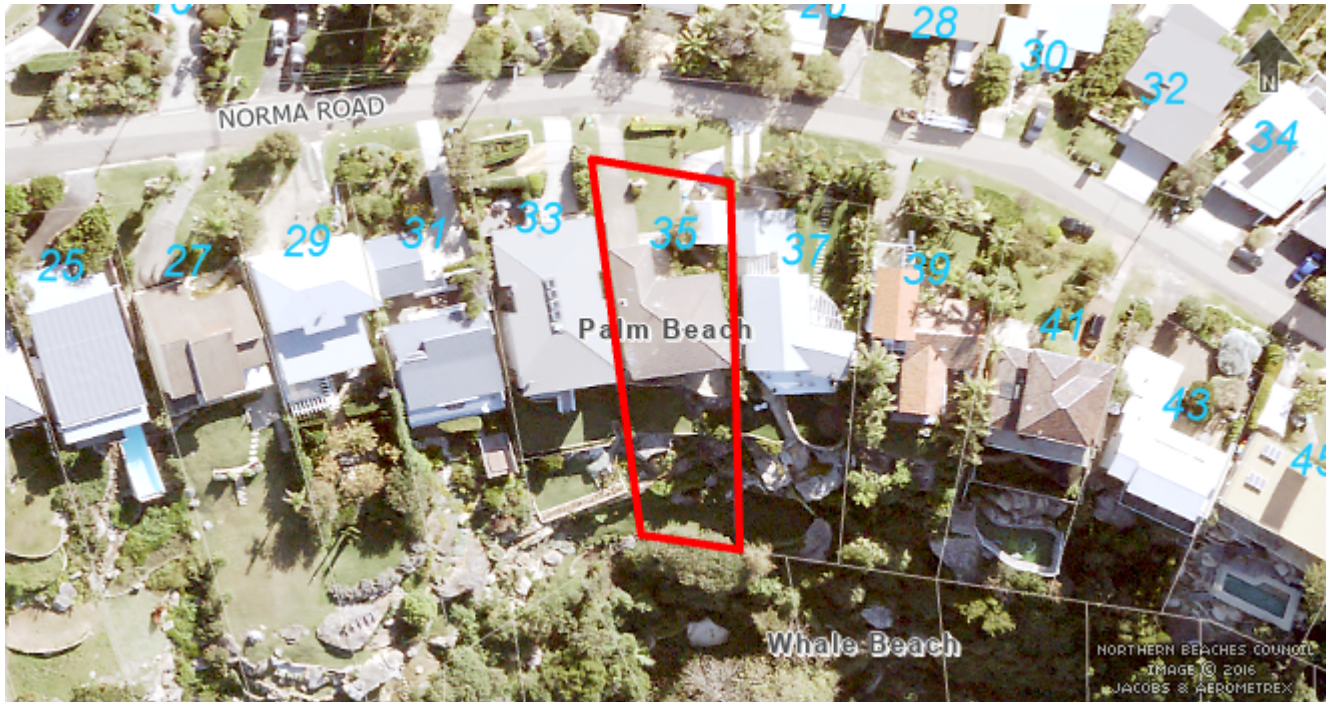
## SITE DESCRIPTION

<b>Property Description:</b>	Lot 376 DP 19651 , 35 Norma Road PALM BEACH NSW 2108
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the southern side of Norma Road.</p> <p>The site is irregular in shape with a frontage of 18.95m along Norma Road and a depth varying between 49 and 50m. The site has a surveyed area of 785m<sup>2</sup>.</p> <p>The site is located within the C4 Environmental Living zone and accommodates a dwelling house and detached garage.</p> <p>The site has a southerly aspect with a very steep slope down towards the rear (northern) boundary.</p> <p>The site has significant vegetation and rock outcrops</p>

towards the rear boundary.

Adjoining and surrounding development is characterised by dwelling houses.

Map:



## SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

DA2020/0132: Development consent granted for "Alterations and additions to a dwelling house" on 3 June 2020. This consent is the subject of the proposed modification. No construction certificate or works have been carried out on the site since this consent was granted.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2020/0132, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p><b>Yes</b></p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> <li>• the works propose no substantial increase or change to the external facades of the approved works;</li> <li>• in the case of the additional excavation, it is relevant to note that the modified area was already approved for partial excavation in support of the necessary piers need to support the above floor. Given this, it is considered that the additional excavation is minor and acceptable given the extent of previously approved works.</li> <li>• a total of six (6) windows will be deleted; and</li> <li>• in regard to the upper level additions, the area of works will be in effect reduced by the proposed modification.</li> </ul>
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2020/0132 for the following reasons provided above which that in summary will result in an effective minor reduction in the overall scope of the originally approved works.
(c) it has notified the application in accordance with:  (i) the regulations, if the regulations so require,  or  (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.

Section 4.55(1A) - Other Modifications	Comments
of applications for modification of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

### Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent</p>



Section 4.15 'Matters for Consideration'	Comments
	<p>authority to consider AS 2601 - 2001: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62</u> and/or 64 of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 24/11/2023 to 08/12/2023 in

accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

## REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p>The proposal seeks approval for the modification of Development Consent DA2020/0132 granted for Alterations and additions to a dwelling house.</p> <p>The comments in this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> <li>Pittwater LEP - Clause 7.6 Biodiversity Protection</li> <li>Pittwater DCP - Clause B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridors</li> </ul> <p>The proposal is generally within the existing development footprint and vegetation on the subject site is highly modified. The proposal is therefore unlikely to impact on environmental values on or off the site, and is considered to comply with controls subject to conditions of consent. The development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p>
NECC (Development Engineering)	<p>I have reviewed the Statement of Modifications and have no objections to the proposed development subject to the removal of the following items: Condition of Consent 7. (Geotechnical), the replacement of the existing geotechnical report referenced in Condition 1. with: J2695A dated 8 September 2023 by White Geotechnical Group, the retention of all other engineering conditions of consent and the inclusion of the following engineering conditions:</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the

application hereunder.

## State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

### SEPP (Building Sustainability Index: BASIX) 2004

Aa amended BASIX certificate has been submitted with the application (see Certificate No.A368275\_02 dated 12 September 2023).

### SEPP (Transport and Infrastructure) 2021

#### Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment: The proposal was referred to Ausgrid who raised no objections.

### SEPP (Resilience and Hazards) 2021

#### Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

### Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

#### Principal Development Standards



Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5m	No change	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

#### Pittwater 21 Development Control Plan

##### Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	5.4m	No change	N/A
Rear building line	6.5m	19.5m	No change	Yes
Side building line	2.5m (west)	1.5-2.5m	No change	N/A
	1m (east)	1.2m	No change	Yes
Building envelope	3.5m (east)	Breach of 2.9m (length) x 0.4m (height)	No change	N/A
	3.5m (west)	Breach of 4.5m (length) x 1-2m (height)	No change	N/A
Landscaped area	60%	416.5m <sup>2</sup> or 53%	No change	N/A

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B5.15 Stormwater	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.1 Landscaping	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	N/A	N/A
D12.6 Side and rear building line	N/A	N/A
D12.8 Building envelope	N/A	N/A
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

#### Detailed Assessment

#### **D12.5 Front building line**

Whilst there is an existing approved non-compliance with the front building line, the proposed modification will not alter, or increase, this non-compliance.

#### **D12.6 Side and rear building line**

Whilst there is an existing approved non-compliance with the side building line, the proposed modification will not alter, or increase, this non-compliance.

#### **D12.8 Building envelope**

Whilst there is an existing approved non-compliance with the side boundary building envelope, the proposed modification will not alter, or increase, this non-compliance.

#### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

#### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2022**

Section 7.12 contributions were levied on the Development Application.

## **CONCLUSION**

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## **RECOMMENDATION**

THAT Council as the consent authority grant approval to Modification Application No. Mod2023/0626 for Modification of Development Consent DA2020/0132 granted for Alterations and additions to a dwelling house on land at Lot 376 DP 19651,35 Norma Road, PALM BEACH, subject to the conditions printed below:

## Modification Summary

The development consent is modified as follows:

### MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-389410 - MOD2023/0626	11 January 2024	<p>Increase foundation space area; widen garage; delete / modify windows on east and west elevation; reduce upper level balcony.</p> <p>Insert additional condition No.1A - Approved Plans and supporting documentation to reference modified plans.</p>

### Modified conditions

#### **A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation, to read as follows:**

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
1995-1	A	Site Plan	J.D. Evans & Co	30 August 2023
1995-2	A	Lower Ground Floor Plan	J.D. Evans & Co	30 August 2023
1995-3	A	Upper Ground Floor Plan	J.D. Evans & Co	30 August 2023
1995-4	A	First Floor Plan	J.D. Evans & Co	30 August 2023
1995-5	A	North / South Elevation	J.D. Evans & Co	30 August 2023
1995-6	A	East / West Elevation	J.D. Evans & Co	30 August 2023
1995-7	A	Section A-A / Driveway	J.D. Evans & Co	30 August 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate No.A368275_02	-	J.D. Evans & Co	12 September 2023
Geotechnical Investigation No.J2695A	-	White Geotechnical Group	8 September 2023

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

In signing this report, I declare that I do not have a Conflict of Interest.

**Signed**



**Nick England, Planner**

The application is determined on 11/01/2024, under the delegated authority of:



**Adam Richardson, Manager Development Assessments**