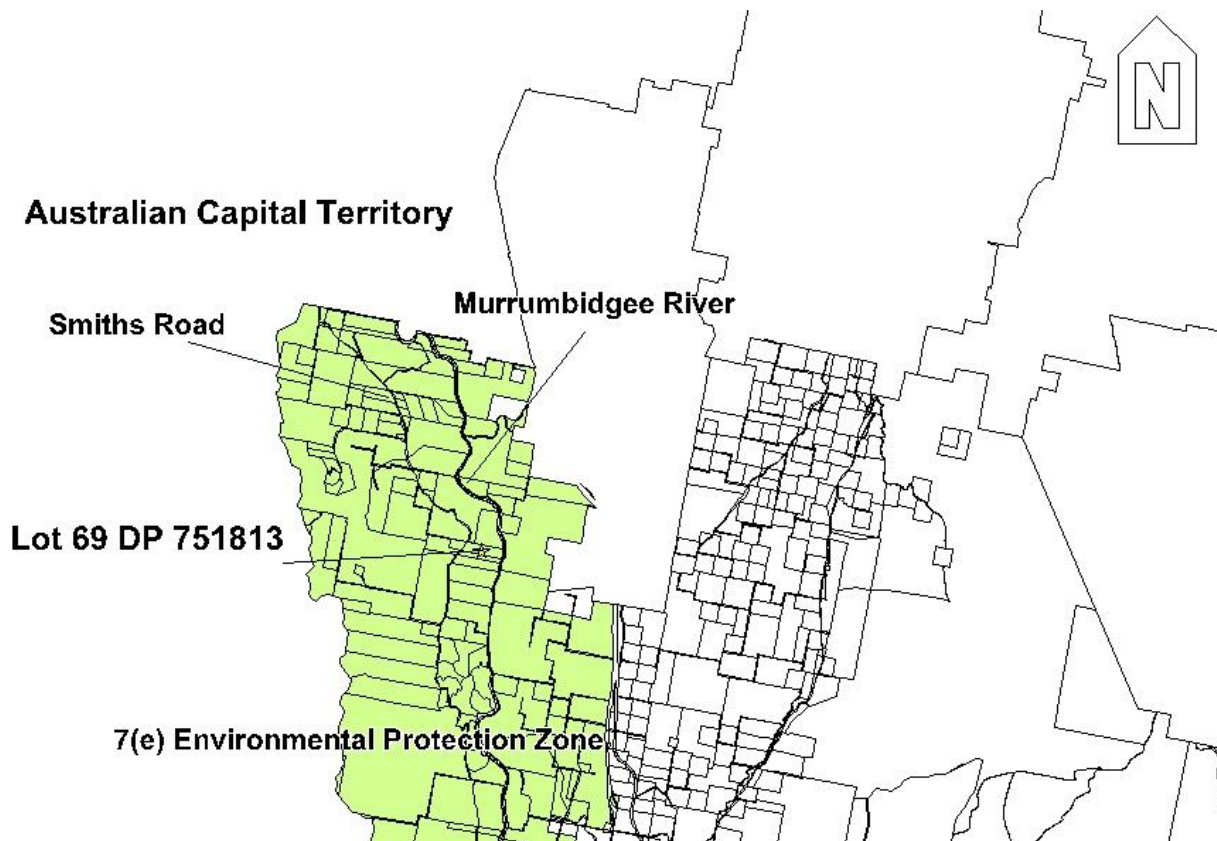


**Cooma-Monaro Shire Council
Planning Proposal**

Amendment of Schedule 9 Development for additional purposes of the *Yarrowlumla Local Environmental Plan 2002* to enable a dwelling (with consent) to be erected on Lot 69 DP 751813

The Planning Proposal concerns Lot 69 DP 751813, Smiths Road, Clear Range. The lot is currently zoned No 7 (e) (Environmental Protection Zone) under the *Yarrowlumla Local Environmental Plan 2002*.

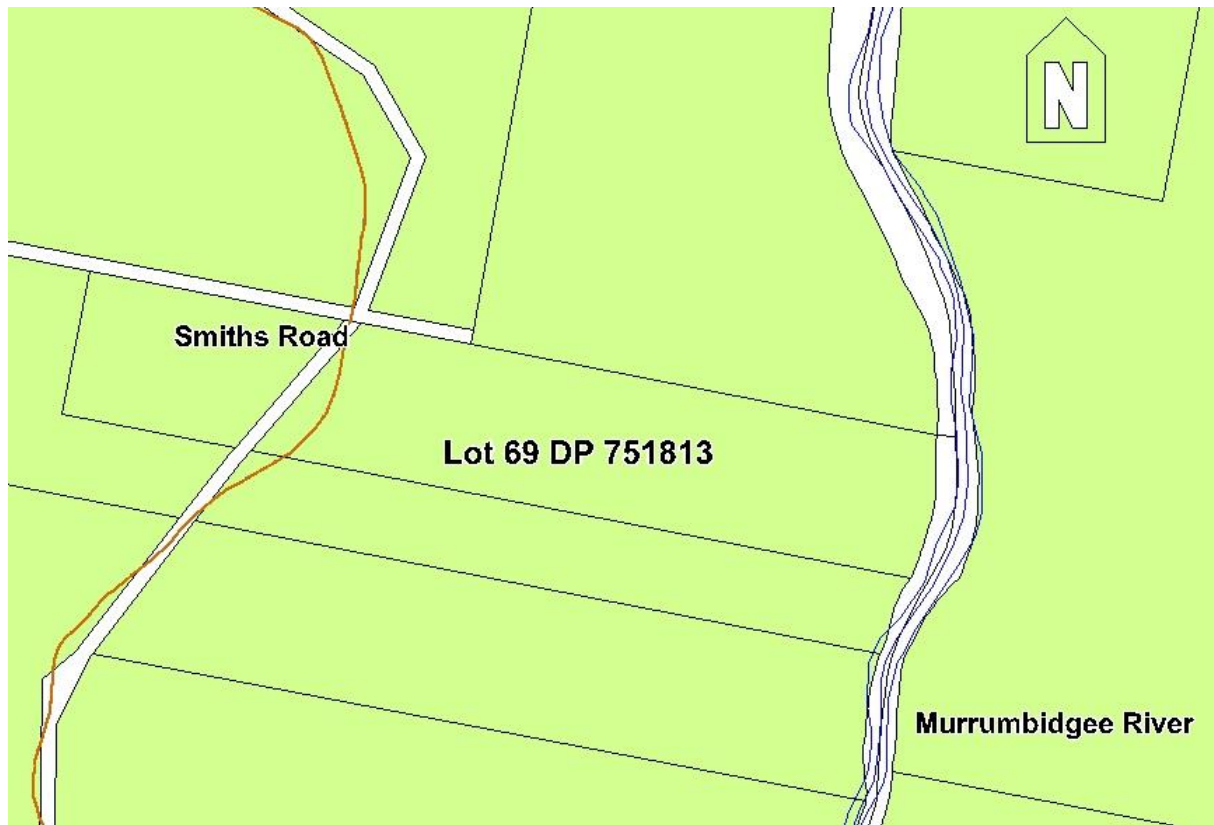
Lot 69 DP 751813 is 24.131 hectares (Cooma-Monaro Shire Council rates data base) and is located on both sides of Smiths Road. The lot is currently vacant although recent development approval has been given for the erection of a machinery shed (DA 127/11). Access to the lot is from Smiths Road. The location of the lot and the current landuse zoning is shown in Figure 1 below.



Map 1
Source

Location of Lot 69 DP 751813 and current landuse zoning
Cooma-Monaro Shire Council

A detailed illustration of the lot is shown below:



Map 2 Lot 69 DP 751813
Source Cooma-Monaro Shire Council

Part 1 Intended outcomes

The applicants are seeking an amendment of the *Yarrowlumla Local Environmental Plan 2002* to include Lot 69 DP 751813, Smiths Road, Clear Range in Schedule 9 Development for additional purposes.

Part 2 Explanation of the provisions that are to be included in the proposed local environmental plan

The inclusion of Lot 69 DP 751813 in Schedule 9 Development for additional purposes the *Yarrowlumla Local Environmental Plan 2002* will allow a dwelling to be erected on Lot 69 DP 751813 (with development consent).

Part 3 Justification for the intended outcomes and the process for their implementation

Clause 28 of the *Yarrowlumla Local Environmental Plan 2002* requires that for the erection of a dwelling in the 7 (e) (Environmental Protection Zone) that the following must exist:

- be a vacant allotment having an area of not less than 80 hectares or
- be a lot in a subdivision consented to in accordance with clauses 18 and 23 or
- be a lot in a subdivision which was consented to or approved by the Council before the appointed day and which meets the requirements for erecting a dwelling house that applied at the date the subdivision was consented to or approved.

As the lot is only 24 hectares and does not result from a subdivision approved by Council, a dwelling is unable to be erected on the Lot 69 DP 751813. A development application and objection under *State Environmental Planning Policy No 1—Development Standards* were lodged by the applicants' in 2009. The NSW Department of Planning did not provide concurrence to the *State Environmental Planning Policy No 1—Development Standards*

objection. Environmental assessments were undertaken as part of the development application.

The applicants' justification for the amendment of amendment of Schedule 9 Development for additional purposes of the *Yarrowlumla Local Environmental Plan* is:

- “i) The removal of the building entitlement under YLEP 2002 can not be justified given:
- a) Lot 69 DP751813 1445 Smiths Road enjoyed a building entitlement for the period 24th December 1970 – 12th June 2002 consistent with the objectives of the planning instruments applying to Yarrowlumla Shire over this period.
 - b) the zoning of the land [Zoned 7(e) (Environmental Protection)] applying under YLEP 2002 is as introduced 14th February 1986.
 - c) the objectives of Zone 7(e), YLE 2002, are as introduced 14th February 1986 under YLEP 1986.
 - d) the development standard [80ha] applying to the erection of a dwelling on the subject land under YLEP 2002 is as introduced November 1975 under IDO NO 1 Yarrowlumla.
- ii) Under Cl 28(1) (c) an anomaly has been created as to the preservation of building entitlements enjoyed by lots created under subdivision as against lots created through the transfer of an original parish portion title in the circumstances where the prescribed development standard can not be met at this time.
- iii) The inconsistency applying to the preservation of the building entitlements applying to a “1995 holding” located within Zone No 1 (a) Zone as against the removal of the building entitlement enjoyed by a “1995 holding” located within Zone 7 (e) prior to the gazettal of YLEP 2002
- iv) Reinstatement of the building entitlement under Clause 60, YLEP 2002 will not create an undesirable precedence.
- v) There are no environmental constraints to the development of the subject land for rural residential purposes; as confirmed by council in refusing the SEPP No.1 application “there is capacity for a dwelling on the site”
- vi) the proposed erection of a dwelling and associated out buildings on the subject land is consistent and compatible with the local land ownership pattern and the land use activities carried out on adjacent and adjoining lands.
- vii) Council under Development Application 127/11DA [Erection of a machinery Shed] has approved the location of the building precinct within which the proposed dwelling is to be erected and granted consent to the construction of the access road to that building precinct.
- viii) Subsequent to the carrying out of the development approved under Development Application 127/11DA, the erection of the a dwelling on Lot 69 will have minimal environmental impact.
- ix) Reinstatement of the building entitlement enjoyed by Lot 69 DP751813 prior to 12th June 2002 will not negate the planning objectives applying to Zone 7 (e) under YLEP 2002.”

Under the previous environmental planning instrument, *Yarrowlumla Local Environmental Plan 1993* (which is no longer in force for the former Yarrowlumla local government area now included in the Cooma-Monaro local government area), Clause 17(7)(b) permitted a dwelling with consent if the allotment was a ‘1995 holding’ on which a dwelling-house could have been lawfully erected immediately before the appointed day.

A ‘1995 holding’ is defined as being:

- (a) *except as provided by paragraph (b)—an allotment, portion or parcel of land in existence at the date of gazettal of Yarrowlumla Local Environmental Plan 1993 (Amendment No 6) as a separate allotment, portion or parcel, or*

(b) where, as at the date of gazettal of *Yarrowlumla Local Environmental Plan 1993* (Amendment No 6), a person owned 2 or more adjoining or adjacent allotments, portions or parcels of land having access to a public road—the land comprised of the aggregation of the areas of those allotments, portions or parcels,

but does not include a 1966 holding.

(Clause 6 *Yarrowlumla Local Environmental Plan 1993*)

Cooma-Monaro Shire Council has sought written advice from Palerang Council as to whether the Lot 69 DP 751813 was a ‘1995 holding’ (Palerang Council hold the property valuation records that determine whether a holding exists). Palerang Council has advised that Lot 69 DP 751813 is a ‘1995 holding’. It is concluded that under the *Yarrowlumla Local Environmental Plan 1993*, that a dwelling could have been erected with consent on Lot 69 DP 751813.

An amendment of the *Yarrowlumla Local Environmental Plan 2002* in this instance is likely to establish a precedent which may in the long term may not be in the interests of landuse planning across the Cooma-Monaro local government area.

The precedent is amending a current Local Environmental Plan to allow the erection of a dwelling which would have been permissible with consent under a previous Local Environmental Plan.

Considerations associated with the potential precedent are:

- The creation of an inefficient, difficult and confusing Cooma-Monaro planning system:
 - ❖ It is likely that there will be further requests for variations (possibly substantial) of existing planning provisions in both the Smiths Road area and other parts of the Cooma-Monaro local government area including rural, rural residential or the other environmental zone. Council staff time will be spent managing individual requests for amendments rather than undertaking strategic planning work which focuses on the whole of the local government area.
 - ❖ The provisions in current local environmental plans will not be valued as it will be viewed by the community that it is possible to amend a current planning instrument where this instrument does not allow what is being sought by the applicant(s).
 - ❖ A lack of certainty for adjoining property owners, those in the region, developers and government regarding development type and location in the Cooma-Monaro local government area.
- The current planning instruments are the core of the Cooma-Monaro local government planning system. If provisions from previous instruments are used, an alternative system is being created. Dwelling and subdivision provisions in local environmental plans assist in managing the density of development. Such controls assist in protecting the natural environment and planning and managing the provision of infrastructure and services. Allowing amendments of current environmental planning instruments, particularly on an ad hoc basis may result in:
 - ❖ Unwanted impacts on the natural environment.
 - ❖ Problems with determining the level of requirement and necessary funding for infrastructure and services and pressure for infrastructure and services in locations.

- The above comments are particularly of concern where the result of an amendment is a large variation of a current planning provision.
- The information associated with the properties that were previously in the Yarrowlunla local government area are not be held by Cooma-Monaro Shire Council and information associated with previous planning provisions for all previous planning instruments is old (usually meaning that it contains little or incomplete information and is difficult to work with).
- Considerable thought and discussion is involved in the preparation of a comprehensive Local Environmental Plan and to allow ad hoc amendments undermines the policy decisions made by Council, the state government and community input.

Section A-Need for the planning proposal

1 Is the planning proposal a result of any strategic study or report?

There is no strategic study or report.

2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

An amendment of the *Yarrowlunla Local Environmental 2002* is the only means of enabling a dwelling to be erected with consent on Lot 69 DP 751813 as the NSW Department of Planning and Infrastructure has not given its concurrence to an application under *State Environmental Planning Policy No1 –Development Standards*.

3 Is there a net community benefit?

In regard to the social environment, it is likely that there would be a benefit to the Smiths Road community if a dwelling was erected on the lot as a diversity of property owners often brings a range of skills to an area which in turn increases community capacity.

The benefits brought to the natural environment and in turn the community through noxious weed control and the protection of the natural environment are a property owner responsibility regardless of whether a dwelling exists and whilst it is beneficial that they would be undertaken, they will not provide a significant benefit.

Section B-Relationship to strategic planning framework

1 Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

There are no regional plans applying to this proposal.

2 Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan

There is no Strategic Plan for the Cooma-Monaro local government area. Following a substantial amount of strategic planning work, Council has prepared a *draft* Twenty Year Strategic Direction for the whole of the Cooma-Monaro local government area and is currently preparing a *draft* Local Environmental Plan. It is anticipated that both documents will be exhibited in the first half of 2011. Additionally, Council is currently preparing a Community Strategic Plan as required under the *NSW Local Government Act 1993*.

3 Is the planning proposal consistent with applicable state environmental planning policies?

Applicable State Environmental Planning Policies

State Environmental Planning Policy	Consistency
<i>State Environmental Planning Policy No 44—Koala Habitat Protection</i>	A flora and fauna assessment did not find evidence of koalas. Given the low number of Eucalypts on the property and the disturbance to the native vegetation it is unlikely that the lot contains habitat for koalas. The Planning Proposal is consistent with the State Environmental Planning Policy.
<i>State Environmental Planning Policy No 55—Remediation of Land</i>	A stage 1 contaminated lands assessment has not been undertaken. A stage 1 contaminated lands assessment would normally be requested as part of a rezoning application. However, the amendment sought does not involve the rezoning of land. This is consistent with the State Environmental Planning Policy.
<i>State Environmental Planning Policy (Rural Lands) 2008.</i>	The subject lot is not state significant agricultural land. Given the size of the lot, the agricultural potential of the lot by itself is very limited. There is some broad scale grazing occurring in the area. Clause 10 of the State Environmental Planning Policy is applicable. The clause requires consideration of the existing uses of the land and that in the vicinity and the impact on landuses and compatibility. Assuming that the property residents control dogs, noise, noxious weeds and other activities that can potentially disturb grazing stock there will be minimal impact on surrounding agricultural activities.

4 Is the planning proposal consistent with applicable Ministerial Directions (117 directions)?

Applicable Ministerial Directions (Section 117 directions)

Applicable Section 117 Ministerial Directions	Consistency
1.5 Rural Lands The objectives of this direction are to: (a) protect the agricultural production value of rural land, (b) facilitate the orderly and economic development of rural lands for rural and related purposes.	<i>Inconsistent</i> The subject lot is not state significant agricultural land. Given the size of the lot, the agricultural potential of the lot by itself is limited. Whilst the Planning Proposal is inconsistent with the Direction the inconsistency is minor. The proposal does not enhance the Rural Planning Principles included in <i>State Environmental Planning Policy (Rural Lands) 2008</i>.
2.1 Environment Protection Zones The objective of this direction is to protect and conserve environmentally sensitive areas.	<i>Inconsistent</i> The lot and its surrounds are considered to be environmentally sensitive due to the proximity of the Murrumbidgee River and the native vegetation.

	The flora and fauna report found that native vegetation on the lot (although not in the area of the proposed dwelling) included the endangered ecological community White Box Yellow Box Blakely's Red Gum Woodland and the listed flora species Silky Swainsona (<i>Swainsona sericea</i>). The community White Box Yellow Box Blakely's Red Gum Woodland is listed under the <i>Environment Protection and Biodiversity Conservation Act 1999</i>. It is understood that there has been no assessment by the Department of Sustainability, Environment, Water, Population and Communities of the proposal. The Planning Proposal is inconsistent with the Direction as the outcome will be that a dwelling is able to be erected on Lot 69 DP 751813, negating the need under the <i>Yarrowlumla Local Environmental Plan 2002</i> for the dwelling to be on a lot of 80 hectares. This in turn allows a dwelling on 24.131 hectares in an environmentally sensitive area. An increase in the density of humans (and their associated activities) is recognised as not being conducive to maintaining or enhancing an environmentally sensitive area. Whilst one property may not have a significant impact it is the cumulative impact of pets, vehicles, noise, waste disposal, structures and the like that is detrimental for an environmentally sensitive area. For historical reasons dwellings have been developed on small lots in the locality. However, as knowledge of the management of environmentally sensitive areas has increased, it is viewed that a higher density of dwellings in environmentally sensitive areas is not conducive to the protection and enhancement of such areas.
2.3 Heritage Conservation The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	<i>Inconsistent</i> There are no known significant landscape features, Aboriginal objects or non-indigenous heritage items on the lot. The lot is not an Aboriginal place listed under the <i>NSW National Parks and Wildlife Act 1974</i>. An Aboriginal archaeological assessment concluded that there are no Aboriginal archaeological constraints to the current development proposal (erection of a dwelling) for the lot. The Planning Proposal is inconsistent however, a strategy is not required for the protection of heritage as there are no items listed.
2.4 Recreation Vehicle Areas The objective of this direction is to protect sensitive land or land with significant conservation values from adverse impacts from recreation vehicles.	<i>Consistent</i> The Planning Proposal will not enable land to be developed for the purpose of a recreation vehicle area (within the meaning of the <i>Recreation Vehicles Act 1983</i>).
3.2 Caravan Parks and Manufactured Home Estates The objectives of this direction are:	<i>Inconsistent</i> The inconsistency is considered to be minor as the Planning Proposal only relates to one dwelling.

(a) to provide for a variety of housing types, and (b) to provide opportunities for caravan parks and manufactured home estates	
3.3 Home Occupations The objective of this direction is to encourage the carrying out of low-impact small businesses in dwelling houses.	<i>Consistent</i> The <i>Yarrowlunla Local Environmental Plan 2002</i> permits home occupations without consent.
4.4 Planning for Bushfire Protection The objectives of this direction are: (a) to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and (b) to encourage sound management of bush fire prone areas.	<i>Consistent</i> Part of the lot is categorised as bushfire prone on the Cooma-Monaro Bushfire Prone Land Map. The NSW Rural Fire Service has not has not raised an objection to the proposed dwelling although conditions of consent would be required if a dwelling was approved. If the Gateway Determination permits the Planning Proposal to proceed the proposal will be re-referred to the NSW Rural Fire Service.
6.1 Approval and Referral Requirements The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.	<i>Consistent</i> The Planning Proposal does not contain concurrence, consultation or referral provisions.
6.2 Reserving Land for Public Purposes The objectives of this direction are: (c) to facilitate the provision of public services and facilities by reserving land for public purposes, and (d) to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.	<i>Consistent</i> The Planning Proposal does not create, alter or reduce existing zonings or reservations of land for public purposes.
6.3 Site Specific Provisions The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.	<i>Consistent</i> The Planning Proposal does not impose additional requirements to those in the <i>Yarrowlunla Local Environmental Plan 2002</i>.

Section C – Environmental, social and economic impact

1 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

A flora and fauna report was undertaken in October 2009. The flora and fauna report identified the listed flora species Silky Swainsona (*Swainsona sericea*) and the endangered ecological community White Box Yellow Box Blakely's Red Gum Woodland. The community White Box Yellow Box Blakely's Red Gum Woodland is listed under the *Environment Protection and Biodiversity Conservation Act 1999*. Additionally, the report states that there are fifteen fauna listed species “expected to find appropriate habitat on the block.” The report also states “It is not inappropriate that human occupation of the subject site occurs. The direct impacts of the development proposal will not have a significant impact on the EEC (*endangered ecological community*). It is the direct and indirect longer term impacts that cannot be adequately or confidently assessed, and indeed there is no possible way they can be forecast.” The reports suggest that a Property Vegetation Plan be obtained. The applicants’ have obtained a Property Vegetation Plan however, it does not cover the entire lot.

Whilst the property owners' have undertaken several environmental initiatives, it is suggested that an increase in the number of dwellings in the area will impact on the environmental values of the zone (refer to comments under the above assessment of the proposal against the 117 Direction 2.1 Environment Protection Zones).

2 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

Aboriginal archaeological heritage

Refer to comments under the above assessment of the proposal against the 117 Direction 2.3 Heritage Conservation.

Bushfire hazard assessment

Refer to comments under the above assessment of the proposal against the 117 Direction 4.4 Planning for Bushfire Protection.

Potable water supply

There is no Council reticulated water supply available in this area. As with other dwellings outside of reticulated systems, it is likely that potable water would be obtained from roof water and/or groundwater and possibly the Murrumbidgee River (the lot has frontage to the Murrumbidgee River).

It is probable that there would be a cumulative impact if water was extracted from groundwater and/or the Murrumbidgee River but it is not possible to quantify this impact.

Site and Soil Assessment (on-site effluent report)

A site and soil assessment has been undertaken and proposes an effluent irrigation system. Council's Health and Building Surveyor has accepted this.

3 How has the planning proposal adequately addressed any social and economic effects?

Given the small number of residential lots (approximately five additional people) to be potentially created it is considered that the impact on existing community, health and emergency services will be minor – assuming that there is a mix of age and needs.

Social impact

There are no significant social impacts relating to the erection of a dwelling on the lot. As stated above it is likely that there will be a positive impact as new residents often bring a range of skills which increases community capacity.

The closest health and educational facilities are in the southern part of the Australian Capital Territory.

Economic impact

The use of Smiths Road, an unsealed road will increase. The average daily number of vehicle movements for a household in a rural environment is six. The residents of Smiths Road regularly express their concerns about the condition of Smiths Road to Cooma-Monaro Shire Council. Development contributions under Section 94 of the *NSW Environmental Planning and Assessment Act 1979* and rates assist with the maintenance and minor improvements to the road. However, the funds are not/will not be sufficient to maintain an unsealed road with increasing vehicle movements.

There are no direct economic benefits to the Smiths Road area created from the proposal.

It should be noted that if the precedent referred to above is used in similar situations it may make the planning and provision of needs in the Cooma-Monaro local government area problematic.

Section D – State and Commonwealth interests

1 Is there adequate public infrastructure for the planning proposal?

Refer to above comments regarding Smiths Road and health and educational facilities and road. There is a community hall, fire shed and a site for the collection of waste by Cooma-Monaro Shire Council. An increase of one dwelling is unlikely to impact on this infrastructure and the level of infrastructure is considered adequate given the non-urban environment.

2 What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

There has been no consultation by Cooma-Monaro Shire Council with any State or Commonwealth public authorities.

If the Planning Proposal proceeds it will be referred to the following organisations:

- NSW Rural Fire Service
- NSW Department of Premier and Cabinet, NSW Office of Environment and Heritage
- Department of Trade and Investment, Regional Infrastructure and Services, Department of Primary Industries
- *Department of Sustainability, Environment, Water, Population and Communities in regard the listed endangered ecological community*

Part 4 – Community Consultation

There has been no community consultation by Cooma-Monaro Shire Council relating to this Planning Proposal.

Additional information pertaining to the reclassification of land

If the provisions of the planning proposal include the extinguishment of any interests in the land, an explanation of the reasons why the interests are proposed to be extinguished
Not applicable.

The concurrence of the landowner, where the land is not owned by the relevant planning authority

Not applicable.