

**Mr Scott Phillips**  
Chief Executive Officer  
Northern Beaches Council  
PO Box 82  
Manly NSW 1655

Dear Mr Phillips *Scott*

Thank you for your correspondence about the illegal tobacco trade in NSW.

I acknowledge Northern Beaches Council's concerns about the unlawful sale of tobacco. While the sale of tobacco is a matter for NSW Health, I am pleased to confirm that I have asked the Department of Planning, Housing and Infrastructure to join the NSW Illicit Tobacco Taskforce. The Taskforce, set up by NSW Health, aims to support the NSW Government's role in solving this issue. The Department welcomes the opportunity to work with NSW Health on this important issue.

I note Council's resolution to prepare a submission to the NSW Parliament's inquiry into the illegal tobacco trade and to request the Standard Instrument Local Environmental Plan be amended.

As Council would be aware, the *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Act 2024* has been passed and took effect on 1 July 2024. This legislation introduces significant changes, including the banning of domestic manufacture, commercial possession, and sale of non-therapeutic and disposable vapes. Additionally, the sale of therapeutic vapes is now restricted to pharmacies, where they can be dispensed without a prescription under certain conditions. These reforms aim to address the health risks associated with vaping while making sure people have access to therapeutic vapes for smoking cessation and nicotine dependence management.

You may also be aware that on 1 July 2025, the NSW Government introduced a new tobacco licensing scheme. Under the scheme, it became compulsory on 1 October for all retailers and wholesalers who sell tobacco and non-tobacco smoking products to hold a valid licence. New penalties have also been introduced as part of the scheme for selling tobacco or non-tobacco smoking products without a valid licence. The maximum penalties are \$11,000 for a first offence for an individual, or \$44,000 for a second or subsequent offence for an individual and \$220,000 for a corporation.


In addition to the increased maximum penalties for the sale of products without a valid licence, the legislation also introduces closure orders for premises found to be selling products without a licence and a new offence of the commercial possession of illicit tobacco. The Government has released a Ministerial release providing more information on the scheme, which you can read at [www.nsw.gov.au/ministerial-releases/enforcement-of-tobacco-licensing-to-commence-as-grace-period-ends-for-retailers](http://www.nsw.gov.au/ministerial-releases/enforcement-of-tobacco-licensing-to-commence-as-grace-period-ends-for-retailers).

With regards to tobacconists, each council has its own Local Environmental Plan that serves as a framework for regulating land use and development in its local government area. However, there are no specific planning controls that restrict the establishment and number of tobacconists in NSW.

Tobacconists are categorised as 'shops' or 'neighbourhood shops' and are permitted with development consent in certain zones. The related planning controls are not differentiated based on the nature of the premises. The *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* also permits a change of use from one type of shop to another as exempt development where they meet specified criteria.

At this point, any change to planning provisions to require a development application to open a tobacconist would be a significant intervention with minimal policy justification from a planning perspective. It is also not clear what development standards, or planning matters relating to the nature of the products sold at these premises, a council could apply should these retailers require development consent.

Furthermore, the refusal of a development application for a tobacconist based on the number of other stores in an area may be difficult to defend, if appealed in a court. This is because they are a permissible use in certain zones, and the primary concern of the sale of tobacco products is not a planning matter and is not enforced under planning legislation.

Should you have any further questions, , Director, Economic and Social Policy, at the Department of Planning, Housing and Infrastructure can be contacted on  
or at

Thank you for bringing this to my attention.

Yours sincerely

**Paul Scully MP**  
Minister for Planning and Public Spaces

20/11/21