

**Planning Department refusing to provide
assessment reports for a strategic study
(Related to Code on Access to Information)**

Investigation Report

On 31 December 2021, this Office received a complaint against the Planning Department (“PlanD”).

The Complaint

2. On 1 December 2021, the complainant made a request under the Code on Access to Information (“the Code”) to PlanD for a copy of the Sustainability Assessment for Hong Kong 2030+ (“SA”) and Strategic Environmental Assessment for Hong Kong 2030+: Feasibility Study (“SEA”) (collectively referred to as “the Reports” hereunder).

3. On 21 December 2021, PlanD refused the complainant’s request for information. PlanD explained that the Reports are broad-brush assessments conducted on the basis of certain assumptions and the information available at the prevailing time. They only serve as supporting working documents. The final recommendations of the Hong Kong 2030+: Towards a Planning Vision and Strategy Transcending 2030 (“Hong Kong 2030+”) were made with a host of other factors further taken into account and reflected the latest developments. Hence, the Reports do not completely reflect the final recommendations of Hong Kong 2030+. In light of the above, PlanD considered it not suitable to release the Reports and cited paragraph 2.13(a)¹ of the Code as the reason for refusal. On 24 December 2021, the complainant wrote to PlanD seeking a review of its decision. On 28 January 2022, PlanD decided to uphold its decision.

4. The complainant considered the Reports highly relevant in assessing the environment impact of the proposed Lantau Tomorrow Vision (“LTV”), hence serving the public interest. Against the above background, the complainant complained to us against PlanD for refusing his request for information.

Our Findings

5. We commenced an inquiry with PlanD on 16 March 2022. Having examined PlanD’s information and response of 6 June 2022, we decided to launch a full investigation and issued a draft investigation report to PlanD for comments on 25 August 2022. We completed this investigation report on 8 September 2022 after considering and duly incorporating PlanD’s comments.

¹ Paragraph 2.13(a) of the Code stipulates that information relating to incomplete analysis, research or statistics, where disclosure could be misleading or deprive the department or any other person of priority of publication or commercial value, may be refused.

The Code

6. The Code obliges Government departments to make available as much Government-held information as possible to the public to keep them well informed about the Government and its services, unless the information falls into the categories which may be withheld under Part 2 of the Code, including paragraph 2.13(a) (see **Note 1**).

7. According to paragraph 2.1.1 of the Code's Guidelines on Interpretation and Application ("the Guidelines"), the withholding of information under most provisions of Part 2 is subject to a "harm or prejudice test". The department concerned has to consider whether the public interest in disclosure of such information outweighs any harm or prejudice that could result from disclosure.

8. According to paragraph 2.13.2 of the Guidelines, the provision in paragraph 2.13(a) of the Code recognises that departments may withhold information relating to incomplete analysis, research or statistics where the incompleteness could produce a misleading impression. Departments may however decide to release this type of information if it is possible for the information to be accompanied by an explanatory note on how it is defective.

Background of Hong Kong 2030+ and the Reports

9. Hong Kong 2030+, commenced in 2015, was the latest review on the territorial development strategy of Hong Kong which intended to provide a strategic spatial planning framework for the future planning, land and infrastructure development as well as the shaping of the built and natural environment of Hong Kong beyond 2030. The final recommendations of Hong Kong 2030+ were promulgated on 8 October 2021. The updated territorial development strategy is underpinned by three interconnected building blocks and one Conceptual Spatial Framework comprising two metropolises (namely Harbour Metropolis and Northern Metropolis as promulgated by the 2021 Policy Address) and two development axes.

10. Two consultancy studies on SEA and SA were commissioned by PlanD in 2015 and 2017 respectively, with a view to evaluating the broad-brush environmental and sustainability implications of the updated territorial development strategy at strategic level.

11. The SEA broadly examined and evaluated at strategic level the potential cumulative environmental effects of a "Preferred Option" scenario (with the recommendations of Hong Kong 2030+) as compared to the "Base" scenario (without the recommendations of Hong Kong 2030+). The main objectives of the assessment were to ensure that the preferred development option under the Conceptual Spatial Framework was environmentally acceptable at strategic level with appropriate

environmental mitigation and environmentally friendly measures, and to suggest follow-up investigations and proactive measures to enhance environmental capacity. It is not the intention for the SEA to demonstrate the environmental implications of individual projects, which will normally be conducted in the context of environmental impact assessment at project level.

12. The main objective of the SA was to evaluate the overall performance of the updated territorial development strategy in economic, social and sustainability aspects, and identify measures to refine the updated territorial development strategy. A strategic, qualitative approach was adopted to assess in broad terms the economic, social and sustainability impacts for the scenarios with and without the recommendations of Hong Kong 2030+.

13. Both the consultancy studies on SEA and SA were completed in around the first quarter of 2021. The assessments were based on the recommendations formulated at that time for the Hong Kong 2030+ study.

The Northern Metropolis Development Strategy

14. On 1 June 2021, the Government announced the appointment of Strategic Planning Advisor for Hong Kong / Shenzhen Co-operation (“SPA”) in the then Policy Innovation and Co-ordination Office to advise the Chief Executive on strategic issues concerning the comprehensive development of the Hong Kong / Shenzhen cross-boundary economic belt. The outcome of the SPA’s work is the Northern Metropolis Development Strategy (“NMDS”) unveiled by the Chief Executive in the 2021 Policy Address.

15. NMDS has taken into account the draft recommendations formulated for Hong Kong 2030+, and has also made reference to the evolving and latest national, regional and local planning context and circumstances, as well as discussions with relevant bureaux/departments, coming up with some strategic land use, transport and conservation proposals. The final recommendations of Hong Kong 2030+, which were released around the same time as NMDS, have reflected the new proposals put forward in NMDS.

PlanD’s Response

16. While the Reports contain general assessments on the environmental impact of the development strategy recommended for Hong Kong 2030+ at the time of assessment, they do not cover the new proposals under NMDS which were formulated in 2021 taking into account the latest circumstances. Since the Reports as conducted do not cover all initiatives including those NMDS proposals cited in Hong Kong 2030+ and the assessments are by nature broad-brush, PlanD was of the view that disclosing the Reports may be misleading as to their coverage. Disclosure of the Reports may also

cause unwarranted doubts on the basis of individual new proposals put forward under NMDS.

17. Furthermore, as mentioned in **paragraphs 10 to 12** above, the Reports only broadly examined and evaluated at strategic level the cumulative effects of the “Preferred Option” scenario of Hong Kong 2030+. The Reports do not, and are not supposed to, address the environmental or related impact of individual projects. As a matter of fact, individual projects presented in Hong Kong 2030+ have to be subject to vigorous impact studies on various aspects. For example, the current Planning and Engineering Study Related to the Artificial Islands in the Central Waters includes dedicated studies of LTV. PlanD considered these studies to be much more relevant than the Reports when considering the environmental impact of LTV. Ultimately, the project will need to comply with all the statutory procedures including the Environmental Impact Assessment Ordinance process, during which the public will be fully consulted in accordance with the statutory provisions, and will be able to access the relevant documents on environmental impact assessment.

18. PlanD has once considered the suitability of partial release of relevant parts of the Reports relating to the LTV project. Eventually, the Department decided not to do so as the findings of the Reports relate to the cumulative environmental and sustainability impacts of the recommendations of Hong Kong 2030+ instead of the environmental impact of individual projects.

19. PlanD has also explored the suitability of releasing the Reports accompanied by an explanatory note, but considered such disclosure not meaningful, given the incomplete coverage of the Reports as aforementioned, and that it cannot assist the public to fully understand the strategic environmental and sustainability impacts of the recommendations of Hong Kong 2030+ which should be considered holistically, with NMDS being an integral element. PlanD added that even if an explanatory note were to be included, releasing the Reports would still carry the risk of information therein being read and cited out of context, with the result of getting any misunderstanding more entrenched.

20. Taking into account the “harm or prejudice test” under the Code, PlanD explained that not only will disclosure of the Reports not meaningfully assist public understanding of the cumulative environmental and sustainability impacts, at strategic level, of the final recommendations of Hong Kong 2030+, but also possibly cause unnecessary doubts on and undermine public support for Hong Kong 2030+ including the new proposals under NMDS given the considerations in **paragraph 16** above. Hence, PlanD was of the view that the public interest in disclosure of the Reports would not outweigh the harm or prejudice that could result. PlanD stressed that even if the Reports are not released, members of the public would not be deprived of access to the more relevant impact assessment reports to be completed for individual projects in the future.

21. Nevertheless, in view of the complainant's concern, PlanD strived to provide the best available information while not compromising the "harm or prejudice test" by providing a brief summary of the key findings of the Reports in their reply of 21 December 2021.

Our Comments

22. We have examined all information pertinent to this case, including the complainant's arguments against PlanD's decision, PlanD's response, the Reports under request, the Code and the Guidelines, etc.

23. PlanD has explained that while the final recommendations of Hong Kong 2030+ mentioned the new proposals under NMDS, the Reports did not cover such proposals as the assessments were based on the recommendations formulated at the time of assessment and had been completed in the first quarter of 2021 before the new proposals under NMDS were formulated later in the year taking into account the latest circumstances. PlanD has also explained that the Reports would not meaningfully assist public understanding of the environmental and sustainability impacts of the final recommendations of Hong Kong 2030+, and that their disclosure would be misleading as to their coverage and function. Having scrutinised its response and the Reports, we accept PlanD's explanation that disclosure of the Reports, which may be regarded as information relating to incomplete analysis, research or statistics under the Code, may lead to unavoidable misunderstanding even if explanatory notes are added.

24. In addition, having scrutinised the Reports, we accept PlanD's explanation that the Reports relate to the cumulative environmental and sustainability impacts of the recommendations of Hong Kong 2030+ instead of the environmental impact of individual projects, and therefore partial release of the Reports based on individual projects is inappropriate.

25. Regarding the public interest in disclosure, PlanD has clarified that the assessments of the Reports only evaluated the broad-brush environmental and sustainability impacts of Hong Kong 2030+, without addressing the impacts of individual projects which will be vigorously evaluated in future impact studies. PlanD has also explained why disclosure of the Reports may cause unwarranted doubts on the final recommendations of Hong Kong 2030+ including the new proposals under NMDS and undermine public support for them. In this light, we accept PlanD's view that the public interest in disclosure of the Reports would not outweigh the harm or prejudice that might result.

26. Summarising our analysis above, under the current circumstances where the final recommendations of Hong Kong 2030+ including the new proposals under NMDS are still at the early stage of development and given the misunderstanding that may be caused by the disclosure of the Reports, we find that it is not unreasonable for PlanD to have withheld the Reports by citing paragraph 2.13(a) of the Code.

27. We understand the complainant's concern on the environmental impact of LTV. Now that PlanD has clarified that the Reports do not address the environmental or related impact of individual projects, the complainant may wish to watch out for the relevant impact assessment reports to be completed for the LTV project.

Conclusion

28. Based on the analysis in **paragraphs 22 to 27** above, The Ombudsman considers this complaint **unsubstantiated**.

Office of The Ombudsman
September 2022