

INQUIRY INTO ILLEGAL TOBACCO TRADE

Organisation: Shoalhaven City Council

Date Received: 27 June 2025

Council Reference: 31157E (D25/275169)

24 June 2025

NSW Parliament, Legislative Council
Portfolio Committee No.5 – Justice and Communities

Via email: portfoliocommittee5@parliament.nsw.gov.au

Dear Sir/Madam,

Submission
NSW Legislative Council's Portfolio Committee No. 5 Inquiry
Illegal Tobacco Trade in NSW

This Inquiry is welcomed, and Council appreciates the opportunity to provide this submission to it.

Opening Comment

Council considered the attached Notice of Motion on 27th May 2025 and unanimously passed the following resolution:

That Council:

1. *Acknowledges that smoking remains the leading cause of preventable disease and death in Australia, and that vaping is an emerging public health challenge, particularly among young people.*
2. *Notes with concern that Shoalhaven, particularly Nowra CBD, has seen a proliferation of tobacco retailers with approximately 9 stores in the central Nowra locale, all within walking distance of schools.*
3. *Notes with concern that according to NSW Health data, there has been an increase in the number of tobacconists opening across NSW, rising from 14,500 four years ago to 19,500 today.*
4. *Acknowledges that from July 1, 2024, all vapes and vaping products, regardless of whether they contain nicotine, can only be legally sold by pharmacies to people with a prescription from a medical doctor. This change in legislation effectively bans the sale of vapes by any other retailers, such as tobacconists, vape shops, and convenience stores.*

5. *Advocates to the NSW Government in support of the proposed Upper House inquiry into illegal tobacco sales, which would examine:*
 - a. *The proliferation of tobacco and vape outlets*
 - b. *Departmental responsibility for compliance and enforcement*
 - c. *Licensing schemes for tobacconists*
 - d. *Landlord responsibilities*
 - e. *Money laundering schemes operating via tobacconists*
 - f. *Impact on human health and business profits*
6. *That Shoalhaven City Council revise the LEP through the current review process to mandate that tobacconist stores require approval through a development application.*
7. *Recognises the collaborative efforts between NSW Health and NSW public schools in delivering comprehensive, curriculum-based training and education to students regarding the dangers to tobacco, vapes and e-cigarettes.*
8. *Shoalhaven City Council undertakes an educational program via social media to inform the community on:*
 - a. *The dangers of vaping*
 - b. *The legislation and regulations regarding the sale and purchase of tobacco, vapes and e-cigarettes*
 - c. *How community members can report incidents where they believe that store owners are breaking tobacco retailing laws, including selling illicit tobacco or illegally selling vaping goods via the online reporting tool or by calling the Tobacco Information Line in 1800 357 412.*

This resolution followed an earlier Council resolution from June 2024 to advocate for greater planning controls to help manage and reduce the number and location of tobacco stores in our local area. The outcome of the advocacy following this resolution was reported back to Council on 26 November 2024 – this report and its attachment are attached.

This submission is made in accordance with the Part 5 of the above Council resolution of 27 May 2025.

Points for Consideration

Since early 2024 Council has held concerns about the proliferation of tobacco and vape stores in our main commercial centre of Nowra and also other retail centres in Shoalhaven. As indicated in the most recent motion to Council on this issue there are now 9 stores of this nature in the relatively small area of Nowra CBD alone and others are continuing to emerge. Most of these are in highly visible locations within relatively close proximity to schools and other sensitive land uses.

Council is extremely concerned about the continued growth of this type of store and the resulting associated public health, safety and other issues that come with their proliferation. These concerns are clearly outlined in the attached Notices of Motion considered by Council in 2024 and 2025.

There is a clear need for:

- More detailed regulation that sets and can limit/control the number of outlets of this nature;
- An associated licensing scheme for tobacconists and similar stores;
- Establishment of a supporting compliance and enforcement regime that is both clear and enforceable, for which the NSW Government and its Agencies are responsible. The need for more enforcement resourcing will also be critical in this regard and the task should not be handed to Councils;
- Set responsibilities on landlords and property managers;
- Enforcement action to limit, restrict and hopefully stop money laundering schemes operating via tobacconists or similar stores; and
- Consideration of the broader Impacts on human health and also businesses more generally in all of the above. Enhanced public educational initiatives are considered to be a key part of this.

Following its June 2024 resolution, Council has been advocating for greater planning controls to help better manage the locations and potentially reduce the number of tobacco and vape stores locally. Disappointingly in responding the NSW Government essentially advised as follows:

- Currently no legislative ability to prohibit a tobacco retailer from operating in a certain area based on proximity to other retailers.
- Tobacconists and stores selling vaping products are categorised as 'shops' or 'neighbourhood shops' and are allowed with development consent in various land use zones.
- Currently no restrictions on tobacconists in the immediate vicinity of schools or other shops frequented by children/families. Are considering whether the current exempt and complying development planning provisions (no development application needed) are appropriate for locations near sensitive land uses.
- Limiting or reducing the number of stores in NSW or each LGA is a market intervention outside the planning legislative framework and cannot be delivered through planning instruments.

More detail in this regard is available in the attached Council report dated 26 November 2024.

Also, as a direct result of Councils advocacy in this regard Local Government NSW (LGNSW) considered (see attachment) passed the following resolution at its Annual Conference in November 2024:

The Local Government NSW calls on the NSW Government to urgently, through the planning system and any other relevant mechanisms, mandate and ensure that 'tobacconist stores' (and similar, e.g. vape stores) require development approval and that as part of this there is the ability to limit/cap and reduce the number of these LGNSW Annual Conference 2024 98 Business Paper stores operating in NSW and in any given Local Government Area. (This will most likely involve amendments to the NSW Standard LEP Instrument, the SEPP (Exempt & Complying Development) 2008 and possibly associated adjustments to other legislation.)

Resulting from LGNSW resolution, the following responses were subsequently provided by relevant NSW Government Ministers:

NSW Minister for Health, Ryan Park MP:

The NSW Government has passed legislation to amend the Public Health (Tobacco) Act 2008 (NSW) which:

- *Introduces a licensing scheme for tobacco retailers and wholesalers (to commence on proclamation expected 1 July 2025).*
- *Increases penalties for illegal tobacco offences (selling tobacco not in the packaging required or without mandatory health warnings) with maximum penalties of up to \$154,000 for an individual and up to \$770,000 for a corporation.*
- *Increases penalties for selling tobacco products to minors up to \$110,000 for individuals and \$220,000 for corporations for second or subsequent offences.*
- *This is a direct response to community expectations about the need to tackle the trade in illicit tobacco and ensure robust enforcement of tobacco and e-cigarette retailing laws.*

Minister for Planning and Public Spaces, Paul Scully MP:

- *The Department is currently reviewing the planning pathways applying to tobacconist stores.*

Whilst these responses are welcomed, Council is keen to see more timely and definitive action in this regard given community concern around this issue.

Councils are looking for leadership from the NSW Government in this regard, including the potential for the land use planning system in NSW to respond with better controls to help manage the location and possibly number of stores selling tobacco and e-cigarettes/vapes in any given area.

One option that should be considered is to separately define the use/s in the existing NSW Standard Local Environmental Plan (LEP) Instrument and also have a related agreed local provision (possibly also in the instrument) that Councils can utilise in their LEP's if they wish.

This could be similar or operate similarly to the following provision that currently exists for 'sex services premises' in the Shoalhaven LEP2014:

7.24 Location of sex services premises and restricted premises

- (1) The objective of this clause is to minimise land use conflicts and adverse amenity impacts by providing a reasonable level of separation between sex services premises or restricted premises, specified land uses and places regularly frequented by children.
- (2) In deciding whether to grant development consent to development for the purposes of sex services premises or restricted premises, the consent authority must consider the following—
 - (a) whether the premises will be located on land that adjoins, is directly opposite to or is separated only by a local road from land—
 - (i) in Zone R1 General Residential, Zone R2 Low Density Residential, Zone R3 Medium Density Residential or Zone RE1 Public Recreation, or
 - (ii) used for the purposes of a centre-based child care facility, a community facility, a school or a place of public worship,

- (b) the impact of the development and its hours of operation on any place likely to be regularly frequented by children—
 - (i) that adjoins the development, or
 - (ii) that can be viewed from the development, or
 - (iii) from which a person can view the development.

Concluding comments

The Inquiry needs to consider the broad community and local government concerns that exist and continue to emerge associated with the growing illegal tobacco (and vapes) trade and the growth of related shops/outlets, including particularly in regional areas, that is having a detrimental impact on existing commercial centres and communities.

Council is hopeful that the Inquiry will make implementable recommendations to government that will be accepted and assist in ultimately helping better manage the number and location of tobacconist (and vape stores). It is imperative that there is more control, better regulation and enforcement in this space.

Thank you for considering Council's submission and we look forward to the progress of this inquiry.

If you need further information about this matter, please contact _____, City Development on _____. Please quote Council's reference 31157E (D25/275169).

Yours sincerely