

Our ref: A12/0147

25 October 2017

Director, Housing Policy
Department of Planning and Environment
GPO Box 39 Sydney NSW 2001

Re: Submission to the Exhibition of the Short-term holiday letting in NSW: Options paper

Dear Sir / Madam

We wish to thank the Department of Planning and Environment (DPE) for inviting Council to make this submission to the exhibition of the *Short-term Holiday Letting in NSW: Options Paper*. This submission has not been considered or endorsed by Waverley Council and therefore represents the views of Council administration.

Background

In 2016, the *NSW Legislative Assembly Committee on Environment and Planning* conducted an inquiry into the adequacy of short-term holiday letting in New South Wales. The Committee's final report was published on 19 October 2016 and made 12 recommendations that applied a largely 'light-touch', laissez-faire approach to regulation including:

- allowing home sharing, and letting a principal place of residence for short-term accommodation, as exempt development,
- allowing empty houses to be let as exempt and complying development,
- strengthen owners' corporations' powers to manage and respond to STHL issues in strata properties, and
- commit to further investigating impacts from STHL on traditional accommodation operators, and opportunities to reform their regulation.

In contrast to the recommendations from the *Parliamentary Inquiry*, restrictive legislation was being implemented across major Northern European and American cities, such as London, Berlin, Amsterdam, Paris, Barcelona and New York.

The NSW Government responded to the report on 19 April 2017 indicating general support for the key recommendations, but indicated that more work was required before policy decisions were made.

Overview of submission

The focus of this submission is on the impacts of STHL and how planning regulation and other forms of regulation can manage these impacts. The submission uses the questions from the *Options Paper* for subheadings.

This submission forms four parts:

1. STHL impacts;
2. STHL – planning regulation;
3. Other forms of regulation – strata, self and registration; and
4. Summary.

STHL impacts

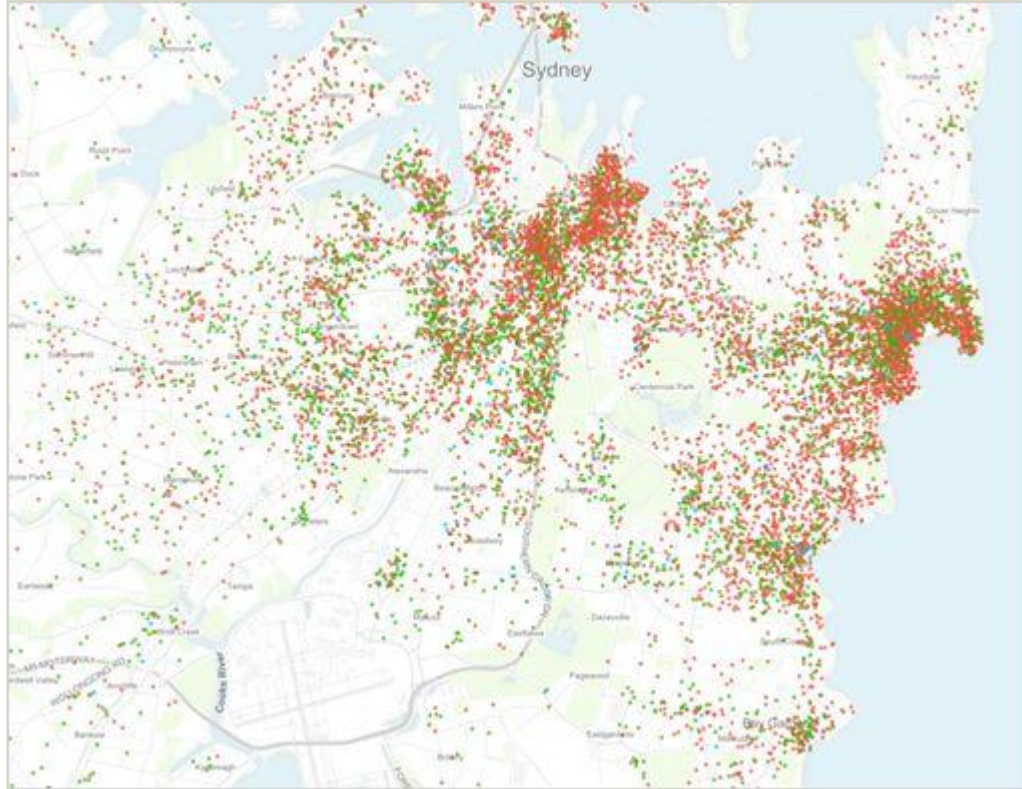
Please indicate below which impact(s) are you most concerned about and how do you believe these could be managed.

This section discusses the impacts of STHL in four broad areas: housing affordability, displacement of long-term local residents, residential amenity and business impacts. After providing a brief background, these impacts are addressed in turn below.

Background: STHL in Waverley LGA

Sydney is the 10th largest Airbnb market worldwide with listings concentrated in and around the Sydney CBD and the northern and eastern beaches (Figure 1). Given its tourist hotspots, including Bondi Beach and the Bondi to Coogee Coastal Walk, the Waverley LGA is attractive to tourist and visitor accommodation including traditional bed and breakfasts, hotels and backpackers' accommodation. In recent years there has been a proliferation of informal STHL, due to the emergence of online booking platforms such as Stayz and, in particular, Airbnb.

Figure 1: Airbnb listings, Inner Sydney and Eastern Suburbs



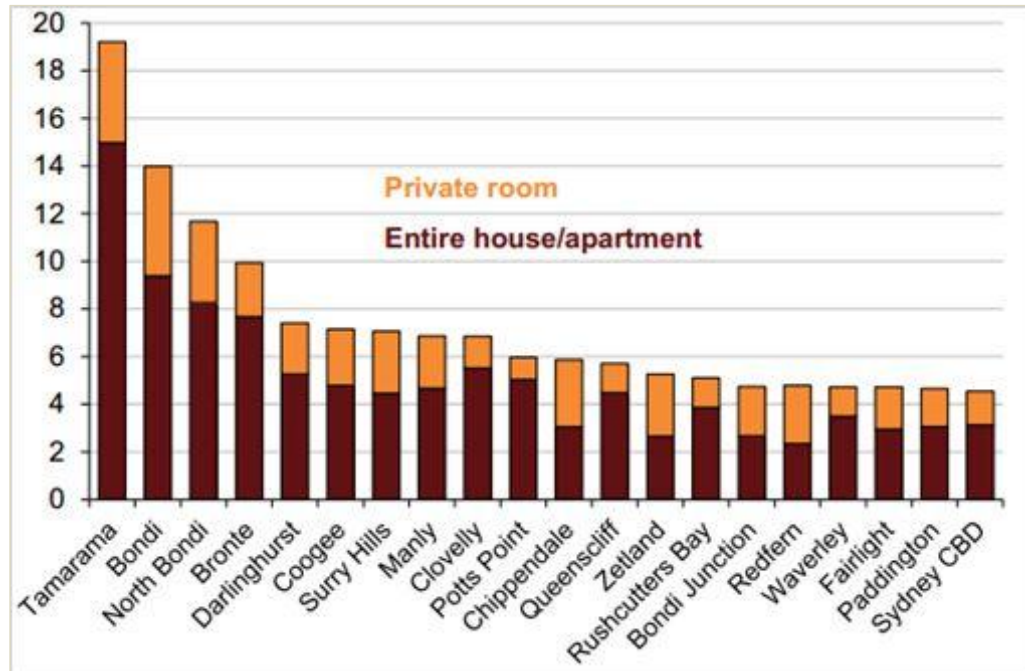
Source: Inside Airbnb, 2016.

Note: Green = private rooms for hire, red = entire dwellings for hire.

Airbnb offers over 2000 listings in Waverley, representing a larger market than the traditional tourist accommodation market. Bondi and North Bondi collectively have over 800 listings available (14% and 12% of total dwelling stock, respectively). Tamarama has the highest percentage of dwellings listed on Airbnb in Australia, with one in five dwellings listed on Airbnb (Figure 2). Indeed, the top four suburbs in Australia with the highest proportion of dwellings rented on Airbnb are in Waverley LGA; most of which are 'entire home' listings (see Figure 2). Renting out single rooms is also much more prevalent in Waverley (around 4% of total dwelling stock), than other LGAs (2.3% in City of Sydney to 0.1% in Parramatta). Overall, around 9% of dwellings in Waverley are listed on Airbnb; more than double the City of Sydney which has 4% of dwellings listed on Airbnb.¹

¹ Gurrán N & Phibbs P, When Tourists Move In: How Should Urban Planners Respond to Airbnb?, Journal Of The American Planning Association Vol. 83 , Iss. 1, 2017.

Figure 2: Airbnb listings as a percentage of dwellings



Source: Grattan Institute, 2016.

Note: Dwellings may only be listed for a short time throughout the year. Bondi Beach is included in Bondi.

The impacts of STHL are geographically uneven, with the most significant impacts occurring in areas where there is a high amount or proportion of STHL. In outer suburban areas, where there is a low amount or percentage of STHL, the impacts are likely to be minimal. Given the high concentration and number of STHL's in Waverley LGA, the impacts are potentially significant.

Impact of STHL on housing affordability

There is increasing concern surrounding the impact of STHL on local housing markets, particularly its effect on rental levels. This impact, as well as the displacement of local residents, was the driving force behind a 'crackdown' on Airbnb and similar forms of STHL in Northern Europe and North America.²

At the same time, the *NSW Parliamentary Inquiry* and the *Options Paper* both dismissed affordability concerns, stating that limited evidence currently available suggests that the impact of STHL on rental availability is negligible. Given that housing affordability is the most critical issue facing Sydney, it is remiss of both parties to dismiss this issue. A lack of evidence doesn't suggest that an impact is not existent, it simply demonstrates that the relationship and causality needs further investigation before being determined.

The NSW Government constantly insists a lack of supply is the primary cause of unaffordability. Therefore, it's unacceptable that the *Parliamentary Inquiry* and the *Options Paper* had nothing meaningful to say about STHL's impact on affordability, given this was the key reason other jurisdictions introduced regulation and that STHL is also clearly reducing supply in some areas. Any regulatory response to STHL must acknowledge the impact that STHL can have on affordability at a local level.

² O'Sullivan, F. 'Europe's Crackdown on Airbnb', City Lab, June 20, 2016.

In economic terms, the argument that STHL impacts on affordability is a simple one. STHL effectively subsidises the demand for housing (while not increasing the supply of housing). Subsidised demand increases aggregate demand. Increased aggregate demand increases houses prices.

Platforms such as Airbnb advocate that STHL provides mortgage relief to ‘mums and dads’ or allows tenants / owners to fund a holiday away. While this is demonstrably true, the upshot is that this additional revenue is also used to outbid long-term tenants or mortgagors – pushing rents and prices upwards. For instance, a household that rents out a spare bedroom for extra income will be able to pay more to rent a particular dwelling than similar households. A household that rents their dwelling out while on holidays is effectively increasing their disposable income, which in turn, increases their ability to bid the price of dwellings upwards.

There is emerging literature on the impact of Airbnb on affordability. Research in New York has shown that an increase in localised Airbnb availability is associated with an increase in property values (both rental and sales). A doubling of Airbnb listings is associated with increases of up to 18% in house values, all other things being equal.³ Renters or home owners yield around 10% of the Waverley LGAs median rent or mortgage expenses per month and up to 20% in other LGAs.⁴ This additional revenue can be used to outbid long-term tenants or mortgagors and push prices and rents upwards.

Both the *Parliamentary Inquiry* and *Options Paper* suggested that data collection and industry reporting will facilitate an informed response from Government. Data collection and industry reporting won’t reveal the impact that STHL is having on affordability. Instead, the NSW Government needs to commission detailed econometric modelling to properly investigate STHL’s impact on affordability.

The Grattan Institute researched the impact of Airbnb on affordability in their report *Peer-to-peer pressure: Policy for the sharing economy*.⁵ The report found that there are “localised” impacts on displacement revealing that “long-term tenants have clearly been displaced from the inner city beachside suburbs”, such as Bondi and North Bondi. At the same time, it suggested that – at a broader Sydney scale – “concerns about rents are overblown” as the number of Airbnb listings was still a small fraction. The Grattan Institute research is little more than assertion, not being based on any rigorous or robust quantitative analysis. As such any findings this report made should be taken with a ‘grain of salt’; despite these findings being enthusiastically accepted by both the *Parliamentary Inquiry* and *Options Paper*. Nonetheless, Waverley agrees with the notion that at a metropolitan Sydney level, the impacts on rents and prices are likely to be minimal. Similarly, the impact on rents and prices in regional areas may be mitigated by the existing low rents and prices of these locations. However, at a local level the impacts on rents and prices can be significant.

³ Sheppard S and Udell A, Do Airbnb properties affect house prices? Department of Economics, Williams College, October 30, 2016.

⁴ Gurran N & Phibbs P, When Tourists Move In: How Should Urban Planners Respond to Airbnb?, Journal Of The American Planning Association Vol. 83 , Iss. 1, 2017.

⁵ Minifie, J. Peer-to-peer pressure: Policy for the sharing economy, Grattan Institute, April 2016.

Displacement of long-term residents

In terms of the local impacts in Waverley, the number of entire dwellings listed on Airbnb is 350% higher than the vacancy rate of Waverley, constraining the supply of permanent rental housing and placing pressure on rents.⁶ For these reasons, a number of North American and European cities, including London, Berlin and Amsterdam have either banned or heavily regulated Airbnb.⁷⁸ Paris regulates Airbnb with a stipulation that entire dwellings are not to be rented out for more than one-third (120 days) of the year.⁹

Amenity impacts

Planning controls seek to achieve a higher level of amenity in residential areas, such as lower levels of noise and light spill, noxious gases and bad odours, as well as quieter traffic conditions. One of the common arguments against STHL is that it disrupts residential 'peace and quiet', with increased levels of noise and traffic generation, inter alia. Waverley intervenes on a case-by-case basis where complaints are made, although complaints typically arise from a number of backpacker operations, rather than places listed on Airbnb or Stayz.

Business impacts

The Options Paper suggests that around one-third of accommodation supply in non-metropolitan coastal NSW is STHL and that, as a result, STHL is a significant contributor to regional economies. Furthermore, Airbnb indicate that it spreads tourist dollars further from traditional hotspots and potentially creating more widespread economic benefits. To the extent that STHL pervades residential areas, it is logical that it would have positive economic spillovers to local retail, such as nearby cafes. Waverley noted in our previous submission to the Parliamentary Inquiry that there were positive economic impacts to businesses generated by the dispersal of tourists beyond traditional commercial centres. However, it is difficult to determine whether STHL creates *net additional* economic benefits (i.e. inducing new spending that wouldn't have otherwise occurred), or whether it is simple diverting economic resources to new areas.

STHL – planning regulation

How should STHL be subject to a planning regulatory framework? If STHL is to be regulated via the planning framework, how should it apply? What would be the impacts of applying a planning framework to STHL?

Given that the impact of STHL is uneven – positive in some areas and negative in others – it is important that planning regulation not only occur at state government level, but also on a local level. This would facilitate a multi-faceted regulatory approach able to be calibrated to each LGAs need, allowing some areas to capitalise on the benefits of STHL and others to avoid or reduce negative impacts. The planning regulation response could involve creating a definition of STHL to be added to the *State Environmental Planning Policy (Exempt and Complying Development) 2008* (Codes SEPP). This definition would be standardised and for those councils where STHL doesn't necessarily work due to local circumstances, then these councils could seek an exemption from the SEPP. The definition for STHL in the Codes SEPP could vary for 'entire homes' and 'spare bedrooms' and be along the following lines:

⁶ Gurran N & Phibbs P, When Tourists Move In: How Should Urban Planners Respond to Airbnb?, Journal Of The American Planning Association Vol. 83 , Iss. 1, 2017.

⁷ O'Sullivan, F. 'Europe's Crackdown on Airbnb', City Lab, June 20, 2016.

⁸ O'Sullivan F, Now London and Amsterdam Are Capping Airbnb Apartment Rentals, 2 December 2016.

⁹ Griswold A, Paris is blaming Airbnb for population declines in the heart of the city, Quartz, January 05 2017.

Regulation	Rationale
Entire homes	
for a maximum continuous period of 10 days	This provision would allow entire homes to be leased out while the main occupant is away.
for a maximum period of 60 days in any 12 month period	This provision ensures that the dwelling is not leased for commercial purposes. It would limit the income from STHLs and thus ensures that the economics of leasing out entire homes favours long-term tenancies. Those STHLs that are seeking a more commercial operation, such as holiday homes, could seek approval under 'Additional local provisions' in the LEP. Limiting the total number of days has been successfully applied in London, Paris and Amsterdam.
Spare rooms	
for a maximum number of 2 rooms	This provision would seek to reduce the impacts of dwellings being used as quasi backpackers accommodation or hotels.
for a maximum period of 60 days in any 12 month period	As above.

As the *Options Paper* correctly points out, setting a limit on the total days per year that a dwelling can be used as STHL would control the degree to which a dwelling is used as STHL and retain its primary use as long-term residential. If the limit is set too high, the income generated through STHL may obviate the need for long-term residential use the rest of the year. Conversely, too restrictive a limit could stifle the demand for STHL.

Limiting the maximum number of bedrooms may reduce the likelihood of large gatherings and the potential for noise, traffic, parking, 'party houses' and other impacts. Although, limiting the number of bedrooms in a STHL may be unfairly restrictive on larger homes, which are common STHLs in regional NSW.

In addition, councils that wish to allow more permanent forms of STHL (i.e. such as holiday homes in regional areas) that do not fit within the existing definitions of 'serviced apartments', 'bed and breakfasts' or 'backpackers accommodation', could allow an avenue for development approval through 'Additional local provisions' of the LEP.

The planning policy response might work best in concert with strata and licensing responses (detailed below). For example, it is arguable that amenity concerns surrounding the presence or otherwise of a host could be best controlled under strata laws.

The regulatory impacts of applying planning regulation, as applied above and combined with appropriate licensing, strata and self-regulation, would strike an appropriate balance between the following competing objectives:

- fostering the 'sharing economy', freeing up and more effectively utilising latent economic resources
- giving hosts the flexibility to use spare capacity in their dwellings
- flexibility and suitable accommodation for tourists and visitors and the ability to 'live like a local'
- reducing pressures on housing affordability and thus allowing long-term residents to continue to live in their communities, and
- maintain residential amenity in areas primarily dedicated to residential uses.

Should there be different planning frameworks in regional and metropolitan areas? If so, how and why?

As stated above, given that the impact of STHL is uneven, planning regulation should allow for diverse responses in regional and metropolitan areas. This does not necessarily entail different policy applying to metropolitan and regional areas. Instead, minimum standards criteria could be provided in the Codes SEPP, applying at a state-wide level. Councils that want to encourage STHL could do so under Additional Local Provisions that allow more permanent and intense versions of STHL (such as holiday homes) to be approved subject to a Development Application.

Other forms of regulation – strata, self- and registration

Considering the mechanisms below (Code of Conduct, Complaint Management Mechanism and Monitoring & Reporting), how could self-regulation in NSW address any negative impacts of STHL?

As indicated in the Options Paper, self-regulation could address the negative impacts of STHL and a Code of Conduct, Complaint Management Mechanism and Monitoring & Reporting would help shift the burden away from resource constrained local and state governments to industry. If 'repeat offenders' are not being managed by industry providers, then there could be remit for local government to liaise with the industry operator (rather than individuals) to resolve any issues.

The platform should be in charge of monitoring as it is almost impossible for governments, including local authorities, to know whether a STHL has been leased for more than the permissible consecutive days or the maximum number of days in the year. Only the platform has this information at hand. Even if authorities had access to this compliance data, it would still create an unnecessary regulatory burden for governments. The platform has much better control and if the platform is fined, instead of individual owners (particularly a meaningful amount), then it's much easier to regulate. For example, it's easier to fine a single entity, rather than thousands of entities. Moreover, given that most STHL is booked online, platforms can be automatically programmed in a way that prohibits dwellings to be leased in contravention of local controls. For example, in London where Airbnb self-regulates the maximum number of days (90), bookings are automatically banned for dwellings once the 90 day limit has been reached.

Are there barriers that may reduce the effectiveness of self-regulation?

To be effective the industry operators, such as Airbnb or Stayz, would ultimately need to be culpable and subject to fines or prohibition from government. Self-regulation without any recourse for punitive action against the host or the platform may reduce the effectiveness of self-regulation.

Should owners' corporations be given the legal ability to prohibit or restrict STHL? If so, how and under what circumstances?

There should be some level of control for strata to limit any negative impacts of STHL. Strata is unique from Torrens title in a number of ways. Firstly, amenity impacts – such as noise, mess fumes/smoke – are amplified due to proximity and shared walls. Secondly, strata is a form of common ownership and thus owners have an obligation to ensure that activities in their dwelling do not disrupt the peace and quiet of neighbours in their own dwellings or common areas.

In addition, strata regulation is a form of regulation that is much 'closer' than planning regulation and given that disputes can be resolved by individual strata schemes in the first instance, it may reduce the regulatory burden for government. Waverley does not have a position on whether strata should be able to outright prohibit STHL.

Is there scope for industry self-regulation in the short-term holiday letting industry? Would this effectively address issues that occur in short-term letting in strata schemes?

Industry self-regulation could work well in concert with strata regulation, as an additional 'check and balance' for strata regulation. For example, if strata disputes cannot be resolved internally, then strata could in the first instance have recourse to the industry platform to take action. This might reduce the unnecessary and costly legal action.

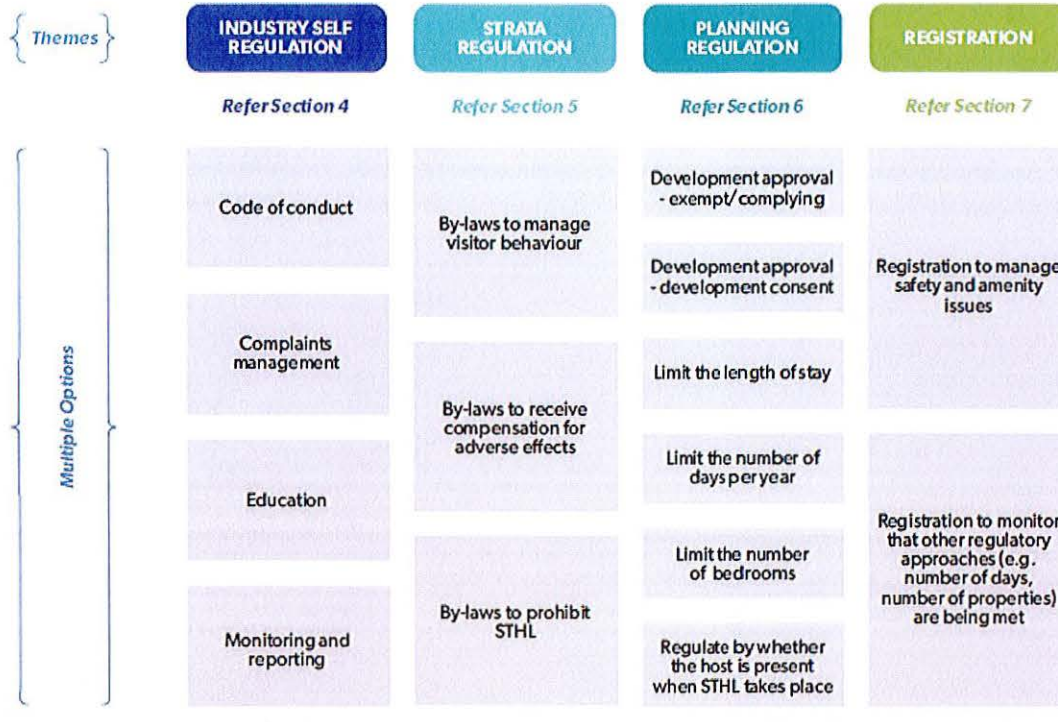
Could a licensing system for STHL work in NSW? If so, how might it operate?

Licences could be a solution, or another 'check and balance', particularly if most STHL is allowed as 'exempt' development. The licensing solution has worked well in Berlin, where the city government was seeking to reduce Airbnb's and the impact they were having on housing affordability and displacement of long-term tenants. The licensing system in Berlin restricts the number of permits for each suburb / district and STHL operators only receive a permit if they meet certain criteria and the area isn't oversubscribed.

Summary

The options outlined in this paper are summarised in the below table. For the future regulatory framework, which top 3 options (if any) would you like to see in this framework? Why?

The top 3 options for planning regulation include limiting the length of stay, number of days per year and bedrooms. These options could form criteria for 'exempt' development approval. Beyond planning regulation, 'monitoring and reporting' under industry self-regulation could ensure compliance with little cost and resources (as this can be built into the online software).



Thank you for your consideration of Waverley's submission. Should you require any additional information or explanation of the matters above, please do not hesitate to contact Tim Sneesby (Senior Strategic Planner) on 9083 8172.

Best regards,



Peter Monks
 Director, Waverley Futures