

# **Oaks Estate Progress Association**

## **Response to Draft Variation No 328: Oaks Estate Precinct Code**

### **Summary**

The draft Oaks Estate Precinct Code (proposed code) should not be progressed in its current form and should be excised from draft variation 328. The proposed code is fundamentally flawed because it is not capable of maintaining the history and character of Oaks Estate. If it proceeds it is inconsistent with the strategic directions in the Territory Plan and will risk resulting in a breach of the National Capital Plan.

A new precinct code must be developed that is appropriate to Oaks Estate's status as a village as defined in the National Capital Plan, and fully incorporating a finalised heritage plan. We also call on the ACT Government to implement other recommendations of the Master Plan, such as public space upgrades, public transport and reduced concentrations of public housing.

### **Introduction**

The Oaks Estate Progress Association (OEPA) is supportive of the ACT Government efforts to plan for the future development of Oaks Estate. We note that this planning process began twenty years ago in 1994 and has included two major reports:

*Oaks Estate Planning Review: Community Consultation Final Report* (Guppy and Stewart, 1994)

*Oaks Estate Planning Study* (Monaro Consultants for the ACT Department of Urban Services, 2001)

The views of the Oaks Estate community have been made very clear to the ACT Government through those reports, which involved extensive consultation with the community. The majority of those community members are still here, and our fundamental views remain the same as found during the 1994 consultation:

- That a land use policy inclusive of appropriate buffering for Oaks Estate be developed that supports the existing village character, its significance and heritage qualities of the area and restricts unsympathetic development.
- That the existing single dwelling housing densities in Oaks Estate be maintained and that no further medium density, unit or multi unit housing developments be undertaken.

The OEPA and the Oaks Estate community support development where it is compatible with the existing community, predominantly single-dwelling residential in built form, reflects the existing the village pattern and the village character. The OEPA view appropriate development to be low-scale, low-impact development, and which protects the identified heritage values of the village. While the OEPA acknowledges that the Master Plan has involved the community and given expression to a range of views, we do not believe that DV No 328: Oaks Estate Precinct Code (the proposed code) succeeds in establishing best practice guidelines for development in this unique community. The opportunity to document and record and provide recognition of what makes Oaks Estate special and distinctive is being missed entirely, and there are major cultural heritage, land contamination, cross-border and flooding issues that are being overlooked. The opportunity to link back to and thereby confer statutory weight on the Master Plan has not been taken.

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The approach is fundamentally at odds with what the Environment and Planning Directorate has done at the villages of Hall and Tharwa. Given that the National Capital Plan identifies Oaks Estate as a village alongside Hall and Tharwa, any ACT planning initiative must be consistent across all villages, and must retain village status and enhance the village's functioning. There is a fine line between merely encouraging Oaks Estate to expand beyond a village into an outlying suburb, and the character destroying activity of releasing a cluster of sites for more intensive development while permitting the Territory Plan to operate unchecked throughout the village as if it were a typical suburb. In the absence of clear statutory objectives, strong limits on what is permissible in either the CZ5 or RZ1 areas, or rules linking back to the Master Plan, the draft variation has crossed that line.

The Master Plan and proposed code have been presented as a mechanism to address a variety of problems that have resulted from years of ACT Government neglect. The ACT Government is attempting to outsource their responsibilities onto developers, by making them responsible for building footpaths, upgrading the sewage and water and other infrastructure, services for which the ACT Government is already being paid by rates from existing residents to provide. Through a combination of actions and inactions - allowing the village of Oaks Estate to run down, and burdening it with an excessive concentration of public housing without providing the necessary community services and transport that those clients need - the ACT government is now seemingly paving the way to allow the sale of publicly owned land and assets for intensive redevelopment and ignoring the potential for inappropriate redevelopment elsewhere in the village, despite legitimate concerns about heritage impacts, land contamination, cross-border and flooding issues.

## **Background and general comments**

The precinct code that currently applies to Oaks Estate was created by a technical amendment in 2012, along with over a hundred precinct codes introduced at the same time that significantly altered the machinery of the Territory Plan. There was very little consultation undertaken then and being classified as a technical amendment, it avoided the lengthy process that a variation must otherwise go through.

The precinct code brought in at that time is brief, applies only to the CZ5 zone, says very little, and mainly operates as a placeholder. It cross-references the rules and criteria contained in the Beard Precinct Code to the CZ5 zone without detailing these (there is a single mandatory rule relating to industrial uses).

The proposed code contained in the draft variation would tweak the current Precinct Code and in practice do little more than permit three-storey development instead of two storeys, thereby increasing land values. There are a number of construction and language/definition problems with the framing of the draft rules and criteria, which would make the rules difficult to enforce and which allow excessive scope for varied interpretations of the criteria.

There are four fundamental concerns that the OEPA has:

1. The density intensification allowed by the proposed code could bring an additional circa 650 people to a village of only 260 people. This is without any increase in development rights as often occurs during the development application process, such as allowing increased storeys. There are also significant future impacts occurring from the redevelopment of public housing assets that have not been calculated. This is an unacceptable level of population density to be concentrated in a relatively small precinct, and would shift the character from that of a quiet village spreading out from the railway station with a predominance of pre-war cottages, where many community members are

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long-term residents who know each other, to a much more busy congested new estate where the majority of the population would have no ties to the past and would be living in three storey high density unit blocks<sup>1</sup>. Of immediate concern is the CZ5 area, which is of high heritage significance, has been linked to the 'Three Corner Stones' – Robertsons House, Queanbeyan Railway Station (formerly Oaks Estate) and 'The Oaks.' All these buildings are fully registered and listed Heritage assets and in proximity to each other. Development in the CZ5 area should be done to enhance and protect the defined values of these significant heritage assets and their physical and visual connections. OEPA would like this area sensitively developed with appropriate buffering between listed assets and new development. And any new development must be consistent with the predominant scale form and typology of the listed assets and adjacent buildings – single dwelling single storey structures.

2. Aspects of the Master Plan that deal with protecting the unique heritage character of Oaks Estate and ensuring that future development is complementary have not been given statutory effect in the draft code. Of particular concern is the lack of protection for the two defining characteristics of the community - the heritage style buildings and the layout of large blocks with smaller residences. The risk that these characteristics will be diluted and eventually lost through incremental extensions, secondary residences, consolidation and subdivision, make it necessary to extend protections over the entire residential area.

3. There is no statement of desired character to define the overall desired future direction of development for Oaks Estate. This is in contravention of the Government's agreed process for developing new Precinct Codes and restricts the ability for planners to assess development applications in the context of the surrounding community. How can planners protect the character of Oaks Estate, when there is no statutory definition of what that character is?

4. The final two problems are exacerbated by the fact that the heritage precinct nomination process has not yet been completed and there has been no comprehensive contamination assessment undertaken in the course of the master plan. The planning process is fatally flawed if it proceeds without sound information, and the ACT government would be liable if future residents suffer health risks .

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<sup>1</sup> This calculation is based on all land in the CZ5 area being redeveloped to allowable levels of the proposed code, as well as the existing development for the Mobil Site and the proposed townhouses on blocks 1-3 section 5 as shown in diagrams of the Master Plan.

## Statutory Planning Priorities

### Proposed code is inconsistent with the National Capital Plan

OEPA argues that multiple aspects of the planning framework for Oaks Estate are inconsistent with the National Capital Plan and would therefore be rendered as having no effect, by the provisions of Section 11.1 of the Act *An enactment that is inconsistent with the Plan has no effect to the extent of the inconsistency...* and Section 11.2 ... *Territory authority shall not do any act that is inconsistent with the Plan..*

#### Does not protect village status as defined by National Capital Plan

The proposed code would enable a range of development to occur as it would almost anywhere else in the ACT. This would effectively mean that the village status of Oaks Estate, as defined by section 4.4 a of the National Capital Plan, would rapidly be eroded, and the area would most likely take on the characteristics and behaviours of an outlying suburb rather than a village with a distinct history and cultural heritage and character of its own that its residents and many others wish to keep. This is quite clearly inconsistent with the National Capital Plan.

The historic village of Oaks Estate is an essential feature of the National Capital Plan's framework, that the ACT government has through a combination of actions and inactions allowed the village to run down, has burdened it with an excessive concentration of public housing without providing the necessary community services and transport that those clients need, and is now preparing the ground to allow intensive wholesale redevelopment despite legitimate concerns about significant heritage impacts, land contamination, cross-border and flooding issues.

There are compelling reasons for arguing that an ACT village in such a sensitive location directly on the railway's approach route to the Kingston station (one of two designated areas in the National Capital Plan that run close to Oaks Estate), framed by two ancient rivers and their junction, with an intact rural backdrop and a complex and fascinating history of its own intersecting with both the national capital's and surrounding region's aboriginal and European histories, with evidence tracing back nearly 180 years exhibiting distinctive nineteenth century and early twentieth century buildings, outbuildings, fencing, planting, former market gardens, plus the station itself... this is a simply extraordinary window in time jam-packed with character, sandwiched between a rapidly growing metropolis and a NSW border town. This warrants special treatment and best practice planning and management.

#### Does not protect rural surrounds of Oaks Estate

The National Capital Plan requires under 4.4c *The hills, ridges and other major open space will form the separation between towns and will be kept largely free of urban development, to act as a backdrop and setting for the City.* This is further codified in Section 8.5.2 *Principle for Hills, Ridges and Buffer Spaces.* Despite the villages of Hall and Tharwa having clearly defined buffers and protections, planners have consistently told OEPA that the rural surrounds will not be included in any precinct code or planning for the village of Oaks Estate. The ACT Government has effectively ensured there will be no consultation requirements should they seek to rezone to allow for development in the rural buffer, because they have made the boundary so as to separate Oaks Estate residents from being considered effected by changes in the adjacent rural zone.

#### Precinct code does not seek complementary development

Under the Principles for Urban Design, Section 7.2-1 states *Planning controls should seek to ensure that development in all forms, including landscaping in urban and non-urban areas, complements and enriches its surroundings.* This provision would require all development to be complementary to the heritage character of the village. There is no such design requirement in the proposed code.

### River corridors are not protected

The National Capital Plan includes a range of protections for river corridors with which the proposed code is inconsistent. 8.6.1 states that *The corridors of the Murrumbidgee and Molonglo Rivers define zones for which the primary aim is to reinforce and preserve their landscape and heritage values and their ecological continuity, while providing for a balanced range of recreational and tourist related uses.* While the Master Plan discusses the Molonglo River corridor, none of these issues have been codified into the proposed code. There is also no discussion of development being required to ensure the environmental protection of the river corridor. Arguably, continuing to allow three horticultural growers right on the river, with the inevitable run-off, could itself be a breach of this provision, which is further enhanced through section 8.6.2 b *The streamflow and water quality of the rivers shall be protected from adverse external influences and maintained in a manner which ensures compatibility between land uses, water uses and the environmental character of the rivers.*

### **A breach of the Territory Plan**

Oaks Estate as a location for CZ5 does not comply with the Zone Objectives stated in the Territory Plan, particularly: *“(a) Encourage higher density residential development in locations with convenient access to transport corridors, and commercial and employment centres.”* We further note the Territory Plan, Statement of Strategic Directions, Spatial Planning and Urban Design Principles 2.5 *“Outside of these areas, planning policies will protect the typically low density, garden city character of Canberra’s suburban areas.”*

The Territory Plan contains the following *Statement of Strategic Directions, Principles for Sustainable Development, Social Sustainability:*

*1.25 Heritage and cultural values will be safeguarded, including in particular those of the Territory’s Aboriginal peoples and those derived from both its rural history and urban development as the National Capital. The distinctive qualities of residential areas and other places, as well as elements of community heritage, will also be recognised and their conservation promoted.*

*1.26 Identified places of heritage significance will be protected in accordance with requirements for their conservation contained in the Heritage Register and any relevant heritage guidelines under the Heritage Act 2004.*

OEPA believes that continuing with the precinct code process without a completed Heritage nomination process and subsequent heritage guidelines is a breach of the Territory Plan. OEPA strongly recommends that the proposed code be withdrawn and redrafted to incorporate Heritage issues once the heritage nomination process is completed.

### **A breach of the ACT planning framework**

The CZ5 zoning is inconsistent with the 2012 ACT Planning Strategy, as the area is not near a town or group centre or on a major transit route and would be completely out of place with the surrounding homes. The types of dense residential development usually undertaken in CZ5 areas, e.g. town centres, are not appropriate to Oaks Estate as we do not have any infrastructure or amenity to support CZ5 uses, such as transport infrastructure.

## **The importance of good planning**

### **The importance of appropriate controls in CZ5 Village Core**

A key recommendation (No.11) in the OEPA submission in response to the draft Master Plan, September 2014, was *"the precinct code to require all new developments in the Village Core (excepting those directly fronting McEwan Avenue) to meet site ratios, controls, set-backs built form etc. appropriate to preserve the existing heritage character of RZ1 zoning, and include recommendation on deep root planting."* This would require at minimum a limit of 2 storeys and a plot ratio of 50%. This recommendation was based on the fact that planners told us our preference to have the area rezoned as residential was never going to be accepted.

Our second submission, *OEPA Input to the Draft Precinct Code*, October 2014, argued *"the community strongly rejects the current CZ5 zoning of areas south of Hazel Street as being incompatible with both the heritage character of the village, and as having unduly negative impacts on the peace and quiet enjoyment of the residential areas. No other RZ1 residential part of Canberra is forced to live adjacent to CZ5 zoning in this manner, particularly in the amount of industrial uses that have been allowed during the 1970-1990's. The poor planning of those decades should not be used as an excuse to continue to inflict industrial developments next to residences."*

The OEPA also recommended no block consolidation anywhere and has consistently argued strongly against apartment blocks units and multi unit housing in either areas RZ1 or CZ5.

### **The importance of clear limits on intensity**

The OEPA also notes that in discussions with planners, they said that they calculated a possible number of dwellings that could be accommodated on the vacant lots in the CZ5 area. They did not calculate the total increase in population should those lots instead be developed as apartment blocks, and they did not calculate the total increase in population should existing buildings be redeveloped to the new allowable level of density. It is impossible for planners to know the full impacts of the proposed density on traffic, infrastructure or the existing population, when they have not performed basic calculations to track the possible population increase.

In the absence of this input from planners, OEPA has calculated the density and population changes that would occur over time should the CZ5 area be redeveloped as per the Master Plan's vision, and in line with the maximum allowable under the Precinct Code. The increase in population is circa 650 people. There are also significant future impacts occurring from the redevelopment of public housing assets that have not been calculated. In a community of only 260 people, this is an inappropriately high jump in population.<sup>2</sup>

### **The importance of appropriate land uses.**

OEPA notes that usually a CZ5 zone would not be allowed adjacent to an RZ1 residential area, because of the inevitable negative impacts on residents' quiet enjoyment of their homes. In addition, while CZ5 zones usually prohibit light industrial and warehouse use, this has been allowed in Oaks Estate in the past due to a lack of planning and development controls, and the proposed code will allow these uses to continue.

When Oaks Estate was converted from freehold to leasehold as a compulsory acquisition in 1974, the National Capital Development Commission recommended that the term of any new

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<sup>2</sup> This calculation is based on all land in the CZ5 area being redeveloped to allowable levels of the draft Precinct Code, as well as the existing development for the Mobile Site and the proposed row houses on lots 1-3 section 5 as shown in diagrams of the Master Plan.

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lease be for 25 years because it was realised that many of the existing land uses were incompatible with adjacent residential areas. The Commonwealth offered 50 year leases, which were later extended to 99 year terms. Given that the original recommendation 30 years ago was to phase out land uses such as warehouse and light industrial, OEPA recommends that light industrial and warehouse use should only continue for the existing term of the lease.

Any redevelopment of those sites that continues with light industrial or warehouse use, must be able to show that there will be no impact to the quiet enjoyment of adjacent lots (whether developed or not to accommodate future redevelopment), and all adjacent residences must be consulted on any new development.

Examples of inappropriate land uses in the CZ5 zone that the proposed code allows are: multi-unit housing, boarding house, consolidation, emergency services facility, guest house, serviced apartment, hotel, motel.

### **The importance of a completed Heritage nomination**

The 2014 Master Plan states. '*A master plan defines what is important about a place and identifies opportunities for preserving and enhancing the quality of that place.*' (p.3) The most fundamental 'quality' of Oaks Estate is its heritage value, as shown by the 2014 heritage assessment commissioned by ACT Planning and Land, which recommends Oaks Estate be listed as a precinct on the ACT Heritage Register. Additional heritage assessments commissioned by the ACT Heritage Council have also recommended that the precinct of Oaks Estate be listed as a heritage place.

The Master Plan is being drafted before the Heritage Council makes its final findings on the recommendations to register Oaks Estate as a heritage precinct. Should the Heritage Council agree, the council will draft heritage protection guidelines, equivalent or better than to those in Hall. The current timing of the Master Plan and Precinct Code drafting means the Heritage protection guidelines will not be incorporated. Throughout the Master Planning process, OEPA has strongly recommended delaying the Precinct Code, or agreeing that the Heritage Guidelines will be codified into the Precinct Code when available. OEPA would like to know why there is such a rush to enact a Precinct Code when there is no critical need or external deadline? The OPEA recommends withdrawing the proposed code until the heritage nomination process is completed, However, if this is not done, one way to improve the interaction with heritage issues, would be to specifically reference the Heritage Act 2004 within the Precinct Code, as done in the Hall Precinct Code:

*In accordance with section 148 of the Planning and Development Act 2007, applications for developments on land or buildings subject to registration under section 41 of the Heritage Act 2004 are accompanied by advice from the Heritage Council stating that the development meets the requirements of the Heritage Act 2004. Note: If advice from the Heritage Council is required but not provided, the application will be referred to the Heritage Council and its advice considered before the determination of the application.<sup>3</sup>*

Even should there be no provisional registration of Oaks Estate as a precinct, there are buildings within Oaks Estate that have been fully heritage registered and the above provision would apply to them.

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<sup>3</sup> Rule 9 of the Hall Precinct Code.

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**The importance of a character statement**

There is no desired character statement included in the Precinct Code. One of the Master Plan goals is "*maintaining the history and character of Oaks Estate.*" (p.35). It is simply impossible for planners to ensure future development maintains the existing character if the character is not defined.

The absence of a statement of desired character is also not consistent with the response by Government<sup>4</sup> to the planning standing committee inquiry into the Draft Variation to the Territory Plan No. 306<sup>5</sup>. The Government committed "*As part of developing precinct codes relevant statements of desired character will be included.*" The absence of a character statement - with no other explicit mechanism with the same level of enforceability to replace it - would be a clear breach of this undertaking.

A character statement and a Heritage plan is a very important tool in creating development and design controls specific to the local area. It allows planners to make decisions on development applications in the context of the local community, matching existing design character and complementing the existing development. Without a desired character statement, development applications are assessed only by a very broad set of mostly territory-wide criteria. These criteria only assess the impact a development has on the immediate neighbours, not on the broader community. The character statement is very helpful to planners when assessing a development application against criteria, as opposed to mandatory rules, and allows planners to ensure a proposed development meets the *intent* of a planning rule in the specific context of the local community.

Other relevant Codes would continue to operate and affect what can be approved in Oaks Estate: the Single Dwelling Housing Development Code, Multi Unit Housing Development Code, Estate Development Code etc and those Codes have undergone substantial revisions in the last few years that relax many former rules and restrictions.

Unless the Precinct Code sets out a clear set of objectives and rules for this village that are easily understood and translated into acceptable proposals, those other Codes (which will continue to be revised) will determine the most likely uses, quality and types of developments and rezoning that are approved.

A desired character statement informed by the Heritage plan is of critical concern in the context of the nomination of Oaks Estate as a heritage precinct. For other heritage precincts, heritage guidelines were enacted that created development controls on things such as plot ratios and requirements to meet the design character of existing buildings. Precinct Codes for those areas generally use the statement of heritage character within the heritage guideline as the desired character statement within the Precinct Code. Because the Oaks Estate heritage precinct nomination has not been completed, it is critical that a statement of desired character is included within the Precinct Code itself.

As part of the Master Plan process, a heritage assessment was undertaken, separate to the Heritage Council process (Philip Leeson Architects Pty Ltd *Heritage Assessment for ACT ESDD, Final Report*. 4 Sep 2013). The findings of this heritage assessment could be used as the foundation of a character assessment:

- the Oaks Subdivision, developed largely after the incorporation of Oaks Estate into the ACT provides much evidence of the way of life of its inhabitants outside the formal regulatory and planned environment of Canberra. Examples include the surviving modest

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<sup>4</sup> [http://www.parliament.act.gov.au/\\_\\_data/assets/pdf\\_file/0008/425087/7th\\_PPWT15\\_DV306.pdf](http://www.parliament.act.gov.au/__data/assets/pdf_file/0008/425087/7th_PPWT15_DV306.pdf)

<sup>5</sup> [http://www.parliament.act.gov.au/\\_\\_data/assets/pdf\\_file/0007/373660/PPW15\\_DV306.pdf](http://www.parliament.act.gov.au/__data/assets/pdf_file/0007/373660/PPW15_DV306.pdf)

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dwellings, built and modified over time often with ad hoc materials, the range of outbuildings and plantings which demonstrate a degree of self sufficiency (p.95)<sup>6</sup>

- its character as an 'urban' village, modest buildings of pleasant architectural character, set in a mature landscape with indicators of a semi-rural, self-sufficient lifestyle and community cohesion. (p.97)
- Oaks Estate is a highly intact early twentieth century urban village in a picturesque rural setting with a unique history, which illustrates several themes in the development of NSW and the ACT. (p.100)
- its character as an urban village, modest buildings of pleasant architectural character, set in a mature landscape with indicators of a semi-rural, self-sufficient lifestyle and community cohesion. (p.100)
- the historic Oaks Estate subdivision, including blocks and street layout; (p.100)
- buildings, places and elements (fences, landscaping) which contribute to the early 20th century suburban village character (p.100)
- Guidelines should recognise that the following characteristics of the built environment presently contribute to the urban village character of Oaks Estate:
  - a variety of building materials including painted, rendered or face brick, weatherboard or fibrous cement walls, mostly timber doors and windows, and corrugated iron or terracotta tiled roofs;
  - a variety of building setbacks;
  - formal street verge plantings including a different tree species in each street;
  - driveways and car accommodation are unobtrusive in the street scape –generally to the side or rear of the main dwelling; and
  - front and side fences in a variety of materials and styles, including brick, wire timber. (p.116)
- Oaks Estate is a unique example of its kind and is rare in its comparative intactness. (p.5)

OEPA would welcome further interaction with ESDD in the development of a character statement, and proposes the following as a starting point for discussion:

Oaks Estate is a highly intact late 19th, early 20th century urban village with indicators of a semi-rural, self-sufficient lifestyle and community cohesion. Its character is defined by its subdivision, including street layout and blocks which allow for gardens for each dwelling, predominantly single storey, modest buildings of pleasant architectural character often with ad hoc materials, set in a mature landscape.

OEPA notes that, should the nomination as a heritage precinct proceed, the subsequent heritage guidelines would include a statement of character. The statement of character within the precinct code should acknowledge that it may be superseded by the heritage statement. This is an inelegant but necessary notation, and is a good example of why the precinct code process should be put on hold pending the outcome of the heritage precinct nomination.

OEPA further recommends that various criteria of the Precinct Code should refer back to character statements to ensure aspects of development are in keeping with the desired character. This is in keeping with previous recommendations: The 1994 planning report recommended that *"In conjunction with the Heritage Study, a plain language style guide to sympathetic renovation to existing housing for use by Oaks Estate residents needs to be developed."* The 2001 planning

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<sup>6</sup> [http://www.actpla.act.gov.au/\\_\\_\\_data/assets/pdf\\_file/0011/40034/Oaks\\_Estate\\_Heritage\\_Assessment.pdf](http://www.actpla.act.gov.au/___data/assets/pdf_file/0011/40034/Oaks_Estate_Heritage_Assessment.pdf)

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study reiterated this position and recommended "*a plain language guide to the sympathetic renovation of existing housing and the design of new housing is developed.*"

The OEPA therefore recommends a character statement and subsequent building design controls be included in the precinct code.

### **The importance of protecting Village Character Buildings**

There are many buildings in Oaks Estate which are intrinsic to the heritage village character. While they may not end up as heritage registered in their own right under the current heritage nomination process, the precinct code must include additional development restrictions on these Village Character Buildings, to ensure the overall character of Oaks Estate is preserved. Ideally, the heritage assessments should be used to inform planners of buildings that should be preserved. Any development of those buildings must be sympathetic to the existing building, and designed to protect and maintain the Village character of Oaks Estate. This is consistent with precinct rule against demolition of character buildings in other heritage areas.

The following rule is to minimise the loss of the historical integrity of the precinct through total demolition of buildings which contribute to the village character.

(a) The demolition of an identified Village Character Building (*those buildings identified through the heritage assessments as contributing to the character of the Village, heritage registered or noted as warrants further heritage investigation*) shall not be permitted except in exceptional circumstances, including:

- the building is so structurally unsound as to be beyond repair. The application must include a professional and independent structural assessment in support of demolition. Only the portion deemed to be structurally unsound may be demolished;
- or the existing condition of the building poses a significant health or safety risk that is beyond repair. The application must include a professional and independent structural or health assessment in support of demolition. Only the portion deemed to be a health or safety risk may be demolished;

(b) Applications for demolition shall only be considered in conjunction with a development application outlining the future redevelopment of the whole block where the proposed replacement building and landscape treatment will reinstate or enhance the heritage character of the Precinct.

(c) Where neglect of a Village Character Building has contributed to the building becoming structurally unsound, redevelopment of the site shall not exceed the gross floor area of the demolished building, should be rebuilt to the previous architectural form and should enhance the heritage character of the Precinct. Additions to the reconstructed building shall not be approved within 5 years of the completion of the replacement building.

### **Courtyard fencing**

The OEPA believes that courtyard fencing should not be allowed in the CZ5 area as this is incompatible with the existing development.

## **Examples of rules that need re-thinking**

As outlined earlier in this submission, OEPA believes the proposed code should not be progressed in its current form and should be excised from draft variation 328. The following rules are specific examples of inappropriate planning. OEPA also notes that many of the rules have criteria, making them harder to enforce.

### **Rule 1**

Rule 1.1 of the proposed code specifies that residential development should be designed to mitigate potential impacts on future residents from the operation of existing commercial uses. This has been relegated to the criteria column, which immediately makes it a less significant development control, and suffers from a number of construction problems.

What does it mean to mitigate and how would a decision maker determine if mitigation were effective or not? Which potential impacts? Future residents of which sites, the ones subject to the DA or any others nearby? Existing at what point in time i.e. what's there now or what's there when a DA is lodged, and why not be clear about the effects of noise and vibration and traffic and operating hours and the need to ensure that any residential development is associated with a level of residential amenity that is acceptable and reasonable for long-term occupants?

The OEPA strongly disagrees that the onus for protecting residences from the operation of existing commercial uses is placed entirely on new residential development. This would afford no protection from existing residents should existing light industrial buildings be redeveloped with continued or even more intensive manufacturing, noise etc. As outlined earlier in this submission, the National Capital Development Commission argued over 30 years ago that existing light industrial and commercial uses should be phased out in Oaks Estate. OEPA recommends a rule that includes provisions such as *"non-residential development is designed to mitigate the potential impacts on existing and future residents from the operation of commercial uses."*

### **Rule 2**

Rule 2 provides a rule limiting where certain uses can occur and makes this mandatory. It states that these 4 uses (craft workshop, nonretail commercial, restaurant and shop) are only permitted where addressing Railway Street and or McEwan Avenue. It's obvious that this is meant to push those to face a certain way, which may be fine, but the question of whether something does or doesn't address the street can easily be argued and why only these 4 uses when the merit track also permits things like a guest house, place of assembly which can include a church but can also be a hall, serviced apartments etc.

It also has the undesirable effect of cancelling the minimum front setback to Hazel Street since this would no longer be a front setback if the front were to face Railway or McEwan. There is no mention here of sympathetic development that encourages conservation and appreciation of the heritage site of Robertson's House, or relates to the Railway Station and rail corridor, which presumably also generates noise occasionally and will hopefully do so more in the future.

William Street is currently being used for storage sheds opposite the community hall, so it would be sensible to encourage community and recreation uses to cluster near the hall and avoid it becoming an unsafe area at night. Allowing for a buffer that ensures that the root zones of significant trees are not disturbed by excavation or sealed off from air and rainfall is the sort of heritage/landscape protection that would normally arise from the master plan process, but is absent here.

In addition to the problems described above, OEPA recommends that non-residential uses are restricted to McEwan Avenue and William Street, south of Hazel Street.

### **Criteria 3 Height of buildings in CZ5 Village core**

Built Form imposes a height and storey limit and rewards a building that both addresses Railway or McEwan and doesn't restrict reasonable solar access to dwellings on adjoining blocks, with an extra storey or 1.5 metres. However the criterion C3 doesn't say anything about privacy, overlooking, bulk, expanse of wall visible, blank walls, and the phrase reasonable solar access used to be understood to mean a minimum of 3 hours of sunlight to 50% of the private open space but seems to have been diluted by substituting a phrase that is capable of being argued – reasonable to whom? Why only the main daytime living area when bedrooms and kitchen should also enjoy reasonable solar access? What if there are no dwellings on adjoining blocks at the time, shouldn't the adjoining blocks still preserve reasonable solar access in case they are redeveloped later or want to put solar panels on their roof?

OEPA has argued in our two previous submissions that the existing 2 storey height restriction must be maintained. Any increase to the allowable building heights is in direct contradiction to the goal of preserving the existing character of the village, because it is increasing the density as well as introducing a building form that does not currently exist. OEPA also notes that the NSW land on the south side of Railway Street has a maximum height of 8.6m and the same height should apply on the north side of the street.

OEPA is also concerned that criteria 3 does not protect the privacy of existing RZ1 development from being overlooked, nor does it protect the existing character of the precinct. OEPA recommends adding protections for the principal private open space of dwellings in the RC2 Residential area.

### **Rule 4 setbacks**

R4 creates a minimum front setback of 4m to Hazel St, but the rule is relaxed by C4 to say that it should reflect "existing block patterns" and provide landscaping between the building and the front boundary. Existing can either mean at the time of gazettal or some later date when a DA is lodged by which time other developments may have created quite a different environment, and can be twisted to refer to an unrepresentative sample. Specifying which blocks or better what the goal of the setback rule is and how one would judge if it's met would make this criterion more robust. Four metres is quite shallow, and it's unclear whether the setback is meant to also apply to car spaces (important to include because of the CZ5 zoning) – given the depth of most of the blocks it seems likely that developers will either locate their service functions at the rear (i.e. Hazel St) or subdivide.

OPEA notes this rule should not have used the term 'front setback' and should simply say 'setback'. As currently proposed, this rule would allow a rear setback of 0m to Hazel Street, as the zoning is CZ5. Therefore a developer could argue that if the building is facing Railway Street, they could have a 0m setback to Hazel Street. This issue needs further exploration and rules should be developed according to heritage development guidelines.

### **Rule 5 -small setbacks in 'commercial' area**

OEPA recommends these setbacks be restricted to lots fronting McEwan Avenue and William Street south of Hazel Street. We have long argued that any non-residential development should be limited to this McEwan Ave/William Street area. OEPA argues that smaller scale development should be allowed the proposed setbacks, but larger scale, bulky buildings should have a larger setback in order to preserve the integrity of the existing character.

OPEA would also like to enact controls that encourage the development of small-lot commercial properties that are more in keeping with the heritage era of the establishment of Oaks Estate, for

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example to look like the main street of Braidwood, which is characterised by commercial/retail ground floor with residential 2nd floor with deep verandas fronting the street.

This could be done by increasing the setback requirements for the 2nd floor of 2m from the building line of the ground floor. Another option could be allowing verandahs to be built over the street. This would create a covered streetscape for pedestrians on McEwan Avenue. The goal is to create a streetscape much like Braidwood or early Queanbeyan, which is consistent with the Master Plan.

**Rule 7 / Criteria 7 Ground floor of all buildings in CZ5 Village core must be adaptable to commercial uses**

The OEPA is concerned this unfairly impacts existing houses on McEwan Ave, which would be unable to develop their properties for continued residential purposes. Under the above rule, should an owner wish to undertake any renovation that requires a DA, the precinct code requires they also ensure the ground floor of the existing house is changed so that it can be adapted in future for commercial use. Clearly this is not the intention of the criteria and an exemption for existing residences should be explicitly included.

It must be noted that because of the heritage nomination, many developments that do not require a DA in other areas, do require a DA in Oaks Estate, meaning this rule has even greater negative impact in Oaks Estate.

OEPA further recommends that this provision only apply to development fronting McEwan Avenue. The OEPA has strongly argued against commercial development along Railways Street.

**Rule 8 articulation**

OEPA is concerned that although there is a requirement for articulation, it is not deep enough to create a true visual change, nor is there a defined minimum length for the articulated length. For example, a building could have an articulation of 1 metre for the length of only 1 metre, then return to the same setback as previous. OEPA recommends the articulation depth should be increased, and a minimum length for the articulated portion of the building imposed, or at least 3 metres.

**R9 Maximum site coverage: 45%**

OEPA agrees with the site coverage provisions, but we are concerned there is no plot ratio recommended. OEPA has recommended that the building height be limited to 2 storeys plus attic for buildings in the CZ5 area. OEPA also recommends a plot ratio in the CZ5 area to limit inappropriately high density, as buildings greater than 2 storeys will have to reduce their site coverage in order to meet the plot ratio.

**Rule 12**

This rule has the same problems as rule 7, in that it unfairly impacts on the existing residential uses in that area, OEPA recommends it should be clear that existing lots used for residential purposes should be allowed to be continued to develop as residential, including secondary dwellings (granny flats) that do not have to meet the commercial uses criteria.

OEPA has recommended that non-residential development be limited to McEwan Avenue: this criteria should therefore be limited to McEwan Avenue. OEPA also recommends any commercial development character to be in keeping with heritage of Oaks Estate. This would require developing a desired character statement that requires commercial development on McEwan Avenue to reflect the look of older buildings Monaro St Queanbeyan or Braidwood and appropriately scaled to suit McEwan Avenue.

## RC2 – Residential Area

OEPA recommends additional controls be enacted for development in the RC2 residential area. These include but are not limited to:

- No consolidation or subdivision of single dwelling blocks.
- No dual occupancy.
- The enactment of a desired character statement that includes heritage guidelines for the renovation of existing properties, as well as design guidelines for any new development. These should require all new development to be in keeping with the heritage character of Oaks Estate. OEPA stresses these guidelines should apply to both the RZ1 and the CZ areas.
- No multi unit housing or unit development occur e.g. section 5 blocks 1,2,3 - these should be rezoned open community space.
- Existing unit development must not be increased in density, scale, bulk, height, number of dwellings or habitable floors.
- Encourage mixed setbacks.
- OEPA further recommends that in order to preserve the existing character of the village, which includes development that uses a variety of setbacks, that a control is included that enforces a variety of setbacks. Options could include a maximum percentage of buildings with the minimum setback.
- OEPA recommends including a requirement that any re-development of multi-unit blocks should ensure privacy for the principle private open space of adjacent residences such as deep rooted plantings etc
- OEPA also recommends a plot ratio more appropriate to the heritage of Oaks Estate and in keeping with other villages as defined by the National Capital Plan.
- OEPA recommends increasing the deep root planting requirement to 25% as more appropriate to the existing character of large gardens with smaller residences.
- OEPA recommends that rules on fencing should be in keeping with past practice of using an inconsistent mix of fencing materials and placement including 0m boundary setback. Fence rules should accommodate the need to protect privacy within the residences principle private open space where that is visible from the public domain.