5 September 2003

Mr. Gary Pratley
Executive Director Metropolitan Planning Division
Department of Infrastructure, Planning
and Natural Resources
20 Lee Street
SYDNEY NSW 2000

Dear Mr. Pratley

Masterplan Review

The Property Council of Australia welcomes the review of masterplans and considers it timely that the review coincide with the PlanFirst review particularly as it relates to the content of local plans as Councils are increasingly requiring compliance with masterplans in local environmental plans.

It is noted that the reliance on masterplans is not confined to sites to which local environmental plans apply. State planning policies including Sydney Regional Environmental Plan 26-City West and SREP 56-State Environmental Planning Policy No 56- Sydney Harbour Foreshores and Tributaries also contain provisions which relate to masterplans.

The property industry acknowledges that masterplans provide a convenient mechanism for consent authorities to use to ensure certainty in relation to development on land. However, a number of major issues have emerged in relation to the use of masterplans from an operational and legislative basis which need to be addressed as a matter of priority. These issues are summarised below.

Mandatory compliance with masterplans

The Environmental Planning and Assessment Regulation 2000 provides that for the purposes of determining a development application, the provisions of any masterplan are to be taken into consideration by the consent authority.

Masterplan being defined in the regulations as follows:

**master plan** means a plan, whether it is referred to as a master plan, a development plan, a precinct plan or otherwise (but not an environmental planning instrument, a development control plan or a contributions plan):

(a) that make provisions for or with respect to the development of land, and

(b) that has been made or adopted by the Minister or a public authority.
For the purposes of determining a development application, the provisions and standards contained in a Local Environmental Plan are mandatory and any variation to a standard would require an application under State Environmental Planning Policy No. 1- Variation to Development Standards.

Even though the regulations provide that masterplans are only to be taken into consideration in the determination of an application, a number of Councils are now requiring mandatory compliance with masterplans and have included provisions in their Local Environmental Plans to this effect. The Property Council considers that such provisions are likely to be ultra vires.

Where a local environmental plan makes reference to the need for the consideration of a masterplan, it is appropriate that there is a:

(a) default provision in the LEP that requires the consent authority to determine a development application if a masterplan has not been adopted within a reasonable time (eg. six months) commencing from the lodgement of the development applications; and

(b) the draft plan only require the consent authority to take the masterplan into consideration when it is determining the development application and does not require the development application to be consistent (or not inconsistent with) the masterplan.

**Scope of Masterplans**

Master planning can be a useful and appropriate mechanism to use to determine the parameters for the development of a site or number of sites. They were originally intended to be used to provide guidance on height, bulk and scale and in release areas to identify constraints and principles for development.

However, the content of masterplans is not being limited to guiding principles which set the context for development or envelope controls. Instead they are extending to include information such as set backs, car parking, floor space area and design details normally required for a development application.

Masterplans are now being required to address very detailed aspects of development and are being used as development control plans or staged development applications even though they are not conferred with such status in the Environmental Planning and Assessment Act or Regulations.

This is causing a new layer of administration which is delaying the process of development assessment and is also imposing undue holding and preparation costs.

There is no reason why a development control plan is not able to deliver the same outcomes as a masterplan. Development control plans can address the same issues as masterplans, and have only become more generic in their content over the last few years.
If a consent authority requires more certainty prior to the final determination of a development application, then it is recommended that staged development applications be used. Staged development applications provide certainty and have a legitimate basis in the Environmental Planning and Assessment Act.

The reliance on master plans appears to have been driven by the cost and resource constraints faced by Councils and the imperative to provide the community with as much detailed information on the likely outcome of a development process.

While development control plans are prepared by Councils, masterplans are generally prepared and lodged by applicants thus relieving consent authorities from having to meet financial costs. It is our view that the potential cost savings for Councils do not constitute sufficient justification for the introduction of a new layer in the planning process.

**Appeal rights**

Masterplans do not provide any certainty to the industry as there are no appeal rights attached to masterplans.

While statutory processes have to be followed in making development control plans and local environmental plans, they are absent in case of masterplans. This has an impact on the availability of:

- third party appeal rights due to improper processes being adopted,
- the opportunity for public consultation and engagement, and
- the information required to be submitted in a masterplan which often exceeds what is considered to be reasonable.

**Certainty**

There is no certainty for applicants in relation to when a masterplan may be called for or what should be addressed in a masterplan. They may be required for infill sites or larger greenfields development.

Furthermore, the criteria which may need to be addressed are not identified in an open and transparent way. This makes it very difficult to plan for a development and to factor the costs and time delays which are likely to be incurred.

It is also not clear what a masterplan actually means as the definition in the regulations are broad and what is required of masterplans ranges for different sites and council areas depending on the whim of council.

Masterplans are sometimes being used to compensate for poorly drafted local environmental plans and development control plans.

In many council areas, land supply is diminishing and sites available for development are often constrained by physical and environmental characteristics. In the absence of site specific controls on difficult sites, some councils are abrogating their responsibilities by requiring masterplans to be
prepared to address what should be addressed in their planning instruments and development control plans.

This is placing unreasonable onus of responsibility for determining development controls entirely on to the applicant.

Conclusion

The issues raised in this letter calls for a close examination of the way in which masterplans are being used across the state. Over the past few years, the reliance on masterplans has introduced yet another layer in the development assessment process which is entirely unnecessary and inefficient.

In summary, the Property Council recommends that:

- local environmental plans not be permitted to incorporate provisions for mandatory compliance of masterplans
- master planning only be used as a mechanism to provide broad planning parameters at the discretion of an applicant
- development control plans be used to achieve the same outcomes as masterplans as they provided a legitimate basis for strategic site planning, and
- staged development applications be used in cases where a consent authority requires more certainty prior to the final determination of a development application.

The Property Council appreciates the opportunity to contribute to this important review and looks forward to participating in any further consultation processes which may be undertaken by the taskforce.

Please do not hesitate to contact me directly about any aspect of this letter.

Yours sincerely

Ken Morrison
Executive Director NSW Policy