

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0099
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Responsible Officer:	Georgia Quinn
Land to be developed (Address):	Lot 19 DP 222082, 37 Terama Street BILGOLA PLATEAU NSW 2107
Proposed Development:	Modification of Development Consent DA2019/0763 granted for alterations and additions to a dwelling house including a swimming pool
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Miranda Ruth Felton Matthew Stuart Felton
Applicant:	JJ Drafting

Application Lodged:	10/03/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	18/03/2020 to 01/04/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

This application seeks modification of development consent DA2019/0763.

In particular, the modifications include:

- a change in material from a concrete to a fiberglass pool;
- subsequent enlargement of swimming pool dimensions:
 - from 9.5 x 4.0m to 10.0 x 4.4m; and
- a change in material and height for a portion of the pool fencing along the northern elevation from 1.2m glass fencing to a 1.8m high colourbond fence.

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 Local Environmental Plan 2014 - 7.2 Earthworks

Pittwater 21 Development Control Plan - C1.5 Visual Privacy

Pittwater 21 Development Control Plan - D3.6 Front building line

Pittwater 21 Development Control Plan - D3.7 Side and rear building line

Pittwater 21 Development Control Plan - D3.11 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 19 DP 222082 , 37 Terama Street BILGOLA PLATEAU NSW 2107
Detailed Site Description:	<p>The subject site consists of one (1) corner allotment located on the northern side of Raymond Road and the western side of Terama Street.</p> <p>The site is regular in shape with a primary frontage of 29.1m along Raymond Road and a secondary frontage of 20.9m along Terama Street. The site has a surveyed area of 690.3m².</p> <p>The site is located within the E4 Environmental Living zone and accommodates a one and two storey dwelling house.</p> <p>The site has a cross fall from south to north (ie. from the primary frontage down to the northern boundary) of approximately 3.1m.</p> <p>The site is not known to contain any threatened species.</p>

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by similar-scale low density residential development within landscaped settings.

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:

Development Application DA2019/0763

This application for alterations and additions to a dwelling house including a swimming pool was granted consent under delegation on 19 August 2019.

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 DA2019/0763, 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>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <p><i>The amendments to the overall pool size are minor ie. an additional 0.5m in length and 0.4m in width. The change in material of the pool structure from concrete to fibreglass is not considered to vary the impact upon the environment and the only other change proposed is the pool fencing material and height along the northern edge of the pool coping from 1.2 high glass to 1.8m high colourbond. In turn, such modifications are considered to be of minimal environmental impact.</i></p>
(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	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2019/0763, for the following reasons:</p> <p><i>The visual impact of the development will remain essentially unaltered as presented to the public domain and adjoining properties. Further, the modifications relate to a minor increase in pool size (an additional 0.5m in length and 0.4m in width), and material changes of the pool structure and a portion of the pool fencing which will also have an increased height of 0.6m. Such amendments are considered to be substantially the same as that approved under development application DA2019/0763.</i></p>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Pittwater Local Environment Plan 2014 and Pittwater 21 Development Control Plan.</p>

Section 4.55(1A) - Other Modifications	Comments
the notification or advertising 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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
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 Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 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 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</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) Environmental Impact 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) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact 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 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

REFERRALS

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

All, Environmental Planning Instruments (SEPPs, REPs 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, REPs 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 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 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 Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A353213_02, dated 10 March 2020).

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP 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. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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	Complies
Height of Buildings:	8.5m	4.7m <i>Privacy screening</i>	No change	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

Clause	Compliance with Requirements
7.6 Biodiversity protection	Yes

Detailed Assessment

7.2 Earthworks

The objective of Clause 6.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

In this regard, before granting development consent for earthworks, Council must consider the following matters:

(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

(b) the effect of the proposed development on the likely future use or redevelopment of the land

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

(c) the quality of the fill or the soil to be excavated, or both

Comment: The excavated material will be processed according to the Waste Management Plan for the development application.

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties.

(e) the source of any fill material and the destination of any excavated material

Comment: The excavated material will be processed according to the Waste Management Plan for the development.

(f) the likelihood of disturbing relics

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area

Comment: The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment: Conditions are included in the recommendation of this report that will minimise the impacts

of the development.

(i) *the proximity to and potential for adverse impacts on any heritage item, archaeological site or heritage conservation area.*

Comment: The site is not a heritage item, in the vicinity of a heritage item or in a conservation area or archaeological site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014 / Pittwater 21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m <i>Primary frontage - Raymond Rd</i>	13.6m <i>New stairs</i>	unaltered	Yes
	3.25m <i>Secondary frontage - Terama St</i>	3.3-3.5m <i>Coping</i>	unaltered	Yes
		7.8m <i>Swimming pool</i>	unaltered	Yes
Side building line	2.5m <i>West</i>	9.9m <i>Swimming pool</i>	9.4m <i>Swimming pool</i>	Yes
	1m <i>North</i>	0.7-1.5m <i>Coping</i> 2.0-2.6m <i>Swimming pool</i>	unaltered 1.6-2.2m <i>Swimming pool</i>	No Yes
Building envelope	3.5m <i>West</i>	Within envelope	unaltered	Yes
	3.5m <i>North</i>	Within envelope	unaltered	Yes
Landscaped area	60% (414.2m ²)	51.2% (353.7m ²)	unaltered	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.3 Bilgola Locality	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	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	No	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
D3.1 Character as viewed from a public place	Yes	Yes
D3.2 Scenic protection - General	Yes	Yes
D3.6 Front building line	Yes	Yes
D3.7 Side and rear building line	No	Yes
D3.9 Building envelope	Yes	Yes
D3.11 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D3.12 Fences - General	Yes	Yes

Detailed Assessment

C1.5 Visual Privacy

Description of non-compliance

The Control requires private open space areas including swimming pools to be protected from direct overlooking within nine (9) metres. This s4.55(1a) application proposes to increase the size of the approved swimming pool (as per DA2019/0763) which in turn provides a side setback of between 1.6 and 2.2m from the northern boundary. Subsequently, the swimming pool is situated within 9 metres of the adjoining properties front private open space.

It is noted the extent of the pool coping remains as approved under DA2019/0763, and therefore such built form setbacks remain unchanged.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying objectives of the control as follows:

- *Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design.*

Comment:

The pool has been designed and sited so as to allow for direct access from the internal and external living areas. It is noted the swimming pool is setback between 1.6 and 2.2m from the northern side boundary. Such setback surpasses the 1m side setback requirement. Further, significant vegetation (both existing and proposed) is sited within the side setback area of the subject site and that of the adjoining property. The landscaping proposed as part of the development application comprises

hedging of Lilli Pilli along the northern boundary. This, in conjunction with the proposed 1.8m colourbond pool fencing and the spatial separation between the pool and the adjoining property is considered capable of providing reasonable amenity. Such privacy mechanisms will mitigate opportunities for direct overlooking and are capable of providing reasonable visual and acoustic privacy for the dwelling occupants and those of adjoining and surrounding properties.

It is therefore considered the siting and design of the proposed swimming pool provides a high level of amenity as a result of good design.

- *A sense of territory and safety is provided for residents.*

Comment:

The proposal will maintain the sense of territory and safety on-site for the dwelling occupants and those of adjoining and surrounding properties.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D3.6 Front building line

Not applicable, as the modifications proposed as part of this application do not alter the approved front setbacks as per DA2019/0763.

D3.7 Side and rear building line

Whilst the minor enlargement of the swimming pool slightly reduces the pools setback to the northern side boundary, it remains compliant with the requirements of the Control. Further, the setbacks to the coping remain unchanged from that approved as per DA2019/0763. In this respect, a merit assessment was carried out as part of the development application and therefore no further assessment is required as a result.

D3.11 Landscaped Area - Environmentally Sensitive Land

The landscaped area provided within the site will remain unchanged from the approved development application DA2019/0763.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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 2019

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 2000;
- 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. Mod2020/0099 for Modification of Development Consent DA2019/0763 granted for alterations and additions to a dwelling house including a swimming pool on land at Lot 19 DP 222082,37 Terama Street, BILGOLA PLATEAU, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp

Drawing No.	Dated	Prepared By
DA.01 - Site Analysis Plan	17 February 2020	JJ Drafting
DA.02 - Pool & Landscape Concept Plan	17 February 2020	JJ Drafting
DA.03 - Ground Floor Plan	17 February 2020	JJ Drafting
DA.04 - First Floor Plan	17 February 2020	JJ Drafting
DA.05 - Elevations	17 February 2020	JJ Drafting
DA.06 - Elevations	17 February 2020	JJ Drafting
DA.07 - Elevations	17 February 2020	JJ Drafting
DA.08 - Sections	17 February 2020	JJ Drafting

Engineering Plans

Drawing No.	Dated	Prepared By
DA.09 - Roof & Stormwater Concept Plan	17 February 2020	JJ Drafting

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate (Cert. No. A353213_02)	10 March 2020	JJ Drafting

c) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

d) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

B. Add Condition No.6A - Addendum to Geotechnical Report to read as follows:

An addendum/ cover letter in respect of the Geotechnical Report (prepared by Hodgson Consulting Engineers dated 6 July 2019) submitted in support of the development application (DA2019/0763) is to be provided from the original author of the report stating that the recommendations of the original report are still current for the proposed modification.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

Signed

G Quinn

Georgia Quinn, Planner

The application is determined on 03/04/2020, under the delegated authority of:



Matthew Edmonds, Manager Development Assessments