

ASSESSMENT REPORT

Nadine Street Residential Subdivision, Sanctuary Point DA 485-12-2002 MOD 1

1. INTRODUCTION

This report is an assessment of a request to modify the Development Application (DA 485-12-2002) for a residential subdivision at Nadine Street, Sanctuary Point.

The request has been lodged by Allen, Price & Scarratts Pty Ltd (the Proponent) pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It seeks approval to increase the number of residential lots, delete an on-site detention basin, remove building setbacks, amend the road layout and design and reduce the width of the road reserve.

2. SUBJECT SITE

The subject site is approximately seven hectares in size and located at Nadine Street, Sanctuary Point, approximately 700 metres north of St Georges Basin in the Shoalhaven City Council local government area (LGA) (**Figure 1**).



Figure 1: Site Location (Base source: Nearmap)

The site is currently undeveloped and until recently, contained a pocket of native dry sclerophyll forest and woodland. The site has since been cleared of all vegetation except for a few trees.

The site is bound to the north, east and west by low density residential development. A drainage/detention basin adjoins the site's northern boundary. A new, low density residential subdivision is currently being constructed to the south (refer to **Figure 2**).



Figure 2: Aerial view of the site and its surroundings (note: the site has since been largely cleared of vegetation) (Base image source: Nearmap)

3. APPROVAL HISTORY

On 3 August 2005, the Minister for Planning approved a Development Application (DA 485-12-2002) for a 40 lot subdivision, (the original DA) including:

- 39 residential lots;
- one drainage basin / open space lot;
- creation of roads; and
- vegetation clearing.

The approved residential lot layout is shown at **Figure 3**.

4. PROPOSED MODIFICATION

On 30 September 2016, the Proponent lodged a Section 75W modification application (DA 485-12-2002 MOD 1) seeking approval for the following amendments:

- increase the number of residential lots (from 39 to 51 lots) and associated amendments to lot dimensions;
- delete an on-site detention (OSD) basin and a drainage / open space reserve;
- deletion of front building setbacks;
- amendment of road layout, design and road reserve width; and
- remove the requirement to stage the development.

The modification proposes to delete the approved OSD basin and develop that land for residential lots in response to Shoalhaven City Council's (Council) Development Control Plan

(SDCP) 2014, which recommends OSD be provided for individual dwelling houses (rather than require a detention basin) to minimise financial burden on landowners and the community and to ensure that the use of OSD is appropriate to the needs of the community.

In addition, the proposed lots and roads would be amended so they align with the *Shoalhaven Local Environmental Plan 2014* (SLEP) minimum lot sizes, and to improve the efficiency of the subdivision layout. The Proponent has also confirmed the project would be carried out in a single stage rather than in two stages as originally approved.

The existing and proposed residential subdivision is shown at **Figures 3 and 4**.

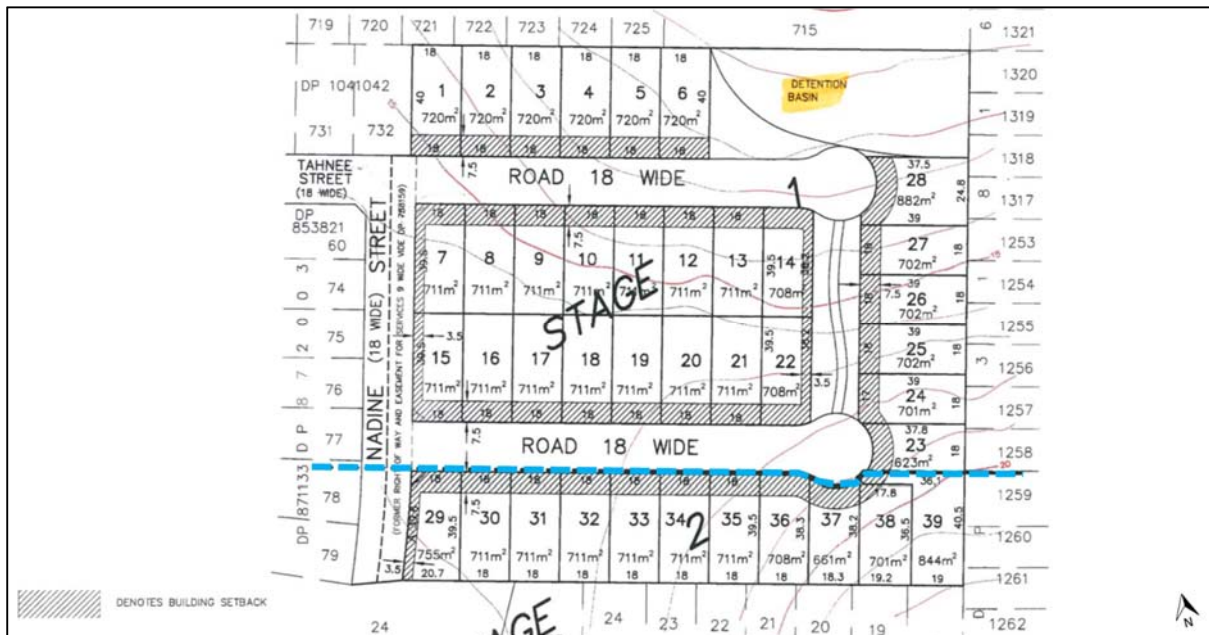


Figure 3: Approved residential lot layout and subdivision staging (blue line)
(Base source: DA 485-12-2002)

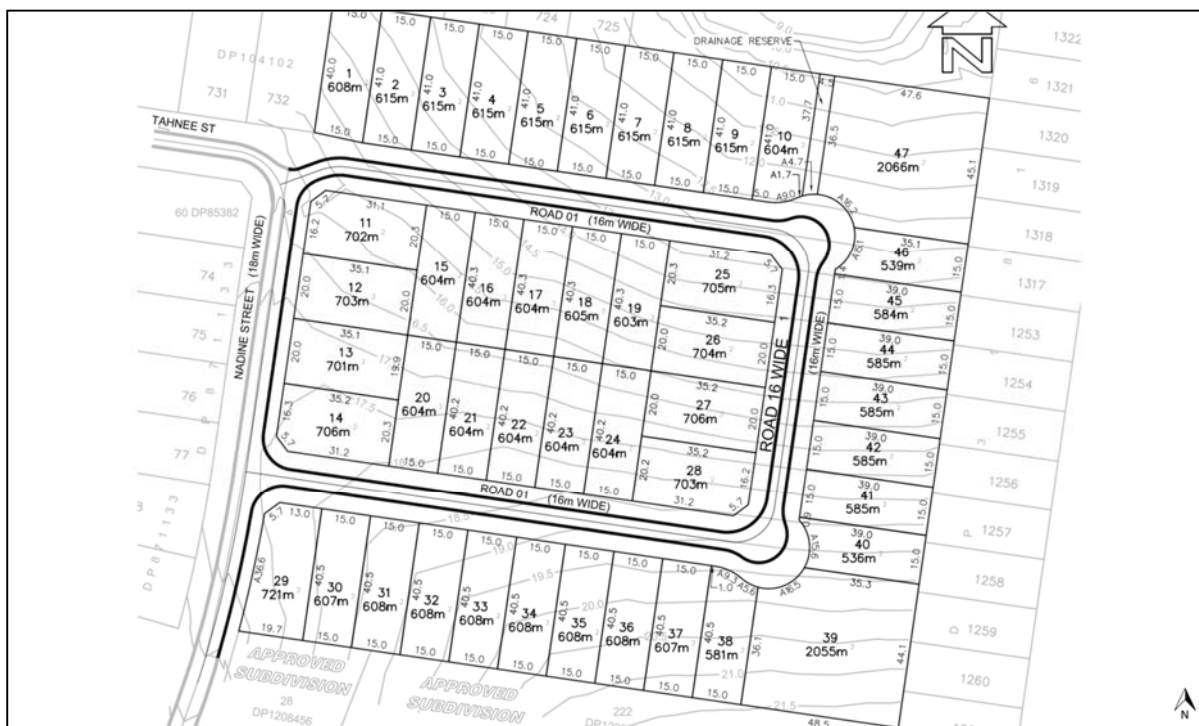


Figure 4: Proposed residential lot layout (Base source: Proponent's application)

5. STATUTORY CONSIDERATION

5.1 Section 75W

The development was originally approved on the 3 August 2005 by the then Minister Assisting the Minister for Infrastructure and Planning under Part 4 of the EP&A Act, as State Significant Development under *State Environmental Planning Policy, 71 – Coastal Protection*.

In accordance with 8J(8)(c) of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) a State Significant Development that was pending on the commencement of Part 3A (being 1 August 2005) and subsequently determined thereafter is to be modified under section 75W of the EP&A Act. In accordance with clause 12 of Schedule 6A of the EP&A Act, section 75W of the Act as in force immediately before its repeal on 1 October 2011 continues to apply to any such modification and hence modification to this approval must be made under the former section 75W of the Act.

Consequently, this report has been prepared in accordance with the requirements of Part 3A of the EP&A Act and the EP&A Regulations. The Department is satisfied that the proposed changes are within the scope of section 75W of the EP&A Act, and the proposal does not constitute a new application.

5.2 Approval Authority

The Minister for Planning is the approval authority. However, the Executive Director, Key Sites and Industry Assessments, may determine the application under delegation as:

- the relevant local council has not made an objection; and
- a political disclosure statement has not been made; and
- there are less than 25 public submissions in the nature of objections.

6. CONSULTATION

6.1 Notification

The Department made the modification application publicly available on its website, notified adjoining landholders and consulted with Council, Rural Fire Service (RFS) and Office of Environment and Heritage (OEH), about the proposed modification.

6.2 Submissions

Council does not object to the proposed modification but raised the following matters for consideration:

- the increase in lot density and reduced lot widths:
 - o have not been considered with respect to the potential for overshadowing;
 - o are not suited for the retention of trees;
 - o the removal of trees identified for retention has not been assessed;
- battle-axe Lots 39, 40, 50 and 51 have an unacceptable orientation, widths, buildable area size and corner splays;
- the reduction in road widths from 18 m to 16 m is not supported;
- insufficient information has been provided to justify the deletion of the OSD basin; and
- given the time since the original approval (14 years), the removal of on-site vegetation should be subject to a further review of significance.

OEH does not object to the proposed modification.

RFS does not object to the proposed modification and advises the proposed deletion of conditions H2 and H3 (relating to restrictions for bushfire protection) is acceptable, subject to a new condition being imposed regarding appropriate bush fire management.

There were 13 **public** submissions received on the proposal. Key issues raised in public submissions are summarised in **Table 1**.

Table 1: Summary of issues raised in public submissions to the notification of the modification

Issue	Proportion of submissions
Flooding and drainage issues	85%
Adverse biodiversity impact due loss of trees	69%
Inadequate road widths	53%
Loss of privacy due to reduction of lot sizes and potential two-storey dwellings	46%
Adverse traffic impacts due to increased density	31%
Smaller block sizes are out of character with this area	23%

A submission was also received from the Hon. Shelley Hancock, MP, in which she requested the Department consider the (above) concerns raised by her constituents.

6.3 Response to Submissions

On 19 December 2016, the Proponent provided its Response to Submissions (RtS), to issues raised by agencies and in public submissions and provides points of clarification on the proposal. The following key amendments were made to the modification application:

- consolidation of battle-axe Lots 39, 40 and 41 into one lot (Lot 39) and Lots 49, 50 and 51 into one lot (Lot 47), resulting in the reduction of proposed new lots from 51 to 47 lots;
- confirmation of trees for retention;
- amended road design to accommodate emergency service vehicles and garbage trucks; and
- increased width of Lot 44 (previously Lot 46) from 14.1 m to 15 m.

The Proponent subsequently updated the RtS and provided additional information on 8 and 23 February. The updates did not include any amendments to the modification application, but, provided additional information regarding solar access, medium density housing, the road reserve width, drainage and vegetation removal.

The Department referred the RtS (and supporting information) to Council for its consideration.

Council provided the following comments on the modification (as amended):

- the 15 m wide east-west oriented lots are too narrow, would result in adverse privacy and overlooking impacts and should be increased to 16 m in accordance with SDCP 2014;
- road reserve widths should be increased to 18 m, and, the proposed new road would be classified as a Local Street, not an Access Street under SDCP 2014;
- the creation of two large lots (consolidation of battle-axe lots) creates the expectation that medium density housing development can be accommodated on those sites, so those large lots should be further subdivided;
- the land has been cleared and the impact of the development on remaining vegetation must be assessed, as no further information has been provided regarding vegetation; and
- Council agrees to deletion of the detention basin from the site and notes upgrading works within the existing adjacent detention basin would be required.

7. ASSESSMENT

The key issues associated with the proposal have been considered in **Table 2**.

Table 2: Assessment of Key Issues

Issue	Consideration	Recommendation
<i>East-west oriented lots</i>	- The original DA allowed for the creation of residential lots with a minimum width of 18 m. The proposal seeks to reduce the minimum lot width by 3 m, to 15 m (Figures 3 and 4). - Public submissions raised concern that the lots are too narrow and may result in privacy impacts if two-storey dwellings are erected. - Council raised concern that the east-west oriented lots, located along the eastern boundary of the subdivision are too narrow and, may result in privacy and overshadowing impacts and should be increased to a minimum width of 16 m in accordance with SDCP 2014. - The Proponent argues the proposed 15 m wide residential lots are acceptable, as: - lots with 15 m widths are not uncommon within the Shoalhaven LGA and Council has recently approved 15 m wide residential lots in other locations; and - the east-west lots slope north and therefore can accommodate single and two-storey dwellings without adverse overshadowing impacts. - The Department notes SDCP 2014 stipulates rectangular lots should not be narrower than 16 m and allow for a 15 m x 15 m building envelope. - With regard to the north-south oriented lots, the Department considers that despite the SDCP 2014 provisions, a 15 m lot width is acceptable as these lots would gain good levels of solar access and can be designed to minimise privacy impacts. The Department also notes Council raised no concern with the width of these lots. - The Department agrees with Council that the east-west orientated lots should be increased in width by 1 m to comply with SDCP 2014 minimum (16 m) to ensure future dwellings achieve appropriate levels of amenity, in terms of solar access and privacy. - The Department notes this increase could reasonably be accommodated by a minor reduction in the width of the large corner lots. The Department recommends a condition accordingly.	The Department has recommended a new condition B10 (a) requiring the east-west oriented lots be increased to 16 m in width.
<i>Roadway widths</i>	- The proposal seeks to reduce the width of the road reserve by 2 m (from 18 m to 16 m). - Concern was raised in public submissions about the potential traffic and safety impacts of reducing the width of the road reserve. Council raised concern that the reduced width would constrain the opportunity for on-street parking and landscaping. - The Proponent states: - the reduced roadway reserve width complies with the minimum width recommended by SDCP 2014 for an 'Access Street'; - the road carriageway width is unchanged from the original DA approval; - car parking is not permitted on road verges and therefore a change to the verge width would not impact on car parking; and - sufficient space is provided within each lot for on-site car parking. - SDCP 2014 requires a minimum road reserve width of 16 m for Access Streets and 18 m for Local Streets. SDCP 2014 defines: Access Street as a street that is generally residential in nature, traffic is subservient and speed and volume are low (typically 15 – 50 dwellings); and Local Streets as collector streets that collect traffic from Access Streets and connect to major roads (typically 50 to 100 dwellings). - The Department notes the proposed road is a loop road not connected to a major road and would contain 47 dwellings when developed. The Department considers the loop road to be an Access Street in accordance with the SDCP 2014 definition and, therefore, a minimum 16 m road reserve width is applicable. - The Department is satisfied the width of the proposed road reserve	The Department has recommended Condition B2 be amended to reflect the amended road reserve width, lot types and numbering.

<i>Issue</i>	<i>Consideration</i>	<i>Recommendation</i>
	complies with the minimum requirements of SDCP 2014. The Department recommends Condition B2 be amended to take into account the proposed changes to the road reserve width, lot types and numbering.	
<i>Medium density housing</i>	- The proposal includes the creation of two large lots (2055 m² and 2066 m² respectively), located at the north-east and south-east corners of the subdivision. - Council is concerned the large size of the two corner lots creates the expectation that they would be suitable for medium density housing. However, Council is of the view that the lots are not suitable for medium density housing due to the constrained width of their street frontage. - The Proponent states medium density housing does not form part of this modification application and any such proposal would be the subject of a future, development application (DA) to Council. - The Department notes the two corner lots are larger than other lots within this, and surrounding, residential subdivisions. However, this is considered acceptable, as: - the lots exceed Council's minimum lot size requirements; - the application does not propose, or infer approval of, medium density housing lots; - the provision of larger lots addresses Council's concern about the creation of battle-axe lots; and - any proposal for medium density housing would be subject of a separate DA to be determined by Council.	No additional conditions or amendments necessary.
<i>Retained vegetation</i>	- The original DA approved the site to be cleared with the exception of 17 trees of significant biodiversity value required to be retained. - The site has now been cleared of native vegetation in accordance with the original DA. - More than half of the public submissions raised concern about the biodiversity impacts associated with the removal of native vegetation from the site. - Council recommended the impact of the subdivision on remaining vegetation be assessed. - The Proponent has confirmed the proposal does not seek to remove any of the trees to be retained. The Proponent also requested the requirement for a Section 88B Restriction under Condition B4(g) be deleted as SDCP 2014 adequately addresses the protection of trees. - The Department notes the removal of vegetation was considered in detail as part of the assessment of the original DA and this modification application does not propose to remove the trees identified for retention. - The Department notes two of the retained trees (at Lots 18 and 19), are located on, or partly on, the proposed lot boundaries. To ensure these trees are not adversely affected by the revised subdivision (i.e., they are retained as intended), the Department recommends a condition requiring the boundaries be amended to better accommodate these trees. - The Department is satisfied the requirement for the s88 Restriction can be removed, as: the remainder of Condition B4(g) requires trees to be retained, an updated tree retention plan has been provided, (and would form part of the approved drawings), and Council would be required to consider any request to remove trees as part of future DAs or tree removal applications.	The Department has recommended a new Condition B10 (b) requiring the amendment of the boundaries of Lots 18 and 19 to better accommodate retained trees. Condition B4(g) is updated to remove the requirement for a s88 Restriction.
<i>Drainage</i>	- The proposal includes: - deletion of the approved OSD basin; and - inclusion of a new 4.5 m wide drainage reserve which connects stormwater from the site to an adjoining, detention basin to the north of the site. - The majority of public submissions raised concern about the potential for flooding / drainage impacts due to the deletion of the OSD basin. - Council initially raised concern about the proposed modification. However, following the submission of the RtS, Council now confirms the proposal would not have unacceptable flooding/ drainage impacts. - The Proponent considers the removal of the OSD basin is justified as	The Department has recommended a new condition to address OSD. Condition B2(h) is also amended to take account of the changes to the flooding / drainage strategy for the site.

Issue	Consideration	Recommendation
	future developments would include individual oversized OSD for all lots in accordance with SDCP 2014. - The Department notes the purpose of including an OSD basin within the original DA was to address flooding and drainage matters. The Department considers the deletion of the OSD basin would not have any adverse amenity impacts as: - retaining stormwater on each individual site, rather than relying on a dedicated storage basin, ensures overland flows during storm events can be better managed/controlled; and - removal of the basin would not have adverse impacts on adjoining residential properties. - The Department also notes the introduction of kerb and guttering on the site would appropriately manage and control overland flows during storm events. - The Department recommends a new condition requiring a positive covenant to ensure each residential lot is provided with OSD in accordance with the Proponent's latest stormwater report. The Department also recommends Condition B2(h) be amended to account for the changes to the flooding / drainage strategy for the site. - With regards to the loss of open space from removing the OSD basin, Council's <i>Public Open Space Plan 2008</i> states Council does not consider land reserved for stormwater control to be suitable as open space for community use. - The Department also notes the land was not intended to be used as open space for recreation purposes and the SLEP 2014 and SDCP 2014 do not require open space to be provided for subdivisions of this size. - The Department's assessment therefore concludes the deletion of the OSD basin is acceptable as stormwater would be appropriately controlled on each individual lot and the OSD basin was not suitable for public open space.	
<i>Fire management and protection</i>	- The proposal seeks to delete Conditions H2 and H3 (Section 88B Restrictions) which prevent development of the site until land to the south has been developed and the bushfire hazard is reduced and managed. - The RFS noted the land to the south has been cleared and Condition (H2) is now redundant. The RFS agreed to the deletion of Condition (H3) provided it is replaced with another condition which protects the site from fire hazard, and requires the site to be managed in accordance with section 4.1.3 and Appendix 5 of <i>Planning for Bush Fire Protection 2006 Standards for Asset Protection Zones</i>. - The Department is satisfied fire risks can be appropriately managed, and recommends Condition H2 be deleted and Condition H3 be modified in accordance with RFS' requirements.	The Department has recommended Condition H2 be deleted as requested and Condition H3 be amended to reflect RFS' requirements.
<i>Culs-de-sac</i>	- Conditions B2(b), B2(c) and B2(l) require the provision of northern and southern cul-de-sac and an accessible north/south concrete pavement connecting the cul-de-sac (refer to Figure 3). - The proposal seeks to delete Conditions B2(b) B2(c) and amend Condition B2(l) because a loop road is now proposed to replace the two culs-de-sac and connecting concrete pavement. - The Department is satisfied Condition B2(c) is no longer necessary, given the revised subdivision design. In addition, the proposed loop road is considered to provide a superior layout when compared with the approved layout comprising two culs-de-sac.	The Department has recommended Conditions requiring B2(b), B2(c) be deleted, and Condition B2(l) be modified as requested.
<i>Staging</i>	- Condition A3 requires the development to be delivered in two stages. - The proponent seeks to delete Condition (A3) as it no longer proposes to stage the development. - The Department considers a single stage development is appropriate, as it is likely to: - reduce the duration of construction/site preparation works; - provide for a more efficient construction program; and - reduce potential construction impacts on neighbouring residential properties.	The Department has recommended Condition A3 be deleted as requested.

<i>Issue</i>	<i>Consideration</i>	<i>Recommendation</i>
<i>Building setbacks</i>	- The approved subdivision plans include a 7.5 m front building setback. - The proposed subdivision plans do not include building setbacks. - Council has not raised any objection to the removal of the building setbacks. - The Department notes SDCP 2014 includes detailed guidance on the location, size and dimensions of building envelopes. - The Department is satisfied SDCP 2014 would provide sufficient guidance for future development of the individual lots and appropriate building setbacks.	No additional conditions or amendments necessary.
<i>Contributions</i>	- Council has recommended the financial contributions within Conditions B3 (Water Supply and Sewer) and E11 (Monetary Contributions) be updated to reflect the increase in the number of lots, and provided revised contribution figures. - The Proponent has agreed to Council's revised contributions. - The Department recommends Conditions B3 and E11 be updated accordingly.	The Department has recommended Conditions B3 and E11 be updated to account for the increase in the number of residential lots.

8. CONCLUSION

The Department has assessed the modification application and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes the proposed modification is appropriate on the basis, that:

- the east-west oriented lots would be increased in width (by a new condition of approval) to ensure future dwellings achieve appropriate levels of amenity;
- deletion of the drainage basin and the retention of stormwater on each individual lot is consistent with SDCP 2014
- the proposed road reserve width is consistent with the requirements of SDCP 2014;
- the provision of two larger sized lots meet the minimum lot size requirements, with any future DAs for these sites to be assessed by Council;
- lot boundaries would be amended to ensure the retention of trees is not jeopardised; and
- fire risks can be appropriately managed, subject to amended conditions.

Consequently, it is recommended the modification be approved subject to the recommended conditions.

9. RECOMMENDATION

It is RECOMMENDED that the Executive Director, Key Sites and Industry Assessments, as delegate of the Minister for Planning:

- considers** the findings and recommendations of this report;
- approves** the application under section 75W of the EP & A Act, subject to conditions; and
- signs** the notice of modification (**Appendix A**).

Prepared by:
Michael Woodland (Planning Consultant)

Anthony Witherdin
Director
Modification Assessments

Anthea Sargeant
Executive Director
Key Sites and Industry Assessments

APPENDIX A: NOTICE OF MODIFICATION

A copy of the notice of modification can be found on the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8024

APPENDIX B: SUPPORTING INFORMATION

The following supporting documents and supporting information to this assessment report can be found on the Department of Planning and Environment's website as follows:

1. Modification request

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8024

2. Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8024

3. Response to Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8024