Item 11

Questions on Notice with Answers

1. Short Term Rental Enforcement and Compliance

By Councillor Thompson

Question

We understand there is an investigative specialist at the City of Sydney dealing with short term rentals.

1. Is the City taking enforcement action against illegal short-term rentals, or those breaking the rules?

    (a) If so, what does this look like? Please describe the actions taken in the past few years and what kind of resourcing enforcement has.

    (b) If so, how many fines have been issued? How often are these issued? How much money do these fines request?

    (c) If not, why not? What are the barriers to enforcement action?

2. How does the City's work with the NSW Department of Fair Trading on enforcement against short term rentals? Please describe how the teams work together, what tasks are shared and what communication occurs.

3. From the City's perspective, how effective is the state's STRA Register?

4. Does the City cooperate well with the NSW Department of Planning, Housing and Infrastructure? Please describe how data is shared, stored and how communication occurs.

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Answer by the Chief Executive Officer

1. The City investigates reports of unlawful short-term rental accommodation (STRA) and takes compliance and enforcement action where appropriate in accordance with the City's Compliance Policy and Prosecution and Enforcement Policy.

    (a) Regulation of STRA is undertaken by the City's Investigative Specialist or Senior Investigator and is complaint-driven.

    STRA is regulated under Part 6 of the State Environmental Planning Policy (Housing) 2021. Non-compliance with these provisions may constitute a breach of the Environmental Planning and Assessment Act 1979, and authorised officers exercise the investigation powers available under that Act.

Investigations may involve reviewing registration records, booking information, development consents, strata by-laws, complaint histories and other available evidence to determine whether a breach has occurred and identify the responsible party.

Where unlawful STRA activity is identified appropriate enforcement action is carefully considered. However, establishing an offence to the criminal standard of proof can be complex and resource intensive. Investigations are required to prove matters such as the number of days a property has been rented, whether it is hosted or unhosted, whether it is a person's principal place of residence, and who is responsible for the rental activity. Obtaining this evidence can be challenging and affects the likelihood of a successful enforcement outcome

(b) A small number of penalty notices have been issued in recent years. The prescribed penalties are $3,000 for an individual and $6,000 for a corporation. The number issued reflects the significant evidentiary burden associated with proving STRA offences and limitations within the current regulatory framework, rather than a lack of investigation or compliance activity.

(c) Key barriers include:

- Time and resources required to obtain sufficient evidence to meet the required standard of proof for a criminal prosecution
- Limitations in the accuracy and reliability of NSW STRA Register data, including difficulties verifying compliance with the 180-day cap
- Ongoing challenges obtaining reliable evidence from booking platforms, although cooperation has improved in recent years

2. Complaints relating solely to breaches of the STRA Code of Conduct, such as amenity impacts, are referred to NSW Fair Trading.

   Where the City identifies a planning breach, it may also refer the matter to Fair Trading for consideration of action under the Code of Conduct, including potential inclusion of a host or property on the Exclusion Register.

   Coordination with Fair Trading has improved over the past 6 months following the establishment of a dedicated investigations team within Fair Trading. Referrals are now made directly, and regular engagement supports a more coordinated approach to STRA regulation.

3. The City does not consider the Register to be an effective compliance tool in its current form or accuracy. The City has consistently advocated for reforms to strengthen the Register and enforcement framework. The City's position is set out in its submission to the NSW Government's Discussion Paper on Short and long-term rental accommodation, available on the City's website. The confidential attachment to that submission was provided to Councillors as a CEO Update on 8 March 2024.

   Key improvements needed include:

   - Verified registration and enforcement – registration through Service NSW and verification of key information, including whether a property meets the requirements for exempt development under the Housing SEPP

- Day-cap monitoring - automated booking data reporting so properties exceeding the 180-day cap are identified and placed on the Exclusion Register, to prevent properties from continuing to hold an active registration number and accept bookings after exceeding the cap

- Platform obligations – booking platforms to verify registration numbers, remove unregistered listings and face penalties for non-compliance

Beyond compliance, the City has also advocated for data to be collected through the Register to support evidence-based policy development. For example, information that would distinguish genuine home-sharing in a primary residence, whether hosted or non-hosted, from dwellings used primarily for commercial STRA activity, including hosts operating multiple listings. This would enable councils' to better understand the sector's impacts and develop targeted policy responses.

4. City staff have made repeated attempts to engage with the NSW Department of Planning, Housing and Infrastructure on STRA regulation. However, meaningful collaboration and information sharing remain limited. This impacts Council's ability to effectively investigate complaints, verify compliance and take enforcement action.

   Council investigators currently have access to two reports through the NSW Planning Portal:

   - STRA Property Report – property, host and booking information.

   - STRA Booking Summary Report – booking data used to monitor the 180-day cap.

   Beyond these reports, Council has been unable to secure support on matters critical to effective regulation, including access to registration records and owner authorisations, training on the operation of the register, removal of ineligible properties, and suspension of properties or hosts that have been the subject of enforcement action.