

Item 4.

Development Application: Various Sites (21-21A Hickson Road, 23 Hickson Road, 4030 Hickson Road, 4020 Towns Place Millers Point, 3-5 Pottingers Street Dawes Point) - D/2019/1074

File No.: D/2019/1074

Summary

Date of Submission: 26 September 2019

Applicant: Transfield Holdings

Owner: Transfield Holdings and City of Sydney

Cost of Works: \$0

Zoning: Zone 1 - Walsh Bay Conservation Zone. Retention of 7 existing art sculptures is permissible with development consent.

Proposal Summary: The subject development application seeks consent to retain existing approved sculptures on an ongoing basis. The effect of the application is to combine six separate development consents which granted approval for the installation of seven public art sculptures, forming the Walsh Bay Sculpture Walk, into one development consent. The sculptures are located over various sites near the Walsh Bay Finger Wharves. No works or new sculptures are proposed.

Two of the seven existing sculptures are located on public land where City of Sydney is the land owner. While at the Local Planning Panel meeting of 23 May 2018, the LPP delegated to City officers the determination of Development Applications for which the Council is the applicant or land owner for the temporary installation of public art, in this instance consent is sought for the retention of the sculptures on an ongoing basis. Therefore the Development Application is required to be determined by the Local Planning Panel.

The application was notified for a 30 day period between 3 October 2019 and 4 November 2019. No submissions were received.

The sites are located within the Walsh Bay Wharves Precinct area which is a State Heritage Item (00559) under the Heritage Act 1977. As such the application is integrated development. The Heritage Office have granted general terms of approval for the proposal.

The proposal is generally compliant with relevant planning controls.

The proposed development is supported as it is compliant with the requirements under the Sydney Regional Environmental Plan No 16 - Walsh Bay, Sydney DCP 2012 and the Heritage Act 1977. The site is not subject to assessment under the Sydney LEP 2012.

**Summary
Recommendation:**

The development application is recommended for approval, subject to conditions.

Development Controls:

- (i) Sydney Regional Environmental Plan No 16 - Walsh Bay (Gazetted 16 June 1989, as amended)
- (ii) Sydney Development Control Plan 2012
- (iii) Heritage Act 1977 (Gazetted 12 June 1981, as amended)

Attachments:

- A. Recommended Conditions of Consent
- B. Sculpture Location Plan

Recommendation

It is resolved that consent be granted to Development Application No. D/2019/1074 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reason:

- (A) The proposal is generally consistent with requirements under the Sydney Regional Environmental Plan No. 16 - Walsh Bay, Sydney DCP 2012 and the Heritage Act 1977.

Background

The Site and Surrounding Development

1. A site visit was carried out by staff on 4 November 2019.
2. The existing public art sculptures are located on several publicly accessible properties in the Walsh Bay area. These properties are 21-21A Hickson Road, 23 Hickson Road, 3-5 Pottinger Street (owned by NSW Maritime but leased to Council), and the Council owned road sections known as 4020 Towns Place and 4030 Hickson Road.
3. The 'Walsh Bay Wharves Precinct' is listed on the State Heritage Register (SHR 00559) under the Heritage Act 1977. The buildings, including piers and shore sheds, have undergone conservation and adaptive re-use in accordance with the Walsh Bay Master Plan.
4. 21 – 21A Hickson Road contains a seven storey waterfront residential building commonly known as "Shore Apartments 8/9". It has a southern street frontage to Hickson Road, with the northern boundary adjoining Sydney Harbour and the Walsh Bay 'finger wharf' known as Pier 8/9. The location of the public art sculpture "Into the Trees II" is located on the publicly accessible northern forecourt of this site. Please refer to Figure 3.
5. Pier 8/9 or 23 Hickson Road contains the adaptive reuse of the former Bond Store into commercial and retail uses. It forms the westernmost Walsh Bay 'finger wharf'. Located on the publicly accessible wharf surrounding the former Bond Store are the public art sculptures "Red, Yellow, Blue", "Tri" and "Transnewfield". Please refer to Figures 4-6.
6. 3-5 Pottinger Street is leased to Council by NSW Maritime, also known as Pottinger Park contains several trees, the existing public art sculpture "Three Sisters" and street furniture. Please refer to Figure 7.
7. 4020 Towns Place is a road section at the junction of Towns Place and Hickson Road. The location of the public art sculpture "The Change" is on the public footpath outside the "Shore Apartments 8/9". Please refer to Figure 8.
8. 4030 Hickson Road is a road section at the junction of Hickson Road and Pottinger Street. The location of the public art sculpture "Still Life with Stone and Car" is in the centre of the roundabout, and two associated " Artwork" signs on the public footpaths. Please refer to Figure 9.

9. Photos of the site and surrounds are provided below:



Figure 1: Aerial image of subject site and surrounding area

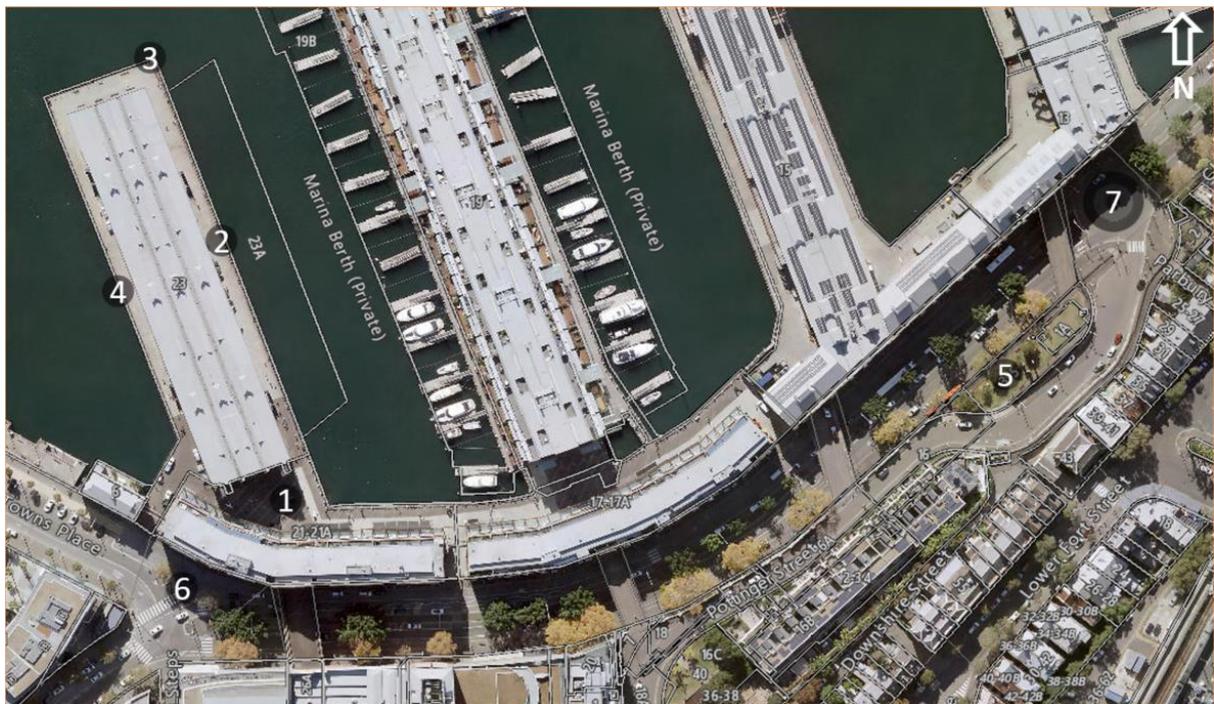


Figure 2: Sculpture location plan



Figure 3: 'Into the Trees II' artwork viewed looking north from 21-21A Hickson Road. Refer to Point 1 in Figure 2.



Figure 4: 'Red, Yellow, Blue' artwork viewed looking south from the eastern side of 23 Hickson Road. Refer to Point 2 in Figure 2.



Figure 5: 'Tri' artwork, viewed looking north-east along from the north-eastern wharf side of 23 Hickson Road. Refer to Point 3 in Figure 2.

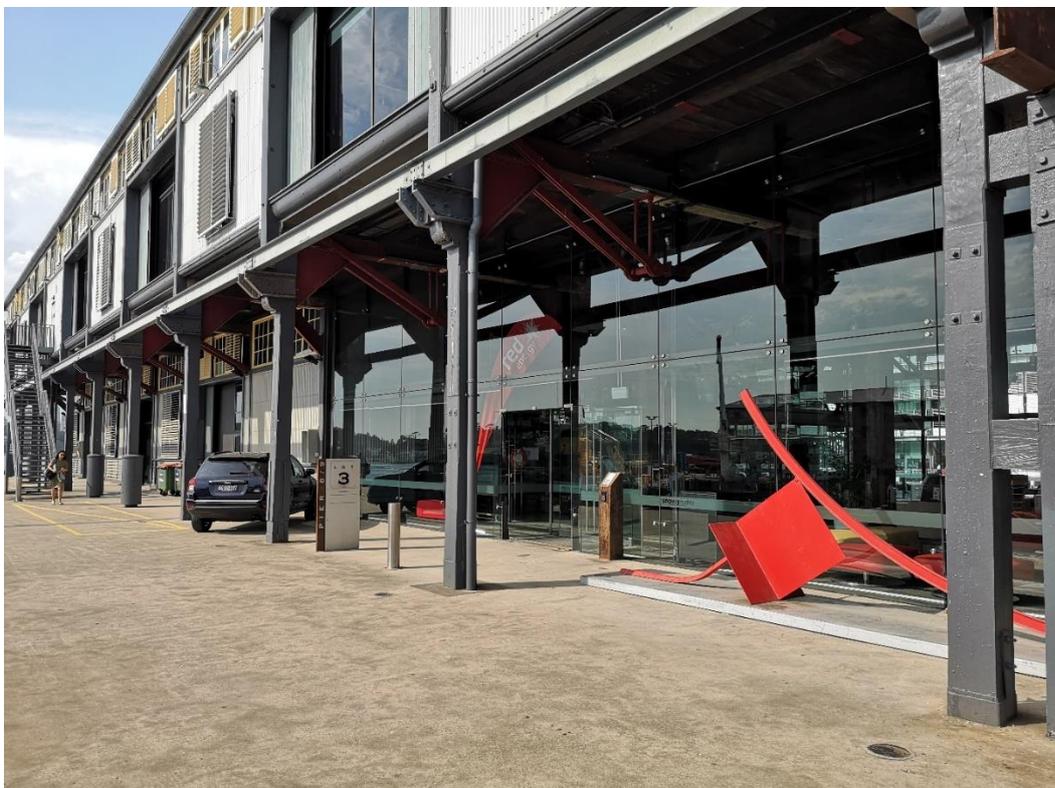


Figure 6: 'Transnewfield' artwork viewed looking north from the western wharf side of 23 Hickson Road. Refer to Point 4 in Figure 2.



Figure 7: 'Three Sisters' artwork viewed looking north east from Pottinger Park. Refer to Point 5 in Figure 2.

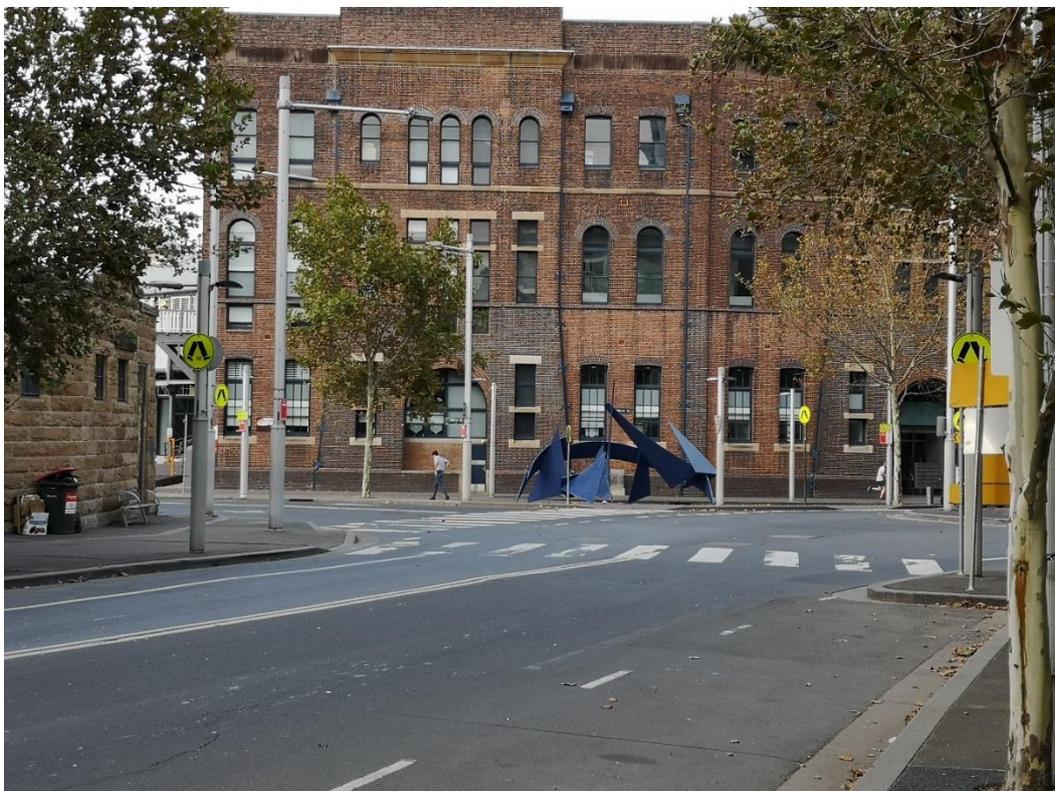


Figure 8: 'The Change' artwork viewed looking north-east from outside 8 Windmill Street. Refer to Point 6 in Figure 2.



Figure 9: 'Still Life with Stone and Car' artwork and two associated 'Artwork' signs viewed looking north-east from Hickson Road. Refer to Point 7 in Figure 2.

Proposal

10. The application seeks development consent to retain the existing approved sculptures in Walsh Bay (seen in Figures 3 to 9 above) on an ongoing basis. The effect of the application will be to consolidate the six existing development consents that approved seven public art sculptures into one consent. The six existing development consents granted approval for the sculptures on a time limited basis and have different lapsing dates. There are no physical works involved in this proposal.

History Relevant to the Development Application

11. On 10 April 2008, development consent D/2007/2441 was granted for the installation of an art sculpture on the roundabout on Hickson Road, at the intersection with Pottinger Street. The lapsing date of the original consent was the 10 April 2010. The application has subsequently been modified five times and the latest amendment 'E' will lapse on the 21 November 2021. Refer to Point 7 in Figure 2 and Figure 9 above.
12. On 10 April 2008, development consent D/2008/166 was granted for the placement of three sculptures on the north east end of Pier 8/9 within the colonnade, near the main entrance of the Transfield office, Walsh Bay. The lapsing date of the original consent was the 10 April 2010. The application has subsequently been modified twice and the latest amendment 'B' will lapse on 28 May 2020. Refer to Point 2 in Figure 2 and Figure 4 above.

13. On 21 April 2008, development consent D/2007/2440 was granted for the installation of two art sculptures on the footway at the intersection of Towns Place and Hickson Road; and at Pottinger Park (east), between Pottinger Street and Hickson Road. The lapsing date of the original consent was the 21 April 2010. The application has subsequently been modified twice and the latest amendment B will lapse on the 19 May 2020. Refer to Points 5 and 6 of Figure 2 and Figures 7 and 8 above.
14. On 22 February 2011, development consent D/2011/72 was granted for the temporary installation of a sculpture named 'Tri' upon the north eastern corner of Pier 8/9 at Walsh Bay. The lapsing date of the original consent was the 22 February 2016. The application has subsequently been modified twice and the latest amendment B will lapse on the 23 January 2023. Refer to Point 3 in Figure 2 and Figure 5 above.
15. On June 2012, development consent D/2012/586 was granted for the installation of the sculpture "Into the Trees II" to promenade of Pier 8/9. The lapsing date of the original consent was the 13 June 2017. The application has subsequently been modified once and the latest amendment A lapsed on the 13 June 2019. Refer to Point 1 in Figure 2 and Figure 3 above.
16. On 1 November 2017, development consent D/2017/1208 was granted for the installation of steel sculpture measuring 4200mm x 6100mm x 1200mm on the public promenade of Piers 8/9 for period of five years. The application will lapse on 1 November 2022. Refer to Point 4 in Figure 2 and Figure 6 above.

Economic/Social/Environmental Impacts

17. The application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:
 - (a) Environmental Planning Instruments and DCPs.

Heritage Act 1977

18. The subject site is listed as a heritage item on the State Heritage Register (SHR Item No. 00559) and is known as the Walsh Bay Wharves Precinct and is not a heritage item listed under Schedule 5 of the Sydney LEP 2012.
19. As an Integrated Development Application requiring approval under the Heritage Act 1977, a copy of the application was referred to NSW Heritage Council on 4 November 2019 in accordance with Clause 66 of the Environmental Planning and Assessment Regulation 2000.
20. On 13 December 2019, the NSW Heritage Council provided General Terms of Approval (GTA's) for the site. The entire proposal was generally supported with conditions.
21. A full list of the General Terms of Approval can be read in full under Schedule 2 attachment A Recommended Conditions of Consent.

Sydney Regional Environmental Plan No 16 - Walsh Bay

22. The Walsh Bay REP is the principal environmental planning instrument applying to the site. The Walsh Bay REP is a 'deemed State Environmental Planning Policy'.

23. The site is located under Zone 1 - Walsh Bay Conservation Zone. The proposal is permissible with consent.
24. The proposal is consistent with the objectives of the zone in that the existing sculptures will not impact heritage significance, the sculptures will not detract from the financial, commercial and retail functions of the existing city central business district or Sydney Cove Redevelopment Area and the developments will not adversely impact residential amenity and function of sites.
25. The relevant matters to be considered under the Walsh Bay REP for the proposed development are outlined below.

Development Control	Compliance	Comment
Cl. 13 Walsh Bay Conservation Zone	Yes	The proposal seeks to retain existing approved sculptures on an ongoing basis. In effect the application will consolidate 6 consents into a single consent. No works are proposed. The proposal does not affect the heritage significance of the Zone.
Cl. 15 Development control code	Yes	This clause allows the consent authority to prepare a development control code (or a development control plan). The provisions of this code (or DCP) must be considered in the assessment of a DA. Refer discussion further below.
Cl. 16 Matters for consideration	Yes	Refer discussion below

26. The matters of consideration under clause 16 of this planning instrument requires the consent authority to take into consideration the views of the Central Sydney Planning Committee (CSPC) and any conditions imposed by the Heritage Council under section 63 of the Heritage Act 1977. The consent authority is also required to consider various historical guidelines and studies, public access to the wharf aprons and foreshore, the affects on Wharfs No 4 and 5 as a theatre complex and certain Maritime sites, and whether the traffic generated would have an adverse impact.
27. The proposal was presented to the Central Sydney Planning Committee (CSPC) on 7 November 2019. The CSPC had no comments or objections towards this proposal.

28. The proposal is an integrated development application as it is located in the 'Walsh Bay Wharves Precinct' State Heritage Register (SHR Item No. 00559). As noted earlier, the NSW Heritage Council provided GTAs for the development.
29. The documents requiring consideration are the Walsh Bay Redevelopment Conservation Guidelines dated February 1988, the Walsh Bay Regional Environmental Study 1989, and the Central Sydney Strategy 1988. The strategic context for the City has significantly changed since these documents were published. It is submitted that the most appropriate planning documents to consider is Sydney DCP 2012.
30. The proposal does not involve any new works and will not affect the existing public access to the wharf aprons and foreshore, the continued use of Wharfs No. 4 and 5 as a theatre complex, and the use of Roads and Maritime Services sites. In addition, the proposal will not generate any additional traffic compared to that existing.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)

31. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
32. The Sydney Harbour Catchment Planning Principles must be considered in the carrying out of development within the catchment. The key relevant principles include:
 - (a) protect and improve hydrological, ecological and geomorphologic processes;
 - (b) consider cumulative impacts of development within the catchment;
 - (c) improve water quality of urban runoff and reduce quantity and frequency of urban run-off; and
 - (d) protect and rehabilitate riparian corridors and remnant vegetation.
33. The site is within the Sydney Harbour Catchment and eventually drains into the Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SREP are not applicable to the proposed development. The development is consistent with the controls contained within the deemed SEPP.

Sydney Local Environmental Plan 2012

34. The Sydney Local Environmental Plan 2012 is not relevant for this proposed development as the sites are located outside the LEP boundary.

Sydney Development Control Plan 2012

35. As noted earlier, the Walsh Bay SREP allows for the adoption of a development control code (or DCP). The land covered by Sydney Development Control Plan 2012 includes the Walsh Bay area.
36. The proposal is acceptable under the DCP Section 3.1.5 Public Art as the Council's Public Art Unit has reviewed and supports the consolidation of the existing consents for administrative purposes. The proposal maintains the number of exhibited public art sculptures and does not require any additional physical works.
37. There are no other relevant controls in the DCP for this proposal.

Issues

Conditions of Consent

38. The proposal seeks to retain the existing previously approved structures on an ongoing basis. The effect of the proposal is essentially to combine 6 consents into one. Many of the conditions imposed on the previous development consents were related to physical works prior to the installation of the sculptures. These conditions are no longer relevant to any consent that is to be granted for the ongoing retention of the sculptures.
39. The various previous consents were granted on a time limited basis (as discussed above). The consents were time limited to ensure the sculptures would not cause a nuisance to road users/pedestrians and that they would be appropriately maintained. Given that the sculptures have now been in place for a number of years and the time limited consents have been routinely extended it is no longer considered necessary for a new consent to be time limited.
40. Council's Public Art Unit has recommended a "Consent To Lapse" condition for a period of five years for all sculptures to allow the Public Art Unit to review and renegotiate artwork on public land, ensuring the artwork will be consistent with Council's Public Art Policy 2016, Public Art Strategy 2012 and the Acquisitions and Deaccessions Guidelines 2006.
41. As mentioned above such a requirement is not considered necessary. The Sydney DCP 2012 and the Walsh Bay REP do not have any controls or objectives to require a time limit for public art sculptures. The impact of the sculptures have previously been assessed and determined to be acceptable and previous consents have been extended.
42. Should circumstances arise where Council no longer supports the art works that are located on public land, Council can take action as a landowner. In this regard a condition is recommended (as was the case on the previous consents) that an appropriate lease agreement to manage terms and conditions for placement of the sculptures on public land be entered into with Council.
43. Other recommended conditions will include the requirement for the applicant to perform maintenance on the sculptures and to ensure any removal works damaging the public domain will be required to be rectified by the applicant. Unimpeded vehicular access must also be maintained during the removal of the sculptures on public land.

Other Impacts of the Development

44. It is considered that the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

Suitability of the site for the Development

45. The proposal is suitable for the site.

Internal Referrals

46. The application was discussed with the Public Art Unit and Public Domain Unit who advised that the proposal is acceptable subject to conditions. Where relevant, these conditions have been included in the recommendation.

External Referrals**Notification, Advertising and Delegation (No Submissions Received)**

47. The application constitutes integrated development and as such the application was notified and advertised for 30 days between 3 October 2019 and 4 November 2019 in accordance with the provisions of Environmental Planning and Assessment Regulations 2000. No submissions were received.
48. As noted earlier, the NSW Heritage Council has been consulted and General Terms of Approval have been provided.

Public Interest

49. It is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

S61 Contribution

50. The sites are located outside of the land covered by the Central Sydney Development Contributions Plan 2013. There is no required contribution.

Relevant Legislation

51. Environmental Planning and Assessment Act 1979.
52. Heritage Act 1977.
53. Sydney Regional Environmental Plan No. 16 - Walsh Bay.

Conclusion

54. The proposal is generally consistent with objectives and provisions of the SREP 16 - Walsh Bay, Sydney DCP 2012 and the Heritage Act 1977. The proposal does not involve physical works or changes to the existing public art sculptures. The proposal allows the applicant to better manage these sculptures administratively.
55. Development application D/2019/1074 is recommended for approval subject to conditions.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Harry Choi, Planner