



AGENDA

**FOR GOVERNANCE AND COMPLIANCE COMMITTEE MEETING TO BE HELD
ON**

**17 JULY 2023 AT CONCLUSION OF THE FINANCE AND CORPORATE
SERVICES COMMITTEE**

**IN WITTBER & DR RUBY DAVY ROOMS, SALISBURY COMMUNITY HUB,
34 CHURCH STREET, SALISBURY**

MEMBERS

Cr P Jensen (Chairman)
Mayor G Aldridge (ex officio)
Cr L Brug
Cr J Chewparsad
Cr K Grenfell
Cr D Hood (Deputy Chairman)
Cr S McKell

REQUIRED STAFF

Chief Executive Officer, Mr J Harry
A/General Manager Business Excellence, Mr B Naumann
General Manager City Infrastructure, Mr J Devine
General Manager Community Development, Mrs A Pokoney Cramey
General Manager City Development, Ms M English
Manager Governance, Mr R Deco
Team Leader Council Governance, Ms J O'Keefe-Craig

APOLOGIES

An apology has been received from Cr L Brug.

LEAVE OF ABSENCE

PRESENTATION OF MINUTES

Presentation of the Minutes of the Governance and Compliance Committee Meeting held on 19 June 2023.

REPORTS

Administration

3.0.1 Future Reports for the Governance and Compliance Committee 7

For Decision

3.1.1 Smoke Free Areas - Salisbury Community Hub 9

QUESTIONS ON NOTICE

There are no Questions on Notice.

MOTIONS ON NOTICE

There are no Motions on Notice.

OTHER BUSINESS

(Questions Without Notice, Motions Without Notice, CEO Update)

ORDERS TO EXCLUDE THE PUBLIC

3.4.1 Appointment of Independent Members on the Council Assessment Panel

Recommendation

Pursuant to section 83(5) of the *Local Government Act 1999* the Chief Executive Officer has indicated that, if the Committee so determines, this matter may be considered in confidence under Part 3 of the *Local Government Act 1999* on grounds that:

1. *Pursuant to Section 90(2) and (3)(a) of the Local Government Act 1999, the principle that the meeting should be conducted in a place open to the public has been outweighed in relation to this matter because:*

- *it relates to information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).*

2. *In weighing up the factors related to disclosure,*

- *disclosure of this matter to the public would demonstrate accountability and transparency of the Council's operations*
- *Contains personal information of applicants*

*On that basis the public's interest is best served by not disclosing the **Appointment of Independent Members on the Council Assessment Panel** item and discussion at this point in time.*

3. *Pursuant to Section 90(2) of the Local Government Act 1999 it is recommended the Council orders that all members of the public, except staff of the City of Salisbury on duty in attendance, be excluded from attendance at the meeting for this Agenda Item.*

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**MINUTES OF GOVERNANCE AND COMPLIANCE COMMITTEE MEETING HELD IN
WITTBER & DR RUBY DAVY ROOMS, SALISBURY COMMUNITY HUB,
34 CHURCH STREET, SALISBURY ON**

19 JUNE 2023

Due to a number of apologies from Elected Members resulting in a lack of quorum, the Governance and Compliance Committee meeting did not proceed as scheduled.

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|------------------------|---|
| ITEM | 3.0.1 |
| | GOVERNANCE AND COMPLIANCE COMMITTEE |
| DATE | 17 July 2023 |
| HEADING | Future Reports for the Governance and Compliance Committee |
| AUTHOR | Hayley Berrisford, PA to General Manager Business Excellence, Business Excellence |
| CITY PLAN LINKS | 4.2 We deliver quality outcomes that meet the needs of our community |
| SUMMARY | This item details reports to be presented to the Governance and Compliance Committee as a result of a previous Council resolution. If reports have been deferred to a subsequent month, this will be indicated, along with a reason for the deferral. |

RECOMMENDATION

That Council:

1. Notes the report.

ATTACHMENTS

There are no attachments to this report.

1. BACKGROUND

- 1.1 Historically, a list of resolutions requiring a future report to Council has been presented to each committee for noting.

2. CONSULTATION / COMMUNICATION

- 2.1 Internal
 - 2.1.1 Report authors and General Managers.
- 2.2 External
 - 2.2.1 Nil.

3. REPORT

3.1 The following table outlines the reports to be presented to the Governance and Compliance Committee as a result of a Council resolution:

| Meeting Item | - Heading and Resolution | Officer |
|-----------------------------|--|----------------|
| 27/06/2022 3.2.1 | Community Compliance Resources 2. Approves a report on the Community Compliance resources and outcomes be presented to Council by 30 November 2023 to enable consideration of required resource demands without the impacts of COVID-19 on both staff and the community. Due: November 2023 | John Darzanos |
| 22/08/2022 MON1 | Motion on Notice: Elected Member Communication Process and Protocols That Administration bring back to the Governance and Compliance Committee a report that details the current communication process and protocols to ensure Elected Members are aware of: a. significant Council infrastructure projects and initiatives. b. development our for public consultation within the City of Salisbury. c. Council public consultation initiatives. d. community events within the City of Salisbury. e. City of Salisbury media notifications Due: July 2023 Deferred to: August 2023 Reason: Additional information required. | Helen Atkins |
| 22/05/2023 G&C- MWON1 | Pitman Park 1. Requests the Administration to present a report to the Governance and Compliance Committee by August 2023 to seek Pitman Park declared as an alcohol free area under Council By-Laws, to reduce antisocial behaviours associated with the consumption of alcohol. Due: August 2023 | John Darzanos |

4. CONCLUSION / PROPOSAL

4.1 Future reports for the Governance and Compliance Committee have been reviewed and are presented for noting.

| | |
|------------------------|--|
| ITEM | 3.1.1 |
| | GOVERNANCE AND COMPLIANCE COMMITTEE |
| DATE | 17 July 2023 |
| HEADING | Smoke Free Areas - Salisbury Community Hub |
| AUTHORS | John Darzanos, Manager Environmental Health & Community Compliance, City Development Brad Scholefield, Team Leader Community Compliance, City Development |
| CITY PLAN LINKS | 1.1 Our City is attractive and well maintained 1.2 The health and wellbeing of our community is a priority 1.3 People are valued and they feel safe, included and connected |
| SUMMARY | <p>The Salisbury Community Hub and Civic Square has become a major community precinct in the northern suburbs, with the facilities and amenities attracting a high number of patrons and families to the area. Ensuring the precinct provides a safe and welcoming environment has led to the review of smoke free areas in and around the Salisbury Community Hub and Civic Square.</p> <p>The purpose of this report is to review the smoke free options and to identify if more work is required to improve public health and wellbeing and reduce the impact from cigarette smoke.</p> |

RECOMMENDATION

That Council:

1. Approves pursuant to clause 5.7 of City of Salisbury By-Law 4 of 2022, Local Government Land By-Law 2022, the local government land known as the Salisbury Community Hub located at 34 Church Street Salisbury SA 5108 and as shown in the attached plan (Attachment 2 No Smoking Areas – Proposed Area, Item 3.1.1, Smoke Free Areas - Salisbury Community Hub, Governance and Compliance Committee, 17 July 2023) is declared a no smoking area and a person must not smoke tobacco or other substance in any building or part of any building or on the local government land, under the provisions of City of Salisbury By-Law 4 of 2022, Local Government Land By-Law 2022, and this restriction shall begin on 1 September 2023 and remain in force until further notice.
2. Approves pursuant to *Section 238 of the Local Government Act 1999*, that a sign or signs shall be erected in a prominent position(s) in the immediate vicinity of the local government land known as the Salisbury Community Hub located at 34 Church Street, Salisbury SA 5108 and as shown in the attached plan (Attachment 2 No Smoking Areas – Proposed Area, Item 3.1.1, Smoke Free Areas - Salisbury Community Hub, Governance and Compliance Committee, 17 July 2023) to notify all attendees and members of the community that the land is declared a no smoking area and a person must not smoke tobacco or other substance in any building or part of any building or on the local government land.

3. Approves the Administration develop an application in accordance with the Application Guide for Smoke Free Areas under the *Tobacco and E-Cigarette Products Act 1997* and apply to the Minister of Health to declare a long-term smoking ban for the Salisbury Community Hub surrounding and Civic Square as identified in Attachment 2.
4. Approves the Administration apply to have appropriate Council Staff authorised under the *Tobacco and E-Cigarette Products Act 1997* to enforce the regulations regarding smoking in the designated area.

ATTACHMENTS

This document should be read in conjunction with the following attachments:

1. Attachment 1 No Smoking Areas – Current controls [↓](#)
2. Attachment 2 No Smoking Areas – Proposed Area [↓](#)
3. Attachment 3 Application Guide for Smoke Free Areas [↓](#)

1. BACKGROUND

- 1.1 The mixed use of the Salisbury Community Hub and Civic Square and detection of smoking in various areas surrounding the Community Hub has led Council Staff investigating a smoking ban for the entire Community Hub and Civic Square area which incorporates the Hub entrance undercroft area, paths, seating areas, playground area and lawn area.
- 1.2 Controlling and restricting smoking in public spaces is managed through a range of legislative controls in order to protect public health and also reduce the environmental impact from cigarette waste. The relevant legislation that restricts smoking in and around the Salisbury Community Hub and the Civic square includes the:
 - 1.2.1 *Tobacco and E-Cigarette Products Act 1997*;
 - 1.2.2 *Work Health Safety Act 2012* and Council's Smoke Free Workplace Policy; and
 - 1.2.3 *Council By-Law 4 Local Government Land*.
- 1.3 The Administration has implemented the placement of signage advising the public of smoking bans as per the *Work Health Safety Act 2012* and Council's Smoke Free Workplace Policy, however these provisions lack the ability to have local Authorised staff enforce any breaches.
- 1.4 The only legislatively enforceable area within the Civic Square is the playground which is designated a smoke free area under the *Tobacco and E-Cigarette Products Act 1997*, however there are no Authorised Officers under this legislation in our Council.
- 1.5 With increasing presence of smokers in proximity to the entry of the Hub and associated waste, it was considered appropriate to review the available legislative options in order to have enforceable restriction that could be applied by local Authorised staff where education alone wasn't having the desired outcomes.

2. CONSULTATION / COMMUNICATION

2.1 Internal

2.1.1 Team Leader Safety & Wellbeing

2.2 External

2.2.1 SA Health - Health Protection Operations, Tobacco Control Unit

3. REPORT

3.1 Under the *Tobacco and E-Cigarette Products Act 1997* and *Work Health and Safety Act 2012* locations around the Community Hub and Civic Square that are currently designated as smoke free areas are depicted in Attachment 1 No Smoking Areas – Current controls.

Tobacco and E-Cigarette Products Act 1997

3.2 The following areas are covered by the *Tobacco and E-Cigarette Products Act 1997*.

Public playgrounds:

3.2.1 Currently a person in a public area must not smoke within 10 metres of any prescribed children's playground equipment. Prescribed children's playground equipment means children's playground equipment that is located in a public area.

3.2.2 For the purposes of the legislation, the area identified in Attachment 1 which shows a plan of the Hub and Civic Square, the prescribed children's play equipment incorporates the area set aside for children's play and with the special rubber ground cover. The 10 metre perimeter follows the outline of the play area and provides coverage over an extended area of the Civic Plaza.

Outdoor dining areas:

3.2.3 Smoking is banned in a public area consisting of an outdoor dining area at any time that food is being offered for purchase, or otherwise provided. This means the area provided for Square Café outdoor dining is a smoke free area when the tables are available and the café is trading.

3.2.4 When the café is closed the area is not declared a smoke free area unless captured by another Section of the Act or other legislation. This area has also been highlighted on Attachment 1.

Enclosed public places, workplaces and shared areas:

3.2.5 Smoking is banned in an enclosed public place, workplace or shared area. If smoking occurs in an enclosed workplace the employer with responsibility for the workplace under the *Work Health and Safety Act 2012* is guilty of an offence. A place or area is enclosed if it is fully enclosed or is at least partially covered by a ceiling and has walls such that the total area of the ceiling and wall surfaces exceeds 70 per cent of the total notional ceiling and wall area. This part of the legislation extends to the inside of the Community Hub and covers all the work spaces and shared areas in the library.

- 3.3 This legislation is administered by Authorised Officers under the *Tobacco and E-Cigarette Products Act 1997* and currently only staff from SA Health are Authorised Officers.

Work Health Safety Act

- 3.4 The *Work Health and Safety Act 2012* requires the City of Salisbury to provide a safe work environment. It is well documented that smoking and passive smoking is a significant health and safety hazard and that there is no recognised safe level of tobacco smoke exposure, and smoking is not permitted within all enclosed City of Salisbury workplaces, buildings, vehicles and staff car parks.
- 3.5 The Work Health Safety policy specifies that smoking is not permitted within 10 metres of workplace building entrances and exit doorways, air conditioning intakes and open windows.
- 3.6 Under Section 20 of the *Work Health and Safety Act 2012* it is the duty of persons conducting businesses or undertakings involving management or control of workplaces, to ensure that the workplace, the means of entering and exiting the workplace and anything arising from the workplace are without risks to the health and safety of any person.
- 3.7 The frequent pedestrian and employee access to the Community Hub through the common entry points means that the area declared smoke free under our WHS Policy extends to those high traffic areas. The doorways and exits and high pedestrian movement thoroughfares leading to entry points are to be considered as smoke free areas. These areas are also highlighted in Attachment 1.
- 3.8 Enforcing the *Work Health and Safety Act 2012* and Work Health Safety policy can be undertaken by anyone deemed to be person conducting a business or undertaking, however there are no immediate enforcement options with this Act through Authorised Officers.

Council By-Law 4 Local Government Land

- 3.9 Under the provisions of the *Council By-Law 4 Local Government Land*, a person must not, on any local government land smoke tobacco or any other substance in any building or part of any building or on any local government land to which the Council has determined that these provisions apply.
- 3.10 Council may by resolution apply these provisions to areas of local government land and buildings that are not covered by the *Tobacco and E-Cigarette Products Act 1997*.
- 3.11 If the entire Civic Square was to be smoke free then the area could be expanded to cover the additional areas shown in Attachment 2 No Smoking Areas – Proposed Area. This includes the entrance paths and main thoroughfares to enable these areas to be enforced as smoke free under local by-laws making it an offence.
- 3.12 The advantage to this option is that it can be implemented and enforced by Council Authorised Officers and covers the entire Civic Square and thoroughfares. The disadvantage is that there are multiple pieces of legislation affecting different parts of the land. A person standing outside the 10 metre zone of the playground falls under the controls of *Council By-Law 4* where a person inside the 10 metre zone falls under the *Tobacco and E-Cigarette Products Act 1997*. This could be

confusing and difficult to ensure the correct legislation is being used without placing markings on the ground to delineate.

- 3.13 Council staff can however apply to be authorised under the *Tobacco and E-Cigarette Products Act 1997* to enable complete enforcement across the entire Civic Square and Community Hub utilising both pieces of legislation.

Smoking banned in certain public areas—longer term bans

- 3.14 The *Tobacco and E-Cigarette Products Act 1997* allows for Council to seek approval to declare the entire area smoke free under that act.
- 3.15 Extending the smoke free area to all parts of the Civic Square and Hub surrounds will require an application to SA Health to declare the area smoke free. Section 52 of the *Tobacco and E-Cigarette Products Act 1997* allows local councils and other incorporated bodies to apply to have an outdoor area declared smoke-free.
- 3.16 This process requires an application to be lodged that covers a range of compulsory requirements as specified in the Application Guide for Declared Smoke-free Area.
- 3.17 The approval is at the discretion of the Minister and the area will be included in the Tobacco and E-Cigarette Products Regulations as a declared smoke free area. The entire process after completing the application takes approximately six months to approve through the Parliamentary processes. Please refer to Attachment 3 for a copy of the Application Guide for Smoke Free Areas.
- 3.18 Local councils that apply for a smoke-free area are expected to also apply for their officers to be authorised to enforce the smoke-free area allowing for local enforcement and prompt action.
- 3.19 There are several specific areas in South Australia that have utilised this option including, Bowden Town Square, Henley Square, Moseley Square Glenelg, the Royal Adelaide Show and the Parade Norwood.
- 3.20 Utilising one piece of legislation for the entire area would reduce any confusion or need to delineate the playground exclusion zone and the area covered by Council By-Laws especially if a person moves between the two areas. It should be noted however that some aspects of the Hub (such as entrances) may still need to be controlled through by-laws.
- 3.21 This option is considered the most complete response to smoking issues in the Civic Square area and is in line with other multi-function public spaces as listed above. The process may take 6-12 months to complete the process and the smoking ban will still be subject to Ministerial approval.


4. CONCLUSION / PROPOSAL

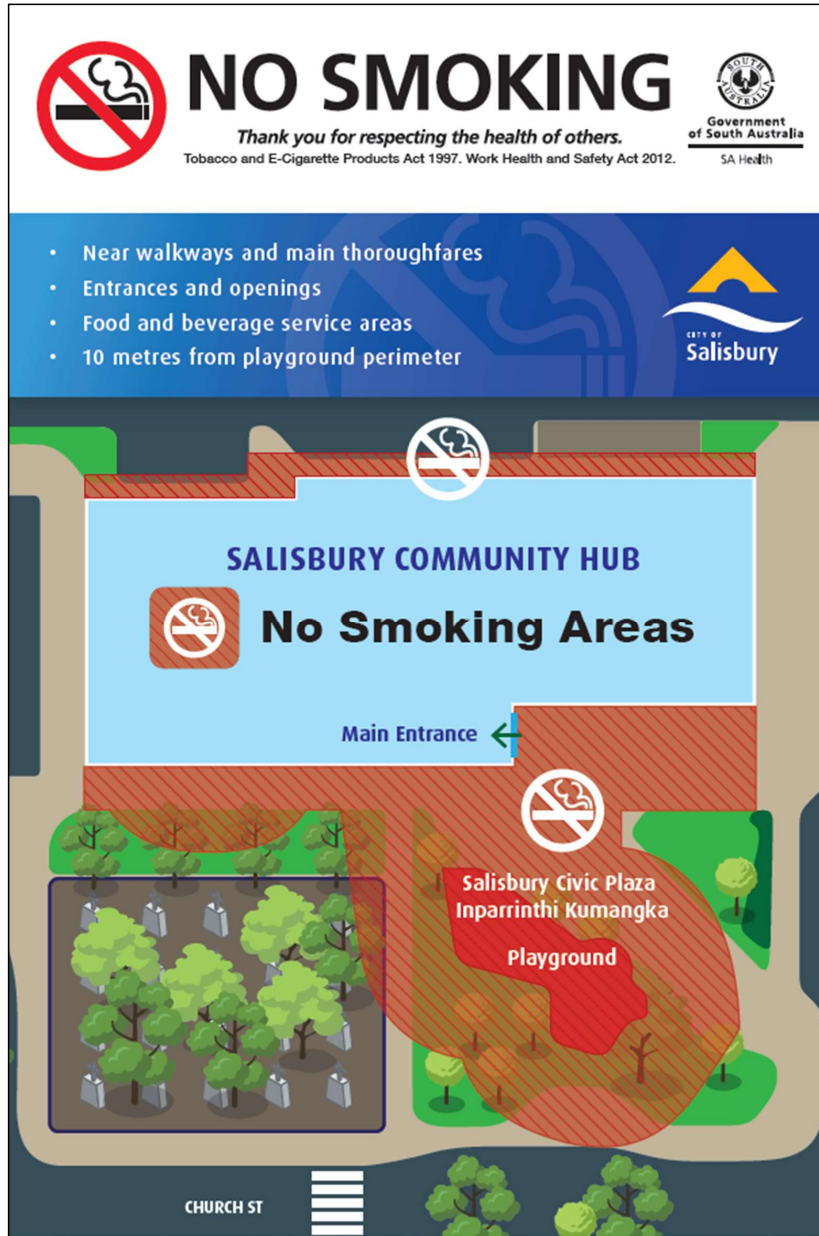
- 4.1 Staff will continue to promote the smoke free zones in and around the Community Hub and Civic Square to help reduce the impact of smoking on the community and to ensure that staff have a safe place of work.
- 4.2 To provide immediate effect to any education and encouragement relating to no smoking and allow for enforcement action or issuing of a directive to cease or move due to smoking, it is recommended that Council support the balance of the Civic Square and entrances and thoroughfares outside the 10m playground exclusion area (as depicted in Attachment 2), be declared as smoke free under Council By-Law 4 Local Government Land 2022.

- 4.3 A comprehensive long-term solution is preferred and it is recommended that Council consider approving the preparation of an application to the Minister for the declaration of a long-term ban under the *Tobacco and E-Cigarette Products Regulations 2019* for the Civic Square and western side of the Hub building adjacent the plaza.

Attachment 1 No Smoking Areas – Current controls


Inclusive of *Tobacco and E-Cigarette Products Act 1997* and *Work Health and Safety Act 2012*

No Smoking areas depicted by diagonal stripes 



Attachment 2 No Smoking Areas – Proposed area

Proposed area inclusive of *Tobacco and E-Cigarette Products Act 1997* and *Council By-Law 4 Local Government Land 2022*

No Smoking areas depicted by diagonal stripes 



Item 3.1.1 - Attachment 2 - No Smoking Areas – Proposed Area



Application Guide Declared Smoke-free Area

Declared smoke-free areas

Declared smoke-free areas are public outdoor spaces where smoking (including the use of e-cigarettes) has been banned. These areas can be created to address a passive smoking risk or to support the management of smoking at an event.

Sections 51 and 52 of the *Tobacco and E-Cigarette Products Act 1997* allow local councils and other incorporated bodies to apply to have an outdoor area or event declared smoke-free.

Areas that can be declared smoke-free

An application can be submitted to declare public outdoor areas smoke-free. Private, residential property cannot be declared smoke-free.

A smoke-free declaration can be used to address a local smoking issue in a public outdoor area, if a clear rationale is provided. The types of areas or events that can be considered include shopping districts, high traffic business districts and congested entrances, car parks, footpaths and streets as well as events such as fetes, sporting events or music and art festivals.

Applications must demonstrate that a risk of passive smoking exists or that smoking impacts on the amenity of an area. For example, a large open park or suburban street is unlikely to be considered for a long-term declaration but would be considered for a short-term declaration during an event.

Eligible applicants

Applications will only be accepted from local councils and other incorporated bodies. Individuals can seek declarations through their local council. Incorporated bodies include groups that run major events, such as festivals and music events.

Applicants must identify a smoking issue, show that they represent the area being declared, have community support for a declaration and are able to manage the enforcement of the smoke-free area. Enforcement is likely to require either the support of the local council or complete control of the area, such as at an event.

Making an application

There are two types of applications: short term and long term.

Short-term applications

The Minister has the power to declare a smoke-free area for a period of up to **three days**. Completed applications for an event of three days or less should be received at least **eight weeks before the event**.

Long-term applications

Major and long-term areas and events will be declared smoke-free by Regulation. Due to the Cabinet and Parliamentary processes required to introduce a Regulation, a completed application must be received at least **six months before it is introduced**.

Developing an application

An application must include:

- > A rationale for the smoke-free area
- > A map and description of the smoke-free area
- > A risk management plan
- > An enforcement strategy
- > The location of signage
- > A communications plan
- > Evidence of consultation
- > An evaluation plan

Rationale

Applicants for declared smoke-free areas must identify an issue in a specific area that a declaration will address. The rationale should include a description of the smoking problem, demonstrate that a risk of passive smoking exists or that smoking impacts on the amenity of an area and show how the declaration of a smoke-free area will address this. The rationale should also include the dates and length of time that the declared area will apply.

Map and description of the smoke-free area

Applications must include a detailed description of the area or event, including a map and the placement of signage.

The smoke-free area is expected to cover the bulk of an area or event, but is not required to be continuous. Areas can be specified where smoking will continue to be allowed.

Risk management plan

Applications must include a risk management plan that considers the consequences of a smoke-free area and strategies for addressing potential negative outcomes.

For example, smoking bans tend to create a high density of smokers outside the smoke-free area, such as at entrances that patrons are required to pass through.

Issues that should be considered include:

- > Where will smokers move to?
- > Can smokers easily enter and exit the smoke-free area? Are pass outs required?
- > Will there be any negative responses from patrons and how will these be addressed?

Enforcement plan

Applications must include an enforcement plan describing how the smoke-free area will be enforced.

Any person aged 15 years and over found smoking in a declared smoke-free area is guilty of an offence and can be fined up to \$750. An expiation fee of \$105 can be issued by authorised officers.

Local councils that apply for a smoke-free area are expected to also apply for their officers to be authorised to enforce the smoke-free area.

Organisers of events will be expected to either show that the local council supports and will enforce the smoke-free area, or that staff and security officers will ask patrons not to smoke. Staff and security officers cannot issue fines.

The enforcement plan should include guidelines describing how smoking breaches will be addressed. SA Health recommends an educative approach to enforcement. Smokers should be informed about the smoke-free area and politely asked to either stop smoking or leave the area. Confrontation with smokers should be avoided. Most people are prepared to voluntarily comply with a smoke-free area when they are aware of it, providing that the area is clearly sign posted as smoke-free.

Location of signage

The *Tobacco and E-Cigarette Products Act 1997* requires that signs are posted in numbers and in positions that ensure they are likely to be seen in the smoke-free area. The application should show on a map where signs will be posted and include a copy of the signs that will be used (an example sign is attached to this document).

Communication plan

Applications must include a communication plan. It should describe how the patrons and businesses in the area will be informed about the smoke-free area.

The scale of the communication plan should reflect the impact on the community of declaring the smoke-free area. For example, an outdoor shopping precinct will be expected to undertake a significant communications campaign, while a community fete may only require signage at the event.

Consultation

Applications should include evidence of stakeholder consultation on a scale that reflects the impact of declaring the smoke-free area. For example, an outdoor shopping precinct will be expected to demonstrate significant community and stakeholder support, while a ticketed event may only need to consult with affected businesses and neighbouring properties.

Evaluation plan

Applications should include an evaluation plan. The evaluation should be conducted either at the conclusion of the smoke-free declaration, or at regular intervals in the case of long-term declarations. The evaluation should include an analysis of the effectiveness of the smoke-free area, the number of compliance and enforcement activities, feedback from patrons and community stakeholders, any unintended consequences and recommendations for future or similar declarations.

Applications should be addressed to:

**The Manager
Tobacco Control Unit
Drug and Alcohol Services South Australia
75 Magill Road
Stepney SA 5069**

and sent via email to HealthDASSATobaccoControlUnit@sa.gov.au

It is recommended that applicants contact the Tobacco Control Unit, Drug and Alcohol Services South Australia on telephone (08) 7425 5000 to discuss a proposed smoke-free area before submitting an application.

Declared smoke-free areas are made at the discretion of the Minister and the South Australian Government. A declaration will only be made once an applicant has satisfactorily addressed the requirements for a smoke-free area.