

6 February 2026

Hon Robert Borsak MLC
Chair, Portfolio Committee No. 5 - Justice and Communities
Inquiry into the illegal tobacco trade
NSW Parliament
6 Macquarie Street
SYDNEY NSW 2000

robert.borsak@parliament.nsw.gov.au

Our Ref:2026/065888

Dear Mr Borsak,

Response to Supplementary Questions - Portfolio Committee No. 5 – Justice and Communities - Inquiry into the illegal tobacco trade

Thank you for the invitation to appear before this inquiry on 17 December 2025. Set out below are responses to the supplementary questions issued to Council.

1. How was a “tobacco store” defined for planning purposes in a way that distinguishes specialist tobacconists from mixed-use retailers?

Council’s submission recommended the Standard Instrument LEP be amended to introduce “tobacco shop” as a separately defined land use, in order that councils could then regulate the permissibility of these uses through their local environmental plans.

This proposed new land use definition would need to be carefully drafted to ensure it only applies to premises where the sale of tobacco, tobacco related products or smoking accessories is the dominant or primary purpose of the land use. This would ensure that other types of premises that lawfully sell tobacco as an ancillary part of their use, such as service stations, neighbourhood supermarkets and newsagents, would not fall within the definition of a tobacco shop.

2. What criteria would determine whether tobacco sales constitute a primary land use rather than an incidental retail activity?

These are matters that could be addressed in supporting planning guidelines prepared by the NSW Government to assist in a consistent interpretation and application of a new land use definition of tobacco shop.

The guidelines could include clear, practical criteria and examples to clarify how existing land use characterisation principles would apply to tobacco retailers, particularly the distinction between premises primarily used for the sale of tobacco products and businesses where tobacco sales are ancillary to another lawful use.

3. What risks were identified that operators could structure their business to avoid classification under such a definition?

It is recognised that some businesses could try to avoid being classified as a tobacco shop by adjusting how they present or structure their operations, for example through the sale of a range of non-tobacco products, limiting retail space for tobacco products, or using business names that do not reference tobacco.

A definition of “tobacco shop” that is based on the primary purpose of the business, supported by clear planning guidelines, could support councils to assess whether tobacco sales are the main driver of customer activity, or an incidental part of the business.

4. How would planning controls operate alongside the NSW Health licensing regime to avoid regulatory overlap or inconsistency?

Stronger local land use planning controls would operate in a parallel and complementary function to NSW Health’s licensing framework.

The establishment of tobacco shops as a defined land use requiring development consent would enable councils to assess where and how tobaccos shops operate, while NSW Health and NSW Police regulate product legality, licensing and illicit tobacco enforcement. Local councils’ regulatory functions would be limited to where a tobacco shop operates without, or in breach of, a development consent.

5. *What safeguards would be necessary to ensure planning approval does not confer legitimacy on premises later found to engage in illicit tobacco sales?*

A development consent would regulate a tobacco shop as a land use under the *Environmental Planning and Assessment Act 1979* (EP&A Act), but it would not legitimise or protect any unlawful activity occurring at the premises. Planning approval relates only to whether a use is permissible and can be appropriately managed in accordance with any relevant conditions, and would not authorise the sale of illicit tobacco products.

NSW Health and NSW Police would continue to apply their existing functions to investigate, penalise and prosecute offences relating to illicit tobacco under public health and criminal legislation, regardless of whether a premises has a development consent.

Councils also have existing powers under the EP&A Act to enforce consent conditions, issue notices and orders, and take compliance or prosecution action where a premises operates unlawfully or contrary to its approved use.

Planning approval would not confer legitimacy on illicit tobacco sales, and operators would remain accountable under planning, public health and criminal law at all times.

Should you require any further information or assistance in this matter, please contact my office on

Yours faithfully

Mal McDonald
Executive Manager, Strategic & Place Planning