

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2024/0459
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<b>Responsible Officer:</b>	Megan Surtees
<b>Land to be developed (Address):</b>	Lot 17 DP 8595, 121 Pacific Road PALM BEACH NSW 2108
<b>Proposed Development:</b>	Modification of Development Consent DA2021/2364 granted for Demolition works and construction of a dwelling house including a swimming pool and cabana
<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>Applicant:</b>	Kede Peter Carboni

<b>Application Lodged:</b>	09/09/2024
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	16/09/2024 to 30/09/2024
<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

This modification application seeks consent to modify DA2021/2364 in the following ways:

- Repositioning of the balustrade on the approved cabana
- Increase width of cabana from 6.380 metres to 9.30 metres
- Retention of planter and associated landscaping in accordance with the original approval

### 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 - D12.10 Landscaped Area - Environmentally Sensitive Land

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 17 DP 8595 , 121 Pacific Road PALM BEACH NSW 2108
<b>Detailed Site Description:</b>	<p>The subject site is legally identified as Lot 17 in Deposited Plan 8595 and is known as 121 Pacific Road, Palm Beach.</p> <p>The site is trapezoidal in shape with a western street frontage of 29.565m, rear boundary of 23.47m and depths of 153.53m (north) and 135.77m (south) equating to an overall surveyed area of 3,058m<sup>2</sup>. The site is uncharacteristically large for both Pacific Road and the wider Palm Beach locality.</p> <p>The site presently accommodates an older one and two storey timber clad dwelling house with a large timber deck to the rear.</p> <p>Topographically the site slopes from west to east (street to rear) by over 10m. There are numerous rock outcrops located towards the rear half of the site.</p> <p>The site contains a number of mature and native trees throughout, as well as numerous exotic plantings throughout.</p> <p>Surrounding properties consist of other detached dwelling</p>

houses of varying age, size and construction, including a heritage listed building immediate to the south.

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:

- **DA2020/0133.** This development application sought consent for demolition of existing structures and the construction of a new dwelling, driveway, swimming pool and landscape works. On 28 July 2020, a Deferred Commencement Approval was granted for this application. On 23 May 2022 a signed letter was provided by the property owner to surrender this consent.
- **DA2021/2364.** This development application sought consent for demolition works and construction of a dwelling house, including a swimming pool and cabana. This application was approved, subject to conditions, on 29 April 2022.
- **Mod2022/0544.** This modification application was submitted to Council to modify DA2021/2364. This application was approved, subject to conditions, on 14 April 2023.
- **Mod2023/0268.** This modification application was submitted to Council to modify DA021/2364. This application was approved, subject to conditions, on 16 October 2023.

## 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 DA2021/2364, Mod2022/0544 and Mod2023/0268 in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - 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 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	<p>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 DA2021/2364, Mod2022/0544 and Mod2023/0268 for the following reasons:</p> <p>The proposed modified works under this application are considered to be substantially the same as that which was previously approved as the works related to the approved cabana structure.</p>
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2021/2364, Mod2022/0544 and Mod2023/0268 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with:	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental

Section 4.55 (2) - Other Modifications	Comments
(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 of applications for modification of a development consent, and	Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(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 (2) 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)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of



Section 4.15 'Matters for Consideration'	Comments
Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p>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 authority to consider AS 2601 - 2001: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 62 and/or 64</u> 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 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 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 'Matters for Consideration'	Comments
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

This modification application is accompanied by an addendum letter prepared by Bushfire Planning Services, dated 28 August 2024. This letter states that the proposed amendments do not adversely affect the results of the original bushfire assessment.

This letter will be included within Condition 1A of this consent.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 16/09/2024 to 30/09/2024 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 comments in this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> <li>• NSW Biodiversity Conservation Act 2016</li> <li>• NSW Biodiversity Conservation Regulation 2017</li> <li>• Planning for Bushfire Protection 2019</li> <li>• SEPP (Resilience and Hazards) 2021 - Littoral Rainforest and Proximity Area</li> <li>• Pittwater LEP - Clause 7.6 Biodiversity Protection</li> <li>• Pittwater DCP - Clause B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor</li> </ul> <p>Portions of the site are identified on the Department of Climate Change, Energy, the Environment and Water (DCCEEW) Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act 2016, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offsets Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR). However, the submitted plans and documentation indicate that the proposed modifications are located outside of the BV Map area and therefore will not trigger entry into the BOS.</p>

Internal Referral Body	Comments
	The proposed modifications will not require the removal of vegetation and are unlikely to impact upon native fauna. The development is designed, sited and will be managed to avoid any significant adverse environmental impact.
Strategic and Place Planning (Heritage Officer)	<b>HERITAGE COMMENTS</b>
	Discussion of reason for referral
	The proposal has been referred to Heritage as the subject site adjoins two heritage item
	<b>Sydney Red Gums (<i>Angophora costata</i>)</b> - 117 Pacific Road <b>"Craboon" (house)</b> - 119 Pacific Road
	Details of heritage items affected
	<b>"Craboon" (house)</b> <u>Statement of significance:</u> The Craboon is architecturally significant due to the stone construction, batted gables and porch with stone piers which represents design from the 1930s. <u>Physical description:</u> The stone cottage with tiled pitched roof
	Other relevant heritage listings
	SEPP (Biodiversity and Conservation) 2021
	Australian Heritage Register
	NSW State Heritage Register
	National Trust of Aust (NSW) Register
	RAIA Register of 20th Century Buildings of Significance
	Other
	Consideration of Application
	The proposal seeks consent to move the balustrade at the cabana to the east and integrate it with the landscaping. The moving of the balustrade line is considered to not impact the heritage house next door or its significance.  Therefore Heritage raises no objections and requires no conditions.  Consider against the provisions of CL5.10 of PLEP.  Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No



## **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 (Sustainable Buildings) 2022**

The proposed modified works do not alter the previously approved BASIX Certificate.

### **SEPP (Resilience and Hazards) 2021**

#### **Chapter 2 – Coastal Management**

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

#### **Division 1 Coastal Wetlands and littoral rainforest area**

##### **2.8 Development on land in proximity to coastal wetlands or littoral rainforest**

- 1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:
  - a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
  - b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

#### **Comment:**

As was addressed under the original development application, the subject site sits in an elevated position above the identified littoral rainforest area and, the portion of site identified as being within proximity to the rainforest is limited to the southeastern corner which is not affected by this proposed modified works.

As such, the consent authority may be satisfied that the proposed modified works will not significantly or adversely impact on the biophysical, hydrological or ecological integrity of the nearby littoral rainforest, and that the quantity and quality of surface and ground water flows to and from the rainforest will not be impacted upon.

## Division 5 General

### 2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

#### Comment:

The proposed modified works are unlikely to increase the risk of coastal hazards.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (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	<b>Dwelling:</b> 8.7m <b>Cabana:</b> 7.7m	Dwelling: No change Cabana: No change Cabana Balustrade: 6.25m	N/A N/A N/A	No, as previously approved Yes Yes

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes

Clause	Compliance with Requirements
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	11.9m - 23.9m	unaltered	Yes
Rear building line	6.5m	40.0m - 60.0m	unaltered	Yes
Side building line	<b>Southern Boundary</b> 2.5m	4.0m	<i>Cabana &amp; balustrade:</i> 4.8m	Yes
	<b>Northern Boundary</b> 1m	1.2m min.	<i>Cabana &amp; balustrade:</i> 10.0m	Yes
Building envelope	<b>Southern Elevation</b> 3.5m	Within envelope	Within envelope	Yes
	<b>Northern Elevation</b> 3.5m	Outside envelope	Within	Yes
Landscaped area	60%	1,808.0m <sup>2</sup> (59.12%)	Unaltered	No, as previously approved

### 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
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
C1.1 Landscaping	Yes	Yes
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
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.6 Side and rear building line	Yes	Yes
D12.8 Building envelope	Yes	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

#### Detailed Assessment

#### **D12.10 Landscaped Area - Environmentally Sensitive Land**

The extent of non-compliance to this control has previously been approved under the original development application and subsequent modification applications. The works under this modification application do not change the existing, and approved, non-compliance. As such, a detailed merit consideration of this non-compliance is not required, in this particular circumstance.

#### **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. Mod2024/0459 for Modification of Development Consent DA2021/2364 granted for Demolition works and construction of a dwelling house including a swimming pool and cabana on land at Lot 17 DP 8595,121 Pacific 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
Mod2024/0459 PAN - 463826	The date of this notice of determination	Modification of Development Consent DA2021/2364 granted for Demolition works and construction of a dwelling house including a swimming pool and cabana.  <b>Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation</b>
Mod2022/0544 PAN - 260699	14 April 2023	Modification of Development Consent DA2021/2364 granted for Demolition works and construction of a dwelling



		house including a swimming pool and cabana.  <b>Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation</b> <b>Modify Condition 1B Amendments to Plans</b> <b>Delete Condition 16 - Removal of Cabana</b> <b>Add Condition 16B - Cabana Roof Garden</b>
Mod2023/0268 PAN - 332077	16 October 2023	Modification of Development Consent DA2021/2364 granted for Demolition works and construction of a dwelling house including a swimming pool and cabana  <b>Add Condition No.1B - Modification of Consent - Approved Plans and supporting Documentation</b>

### 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
DA100	11	Site Plan	Daniel Boddam, Architecture & Interior Design	13 August 2024
DA103	9	Lower Ground	Daniel Boddam, Architecture & Interior Design	13 August 2024
DA200	9	Elevations	Daniel Boddam, Architecture & Interior Design	13 August 2024
DA201	10	Elevations	Daniel Boddam, Architecture & Interior Design	13 August 2024
DA301	9	Sections	Daniel Boddam, Architecture & Interior Design	13 August 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate 1242697S	-	BASIX Certificate Centre	29 October 2021

Bushfire Addendum Letter	-	Bushfire Planning Services Pty Limited	28 August 2024
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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**



**Megan Surtees, Planner**

The application is determined on 01/10/2024, under the delegated authority of:



**Adam Richardson, Manager Development Assessments**