

Cultural Vitality **Social Equity** Economic Prosperity
Environmental Sustainability



Options for Introducing Smoke-Free Areas & Events

Position Paper



City of
Norwood
Payneham
& St Peters

TABLE OF CONTENTS

1.0	Introduction.....	5
2.0	Background	5
2.1	Statistics.....	5
2.2	What is second hand smoke?	6
2.3	Health impacts.....	6
3.0	Legislation and what the Council can do.....	7
3.1	Existing legislation.....	7
3.2	New smoke-free legislation	7
3.3	Process for declaring smoke-free areas and events	8
3.3.1	Tobacco Products Regulation Act 1997	8
3.3.1.1	Section 51.....	8
3.3.1.2	Section 52.....	8
3.3.2	Regulation of smoking under a By-Law	9
3.3.3	Introducing a non-smoking council policy.....	9
4.0	Is the introduction of smoke-free areas a positive step for our community?.....	9
5.0	Community support for smoking restrictions in public spaces	11
6.0	What about smoker’s rights?.....	11
7.0	What are other councils doing?.....	11
7.1	South Australia	12
7.2	Australian Capital Territory	12
7.3	New South Wales	12
7.4	Northern Territory.....	13
7.5	Queensland.....	13
7.6	Tasmania	13
7.7	Victoria	13
7.8	Western Australia	13
8.0	What is happening in other countries.....	14
9.0	Council areas and events that could be declared smoke-free.....	14
9.1	Council events	14
9.1.1	Recommendation.....	15
9.2	Council owned buildings and facilities	15
9.2.1	Recommendation.....	16
9.3	Parks and reserves (including Norwood Oval)	16
9.3.1	Recommendation.....	17
9.4	Outdoor dining	17
9.4.1	Recommendation.....	19
9.5	The Parade	19
9.5.1	Recommendation21	
10.0	Conclusion.....	21
	References.....	23

1.0 Introduction

Over recent years, there has been increasing community awareness of the harmful effects of second hand (passive) smoke. This has led to the community both accepting the creation of smoke-free areas and expecting the availability of smoke-free areas. However, finding an acceptable balance for all members of the community, both the smokers and the non-smokers, can sometimes be difficult, particularly in places where there is a pre-determined perception that eliminating smoking will have subsequent flow on effects.

In May 2012, the State Government introduced new legislation through amendments to the *Tobacco Products Regulation Act 1997* (the Act), banning smoking within ten (10) metres of any prescribed children's playground equipment (located in a public area) and under all covered public transport waiting areas, including bus, tram, train and taxi shelters and other covered areas that are used to board or alight from public transport. The introduction of this new legislation has broadened the extent of smoking controls in South Australia, which already has in place smoking bans in most enclosed public places, workplaces (including restaurants, cafes, shopping centres and Licensed venues), in shared areas (areas within residential facilities that are used by all tenants) and in cars containing children under the age of sixteen (16).

In addition to these targeted smoking bans, the new legislation has given Local Government and other incorporated bodies, the power to identify and apply to have a particular outdoor area, or a specific event, declared smoke-free. Through these legislative changes, Local Government has the opportunity to establish policy that provides for better public health for its citizens.

The purpose of this Position Paper is to provide an overview of the new legislation and outline the advantages and disadvantages associated with the introduction of additional outdoor smoke-free areas or events. In particular, the Position Paper sets out the investigations into the different types of locations and events that could be designated as smoke-free environments and makes recommendations as to whether or not the Council should consider restricting smoking in these particular places or events, whilst at the same time taking into consideration any existing legislation and Council Policy relating to the smoke-free areas.

2.0 Background

South Australia has seen numerous smoking bans introduced over the years in incremental stages. These bans have been a consequence of a range of factors including advances in scientific evidence, growing public acceptance and expectations and political decision making. *“While the earliest smoking bans in cinemas and on public transport were driven primarily by concerns about fire risk, the growing recognition of the health effects of second hand smoke together with growing public dislike of cigarette smoke have been the factors facilitating the adoption of smoke-free policies and legislation in more recent times.”*³

This section looks broadly at the number of smokers within South Australia, what second hand smoke is and the health effects associated with second hand smoke.

2.1 Statistics

Statistics released by the Cancer Council in May 2012, indicate that approximately 17.6% of all South Australian adults, aged fifteen (15) years and above were smokers in 2011, which is a significant decline since 2010, where 20.5% and more so in 2002, where 23.6% of adults, were smokers. A large percentage of this decrease is being attributed to the strong focus on prevention, which has been supported by legislative changes and public education campaigns. However, the increased financial cost of smoking cannot be underestimated as an influence in people's decision to stop smoking. At this stage, it is unknown what, if any, impact the recent introduction of plain packaging of cigarette packets will have on the rate of smoking. Notwithstanding this decrease, there continues to be a strong correlation between smoking and a person's socio-economic status, with the rate of smoking increasing as the level of socio-economic disadvantage increases. For example the smoking prevalence amongst Aboriginal people is more than double that of non-Aboriginal people and 85 per cent of all prisoners are smokers.⁶

In South Australia, males account for a significantly higher proportion of the smokers, with 20.2% of all men compared to 15.2% of all women being smokers. **Table 1** below provides a breakdown of the percentage of smokers by sex and age group.

TABLE 1: SMOKING PREVALENCE AMONG SOUTH AUSTRALIAN ADULTS, 2011**

Category	Smoking Prevalence * (%)
Males	20.2
Females	15.2
15-29 years*	17.6
30-44 years	23.2
45-59 years	21.7
60+ years	7.8
Total (15+)	17.6

* Defined as those who reported smoking daily, weekly or less often than weekly.

** TCRE, Key Smoking Statistics for SA-2011, Adelaide Australia. Tobacco Control Research and Evaluation, Cancer Council SA, May 2012.

Of the four (4) age categories set out in Table 1, the greatest number of smokers is in the 30-44 and 45-59 cohorts, accounting for 23.2% and 21.7% of the total population, respectively. The number of smokers drops dramatically in the 60 year old and over category, accounting for only 7.8% of the total population in that cohort. The reason for this significant drop is unclear, however it can be assumed that health issues, cost and education are more than likely the contributing factors.

There are approximately 15,000 tobacco-attributed deaths across Australia each year, 1,140 of which are in South Australia. In addition to being the most preventable cause of premature deaths in Australia, smoking also has the potential to significantly reduce the quality of a person's life and place a huge financial burden on a person's family, the health system and the community in general.

2.2 What is second hand smoke?

Second hand smoke, which is also known as Environmental Tobacco Smoke (ETS) and Passive Smoking, is a combination of two (2) types of smoke - sidestream smoke and mainstream smoke. Sidestream smoke is the term given to the smoke that comes out of the burning end of a cigarette, cigar or smoking pipe, while mainstream smoke is the term given to smoke that is exhaled by a smoker. Sidestream smoke is the main component of second hand smoke.^{5,7,9,13}

In general, cigarette smoke contains more than 4,000 chemicals, forty-three (43) of which are known carcinogens (substances that are known to cause cancer). Whilst both types of smoke, sidestream and mainstream, contain chemicals, the chemical components found in second hand smoke and sidestream smoke in particular, are different to the chemicals inhaled directly by a smoker. Researchers have found that the carcinogens and toxic particles in second hand smoke are finer and more concentrated than the mainstream filtered smoke that is inhaled by a smoker, which means they can be inhaled more deeply into the lungs and therefore can be more harmful than the mainstream filtered smoke.^{5,7,9,13}

2.3 Health impacts

There is a significant amount of evidence linking exposure to second hand smoke with a range of serious and life threatening health impacts including heart disease, stroke, cancer, asthma and other respiratory problems. Children in particular, exposed to second hand smoke are at an increased risk of asthma, Sudden Infant Death Syndrome (SIDS), acute respiratory infections and ear problems.

Research has shown that significant exposure to second hand smoke not only increases a person's risk of coronary heart disease by approximately 25%, it also increases a non-smokers risk of suffering a stroke.^{8,9} Information released by the Heart Foundation suggests that even very short-term exposure to second hand smoke (as little as 30 minutes) can affect the cardiovascular system of non-smokers.⁸

Notwithstanding the significant health impacts that are caused by second hand smoke, there is also a strong risk that by exposing children to smoking it also increases their chances of commencing smoking, simply because they are seeing adults smoking. Research shows that “if cigarette smokers commence smoking as teenagers and do not quit, eventually about half of them will be killed by tobacco”.⁶

Whilst the health impacts are well documented for indoor exposure to second hand smoke, there is less documented evidence regarding outdoor exposure, although, as awareness and concern increases so does the amount of evidence that is being documented, showing that second hand smoke can accumulate in outdoor locations at levels that could pose risks to health. What is known, is that as the amount of smoke in outdoor locations increases, particularly in areas around a large concentration of smokers and under certain wind conditions, so does the exposure and consequently the effects of second hand smoke, particularly for people with certain pre-existing medical conditions.

3.0 Legislation and what the Council can do

3.1 Existing legislation

In Australia, the legislation relating to smoking is generally controlled by the individual States or Territories. The only three (3) exceptions to this are the *Air Navigation Act 1920*, which banned smoking on all domestic flights in 1987 and international flights in 1996, the *Interstate Road Transport Act 1985*, which banned smoking on all registered buses and the *Airports Act 1996*, which prohibits smoking in any part of an airport that displays a non-smoking sign.

The *Tobacco Products Regulation Act 1997* (the Act), is the overarching legislative document that regulates tobacco and smoking in South Australia. In December 2004, amendments to the Act introduced legislation banning smoking in all enclosed public places, workplaces and shared areas (areas within residential facilities that are used by all tenants). This smoking ban was expanded in November 2007, to include all public places, workplaces and shared areas that are more than 70% enclosed. A place or an area is deemed to be enclosed for the purposes of the Act if it is fully enclosed, or is at least partially enclosed, by a ceiling or roof and has walls such that the total area of the ceiling and wall surfaces exceeds 70% of the total notional ceiling and wall area. Under the legislation, an area without a ceiling or roof is not considered to be enclosed.

These legislative changes followed the legislative changes, which banned smoking in all indoor dining areas in 1999 and the smoking restrictions in enclosed licensed hospitality premises, which were phased in between 1999 and 1 November 2007. Legislation banning smoking in cars containing children (defined as being sixteen (16) years of age or less) was introduced in May 2007.

3.2 New smoke-free legislation

On 31 May 2012, the Act was amended to encompass additional public areas, where smoking is prohibited. These additional areas include within ten (10) metres of children’s playground equipment and public transport waiting areas that are used or intended to be used, by passengers boarding or alighting from public transport, which is wholly or partly covered by a roof. A public transport waiting area is defined for the purposes of the legislation as being any part of a bus stop, tram stop, railway station, taxi rank, airport or similar public place, which is used or intended to be used by passengers boarding or alighting from transport. Included also are bus stop waiting areas covered by a roof from an adjacent building. In such locations, if the area is wholly or partly covered by a roof, smoking is banned.

In addition, the amendments to the Act have given Local Governments the ability to make an application to the Minister for Mental Health and Substance Abuse, to declare an outdoor area or event smoke-free, either on a short term or long term basis. A Council can simply choose to remain within the ambit of the smoke-free areas designated by the legislation, or it can determine to be pro-active and make applications to declare other areas or events, smoke-free. Section 3.3, ‘Process for declaring smoke-free areas and events, within this Position Paper, outlines the new legislation and processes required to declare short term or long term smoke-free areas and events.

As part of the introduction of the new legislation, the State Government undertook a public awareness program informing the community of the new smoke-free areas. Whilst there is no legislative requirement to install signage at or near children's playground equipment, for example, councils have the ability, if they choose, to erect specific signs indicating that smoking is not permitted within ten (10) metres of children's playground equipment, or to incorporate smoke-free signage as part of other signage. From a public awareness perspective, it is considered good practice to do so. The placement of appropriate signage will simply reinforce the fact that smoking within ten (10) metres of children's playground equipment, for example, is banned. In August 2012 the Norwood Payneham & St Peters Council resolved to install specific signs at each of its playgrounds, advising people that smoking is not permitted within ten (10) metres of children's playground equipment. The new signage was installed at all playgrounds throughout the City of Norwood Payneham & St Peters in early 2013.

3.3 Process for declaring smoke-free areas and events

There are three (3) processes by which a Council can declare an area or event smoke-free, namely; through Section 51 or 52 of the *Tobacco Products Regulation Act 1997*; through the introduction of a By-Law under Section 238 of the *Local Government Act 1999*; or through the introduction of Council Policy. Each of these three (3) processes and the enforcement powers that are available to the Council are discussed below.

3.3.1 Tobacco Products Regulation Act 1997

Section 51 and Section 52 of the *Tobacco Products Regulation Act 1997*, allows Local Governments and other incorporated bodies, to identify and apply to make a certain outdoor area, or have an event, declared non-smoking for a short term or long term period, respectively. Once declared, the area or events non-smoking status is enforceable under the Act.

3.3.1.1 Section 51

Pursuant to Section 51 of the Act, a Council may make an application to the Minister for Mental Health and Substance Abuse, to have a certain outdoor area or event declared non-smoking for a short-term period of up to three (3) days. Examples of these include a football match, carnival, fete, pageant or other community event. Under the legislation, the Minister has the power to declare an outdoor area, or event, smoke-free for a period of up to three (3) days, by notice in the Government Gazette. Applications for an event of three (3) days or less, to be declared smoke-free will need to be made at least three (3) months in advance.

Where a short term declaration is made, smoking in the outdoor area is an offence, and therefore is enforceable under the Act. Police Officers and Tobacco Control Officers from the Department of Health and Ageing have been given the authority to undertake the enforcement for the new provisions on behalf of the State Government. It is expected that any Council that makes an application for a smoke-free area or event will also apply to have their suitability skilled and experienced staff, authorised under the Act, to undertake the responsibility for the enforcement of the new provisions. Any fees collected by a Council through Expiation Notices, will be treated as revenue for the Council.

3.3.1.2 Section 52

Pursuant to Section 52 of the Act, a Council may make an application to the Minister for Mental Health and Substance Abuse, to have longer term and permanent smoking bans applied to major events and outdoor areas. The long term or permanent declaration of an area, or event, as smoke-free, will be considered on its individual merits and will be declared smoke-free by Regulation. A Regulation is a law and therefore must be approved by Cabinet and the Governor, prior to being tabled in Parliament, before it comes into effect. Due to the Cabinet and Parliamentary processes required to introduce a Regulation, an application will need to be made at least six (6) months prior to its intended introduction.

Any smoking bans introduced through Section 51 or Section 52 of the Act, are at the discretion of the Minister, therefore there is no guarantee that any application to introduce smoke-free areas or events will be successful.

Similar to Section 51, Police Officers and Tobacco Control Officers from the Department of Health and Ageing, will have the responsibility to undertake the enforcement for the new provisions on behalf of the State Government. It is expected that any Council that makes an application for a smoke-free area or event will also apply to have their suitability skilled and experienced staff, authorised under the Act, to undertake

the responsibility for the enforcement of the new provisions. Any fees collected by a Council through Expiation Notices, will be treated as revenue for the Council.

3.3.2 Regulation of smoking under a By-Law

As an alternative to making an application to the Minister under Section 51 or Section 52 of the Act (which is subject to Ministerial approval and, therefore, does not guarantee the Council's desired outcome), a Council may restrict smoking on Local Government land (not including footpaths and roads) by way of amending its Local Government Land By-Law to include such a provision. A By-Law is a legislative instrument made by the Council that regulates, controls and provides the tools for the administration of the Council area.

Specifically, pursuant to Section 238 of the *Local Government Act 1999*, a Council may make By-Laws to regulate various activities on Local Government land, which includes smoking. This power extends to being able to prohibit smoking on any local government land that the Council has determined by way of resolution (such as specific reserves). Creating this By-Law will make smoking in the determined locations an offence. The Council's power to make By-Laws about the use of roads (including footpaths and nature strips) is limited to the particular uses set out in Section 239 of the *Local Government Act 1999* and does not include smoking.

The introduction of any By-Law is only able to operate on land that it is not already regulated under the *Tobacco Products Regulation Act 1997*, such as within ten (10) metres of children's playground equipment, enclosed workplaces and bus stops.

If a Council amends its By-Laws to restrict smoking on certain land, the smoking restrictions can be enforced by Council Officers appointed as authorised persons under Section 260 of the *Local Government Act 1999*. However, the ability to enforce the By-Law is contingent upon an alleged offender cooperating with a request by an authorised officer and providing his/her name and address.

3.3.3 Introducing a non-smoking Council policy

A Council, like any other land owner, has the ability to introduce smoke-free policy on any parcel of land or within any facility that is in its ownership. Unlike the non-smoking bans that are introduced through Section 51 and Section 52 of the *Tobacco Products Regulation Act 1997*, or by a Council By-Law introduced under Section 238 of the *Local Government Act 1999*, Council Policy is simply a position of the Council regarding the conduct of its employees and members of the community in a particular area or facility. Any smoke-free policy introduced by the Council would need to be strongly promoted and would need to incorporate clear signage in order to get the support of the community and to ensure compliance.

Unlike the other two (2) options, a smoke-free policy introduced by the Council cannot be enforced under legislation. Therefore, the introduction of any policy will need to also include appropriate enforcement procedures that are relatively easy to implement and enforce, in the event of non-compliance. Most councils that have introduced smoke-free policy in this manner have found that the level of community support ensures bans are generally self-enforced.

4.0 Is the introduction of smoke-free areas a positive step for our community?

As previously stated, there is substantial evidence linking exposure to second-hand smoke with a range of serious and life threatening illnesses including heart disease, cancer and asthma. In particular, research now shows that children exposed to second hand smoke have an increased risk of developing asthma, Sudden Infant Death Syndrome (SIDS), acute respiratory infections and ear problems.¹

As community awareness of the harmful effects of second-hand tobacco smoke increases, so does the community's expectations that it will be protected from smoke polluted environments. Information obtained from the Cancer Council SA indicates that in 2010, 95.2% of the population (93.5% smokers) held the view that smoking causes illness and/or damage to the body.¹² **Table 2** provides a summary of the views of the general population and that of smokers, in regard to what type of illness and or damage they believe

smoking can cause. Lung Cancer and Emphysema are the two (2) most common illnesses that people associate with smoking.

As well as the health benefits associated with restricting smoking, there are also additional social benefits associated with reducing this social nuisance and with children role modelling adults and environmental benefits through a reduction in the number of cigarette butts that are littered. By introducing more smoke-free areas it will help to de-normalise smoking and reflect the desires of the vast majority of the community. The less visible that smoking is the less socially acceptable that it becomes. Given that the vast majority of adult smokers start in their teenage years, it is important that every effort is made to de-normalise tobacco, so children are less likely to view smoking as socially acceptable behaviour and therefore less likely to start smoking.

In terms of the environmental benefits, the KESAB Litter Index data shows that cigarette butts, which are not biodegradable, contribute to approximately 50% of all the litter counted at 151 sites throughout South Australia. Cigarette butts take up to five (5) years to break down. Therefore, by restricting the number of public areas where smoking is permitted, the Council would also be contributing to a reduction in the amount of litter, which would consequently result in an environmental benefit.

TABLE 2: VIEW THAT ACTIVE SMOKING WILL CAUSE ILLNESS AND/OR DAMAGE

Illness or Damage In 2010	% of Population	% of Smokers Only
Lung Cancer	73.5%	67.8%
Emphysema	50.7%	57.3%
Heart Disease	33.2%	34.3%
Asthma	20.3%	16.5%
Stroke	10.5%	14.8%

Source: TCRE, *Key Smoking Statistics for SA-2011, Adelaide Australia. Tobacco Control Research and Evaluation, Cancer Council SA, May 2012.*

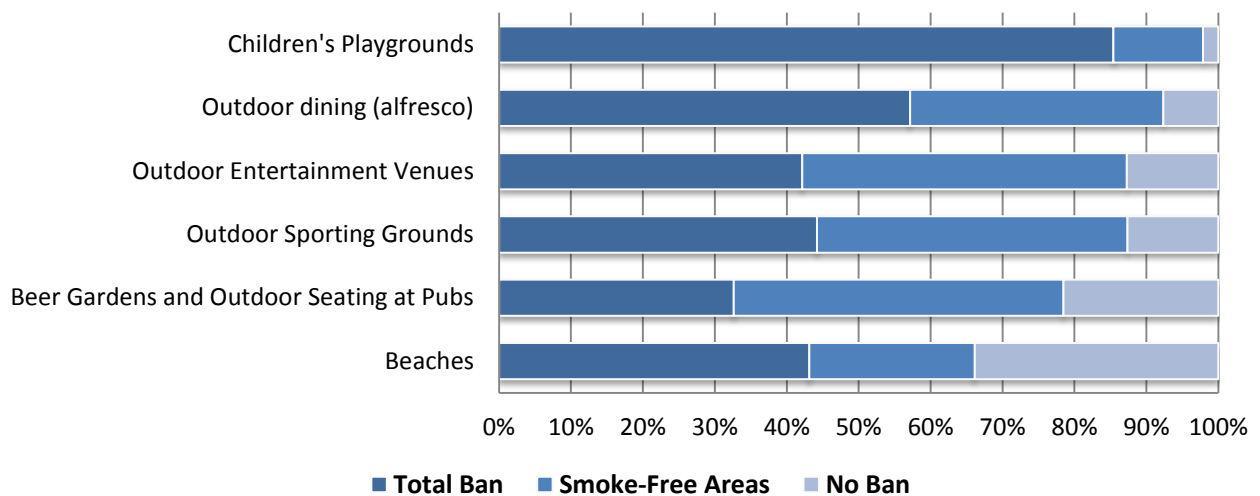
Finally, by increasing the number of smoke-free areas and events, the Council would also be assisting smokers to “quit the habit”. In theory, the harder that it is to smoke the less likely it is that a person will smoke. At the very least, it reduces the number of cigarettes that a smoker may consume.

Given that there is increasing documented evidence of the risks associated with exposure to second hand smoke, more emphasis by the State Government for people not to smoke through the anti-smoking campaigns and legislative changes and the community’s increasing intolerance of smoking, it is only timely that the Council takes up the opportunity to introduce smoking restrictions. As a democratically elected body, which is responsible for delivering the best outcomes for the community and improving the Country’s well-being, the Council also has an obligation to promote positive public health outcomes where it provides assets and services intended to be for the benefit of the community, in particular children.

5.0 Community support for smoking restrictions in public spaces

Figure 1 illustrates the results of the Health Omnibus Survey undertaken in 2011, regarding South Australia's perception towards smoking restrictions at various types of places and events. In particular the results indicate that there is very strong support for banning or restricting smoking at children's playgrounds (hence the government's recent legislative changes) and outdoor dining, with 78.5 per cent of the population agreeing that smoking should be banned in Outdoor Dining Areas of cafes and restaurants.¹² As a result the South Australian Government has committed to making alfresco (outdoor) dining areas smoke-free by 2016.

Figure 1 - Preferences for Smoking Restrictions, 2011



Source: TCRE, *Key Smoking Statistics for SA-2011, Adelaide Australia. Tobacco Control Research and Evaluation, Cancer Council SA, May 2012.*

6.0 What about smoker's rights?

Smoking is a legal activity therefore people have a right to smoke if they choose to do so. The issue is not whether or not smokers should be allowed to smoke, it is about whether or not smokers should be allowed to smoke in the vicinity of others, particularly non-smokers and whether or not their decision to smoke affects others. Therefore, any decision by the Council to adopt additional smoking bans within the City of Norwood Payneham & St Peters, should not be seen in any way as an attack on smokers or an attempt to penalise smokers. Any decision to expand smoking restrictions within the City of Norwood Payneham & St Peters, should be in the best interests of the whole community. For this reason, the issue should not be about whether or not people smoke but where they smoke, in order to minimise the effect their smoking has on the health of others and on the amenity of public areas.⁵

7.0 What are other councils doing?

Councils throughout the various States and Territories in Australia are moving, not surprisingly, towards a greater number of smoke-free areas in an attempt to protect the health of residents, employees and visitors. The smoking bans that are found in each of the States and Territories vary as they are being introduced through a number of mechanisms, including state-wide legislation and a combination of Council By-Laws (or the equivalent thereof) and Council Policy. Of all the States and Territories, New South Wales appears to be the leader in terms of the number of smoking restrictions and its overall acceptance of smoke-free areas.

The following is a broad overview of the smoking restrictions within each of the State and Territories within Australia.

7.1 South Australia

In addition to the State-wide smoking bans introduced by the State Government, the most notable non-State Government smoking bans that have been introduced in South Australia, are the recent non-smoking bans introduced by the Adelaide City Council. In addition to its recent By-Law which makes Rundle Mall and all of the laneways leading-off Rundle Mall smoke-free, the Adelaide City Council has also introduced policy to encourage the introduction of smoke-free outdoor dining. When the smoke-free outdoor dining scheme was introduced in August 2011, it was endorsed on a 12 month trial basis, to test the reaction of business owners and patrons. The scheme offered a 50 per cent fee reduction to businesses with Outdoor Dining Areas that were prepared to enforce a non-smoking policy in their respective Outdoor Dining Permit areas. As a result of its success the Adelaide City Council resolved to extend the scheme through to 2016. Fee discounts will reduce on a sliding scale until 2016 when the State Government has indicated that it will implement a total ban on smoking in Outdoor Dining Areas. Given that the scheme is a Council Policy position and therefore is not mandatory, it has been endorsed on the proviso that persons who smoke in the designated non-smoking Outdoor Dining Areas cannot be prosecuted.

In addition to the Adelaide City Council, the City of Unley and the City of Prospect, are two (2) other Councils within South Australia that have a smoke-free outdoor dining policy, with the City of Unley having introduced its policy in August 2011. Similar to the Adelaide City Council, the City of Unley also offers a rebate on all outdoor dining fees, if a non-smoking policy is enforced. As at September 2012, only 4 of the 23 Outdoor Dining Permit holders within the City of Unley had adopted the no smoking policy.

In addition to the smoke-free outdoor dining licences, the City of Prospect also promotes smoke-free events and intends to make an application to the Minister for Mental Health and Substance Abuse, to declare all community parks and gardens and all community events, smoke-free.

7.2 Australian Capital Territory

In the Australian Capital Territory (ACT), smoking in enclosed spaces is regulated under the *Smoking (Prohibition in Enclosed Public Places) Act 2003*. In December 2006 when the smoking bans in enclosed spaces were introduced, the smoking restrictions were also applied to all substantially enclosed (75 per cent or more) public places. However as of December 2010, the substantially enclosed restrictions were superseded, with smoking in outdoor eating and drinking places completely banned under the *Smoke-Free Public Places Act 2003*. This was the first ban on smoking in outdoor areas in the ACT. In addition, in May 2012 the *Smoking in Cars with Children (Prohibition) Act 2011* was introduced making it an offence to smoke in a vehicle in the ACT when a child under the age of sixteen (16) is present.⁴

7.3 New South Wales

In New South Wales smoking is banned in enclosed public places under the *Smoke Free Environment Act 2000*. In addition in New South Wales, Councils have the power to legislate within their own jurisdiction in order to protect their local community from the harmful effects of second hand smoke. As a result more than half of the local councils across New South Wales have adopted a variety of measures in recent years to limit the incidence of smoking in outdoor areas, including playgrounds, sporting fields and outdoor dining. More specifically at least 30 out of the 152 Councils have adopted 100% smoke-free Outdoor Dining Area policies. In the Sydney metropolitan area, 86% of Council have some form of smoke-free outdoor dining policy. The City of Sydney is probably the most obvious in terms of its lack of smoke-free policies.⁴

Appendix A provides a summary of the types of smoking controls that have been introduced in nine (9) of the councils across New South Wales. These smoking controls range from playgrounds and sporting fields through to Outdoor Dining Areas and events.

Probably of all the New South Wales councils, the most radical in terms of smoking controls is the Mosman Municipal Council. In March 2007, the Mosman Municipal Council banned smoking on every council controlled public space. The introduction of this ban extended the outdoor areas that had previously been

designated smoke-free by the Council in 2004, (i.e. beaches, Outdoor Dining Areas, children's playgrounds, public events, playing fields and the grounds of the council managed buildings). The additional bans encompassed all parks, public squares, bus shelters and council car parks. The only public outdoor spaces where smoking is still permitted within the Mosman Municipal Council are some footpaths and roads, provided these footpaths and roads are not within ten (10) metres of any Council managed building or children's playground.³ It is understood that the Council only stopped short of a total smoking ban in public because of the impracticality of installing enough signs, legally required in order to make smoking an offence.

7.4 Northern Territory

As of 2 January 2010, under the *Tobacco Control Act 2002*, all enclosed public areas in the Northern Territory (including pubs, clubs and casinos and entrances/walkways accessing public buildings) were made smoke-free. In January 2011, the Northern Territory Government made all staffed/serviced outdoor dining and drinking areas in the Northern Territory smoke-free. Liquor licensed premises may exempt a small part of their outdoor area (up to a maximum of 50%) for a smoking area however, this is subject to strict regulatory restrictions.⁴

In addition, under the tobacco control legislation, the owner or occupier of any public venue, such as a shopping centre, sports facility, business or workshop, is now also able to declare any public outdoor area as a smoke-free area.

7.5 Queensland

In Queensland smoking is restricted under the *Tobacco and Other Smoking Products Act 1998*. In January 2005 the Queensland Government declared all playgrounds, patrolled beaches and artificial beaches smoke-free, with outdoor eating and drinking venues declared smoke-free in July 2006. In addition in September 2011, the Brisbane City Council designated the Queen Street Mall and the Albert Street Cross Mall as smoke-free, through the implementation of the *Smoke-Free Places Local Law 2011*.⁴

7.6 Tasmania

In Tasmania the *Public Health Act 1997* regulates smoking in all enclosed public places and workplaces, all vehicles if a person under the age of eighteen (18) is present, within three (3) metres of an entrance to or exit from non-domestic and multi-use buildings and an area within ten (10) metres of any air intake for ventilation equipment. On the 1 March 2012, the smoking restrictions in Tasmania were expanded to include all Outdoor Dining Areas.⁴

In 2010, the Hobart City Council, banned smoking in Hobart's main Central Activity Districts of Elizabeth Mall, Hobart Bus Mall and Wellington Court.

7.7 Victoria

The *Tobacco Act 1987* is the legislation that regulates smoking in Victoria. Current legislation encompasses enclosed workplaces, licensed premises and the public transport stops. Given that State laws are weak, councils in Victoria have elected to follow the New South Wales examples and have started to introduce smoke-free policy in their local jurisdictions, mainly in relation to alfresco dining areas and beaches. A survey of all Victoria Councils conducted by the Heart Foundation and Quit Victoria, found that as of May 2011, 41% of all Victorian Councils had adopted some kind of outdoor smoke-free policy. Monash City Council was the first to ban smoking at children's playgrounds, through the introduction of a By-Law in 2007.⁴

7.8 Western Australia

Under the *Tobacco Products Control Act 2006*, smoking in Western Australia has been prohibited in all enclosed public places, including licensed premises, since July 2006. In September 2010, Western Australian legislation made all unlicensed alfresco dining areas (and at least 50 per cent of licensed Outdoor Dining Areas), playgrounds and patrolled beaches smoke-free.⁴

8.0 What is happening in other Countries

Smoking bans of varying degree are being introduced and embraced by many countries around the world. Despite the extensive research and evidence regarding the effects of smoking and exposure to second hand smoke, there are still quite a few countries around the world that have no, or very few, smoking restrictions.

California, in the United States, is recognised as having some of the toughest and most extensive anti-smoking legislation of anywhere in the world. In 2011 Los Angeles introduced a total ban in all alfresco dining, except bars, nightclubs and private functions. In addition outdoor smoking bans exist in several Californian jurisdictions and include such provisions as no smoking at bus stops, markets, ATM queues, parks and sidewalks. Outdoor smoking bans have also been embraced on education facility and hospital grounds.

At the other extreme countries such as Greece, are struggling with the introduction of smoking bans. On 1 July 2009, Greece introduced for the third time a smoking ban in public places. The previous attempts to introduce a ban in 2002 and 2003, failed after they were largely ignored. Under the new legislation, smoking is prohibited in hospitals, schools, vehicles and all public spaces. Small restaurants have been given the option to choose to admit exclusively smokers (or non-smokers), whilst bigger restaurants can have designated smoking areas.

9.0 Council areas and events that could be declared smoke-free

9.1 Council events

Given the range of events held by the City of Norwood Payneham & St Peters, there is significant opportunity to designate some, or all, of the Council's events smoke-free. As a minimum, events such as the Norwood Christmas Pageant and the St Peters Fair, both of which are "family friendly" events and therefore have a large presence of children, should be given consideration as smoke-free events.

As part of the Council's deliberations regarding the declaration of smoke-free events, significant consideration will need to be given as to whether or not the Council establishes specific 'smoking areas', in an attempt to minimise concentrated smoking at the perimeter of the event boundaries. Without designated smoking areas, there is a strong risk that smokers will generally congregate at the entrances and exits of the event boundary, where smoking is permitted. The risk of this happening is higher in relation to some types of events, such as a Food and Wine Festival, than what it would be in relation to some of the other events. Therefore, the need to designate any smoking areas will need to be determined on a case by case basis.

Whilst there are two (2) options available to the Council by which it can designate Council events as smoke-free, declaration under the *Tobacco Products Regulation Act 1997* (the Act) or alternatively, through the introduction of Council Policy, declaration under the Act is the most pragmatic in terms of its application and enforcement.

Pursuant to Section 51 of the Act, the Council has the ability to make an application to the Minister for Mental Health and Substance Abuse, to declare a particular event smoke-free. Under this section of the Act, applications for an event of three (3) days or less, can be declared as smoke-free. Any event greater than three (3) days duration is required to be declared by Regulation under Section 52 of the Act. The 2012 Royal Adelaide Show was the first event in South Australia to be declared as smoke-free by Regulation under the new legislation.

Most Council events are generally short term and therefore would comply with the requirements set out under Section 51 of the Act. In respect to any Council events that exceed three (3) days, such as a week or month long festival, the Council will need to determine whether it makes an application under Section 52 of the Act for the whole event or festival, or whether the Council simply makes an application for individual outdoor event/s within the broader festival, to be designated as smoke-free (individual events held indoors as part of a broader festival would automatically be smoke-free). Should the Council adopt a blanket policy

position that all of its events will be smoke-free then an application under Section 51, or Section 52 for Council events that exceed three (3) days duration, of the Act will need to be pursued.

The advantage of a declaration by Regulation under Section 52 of the Act, is that due to the lengthy process required to introduce the Regulation it is generally applied for a significant period of time. For example, the Regulation introduced for the Royal Adelaide Show has made the Show smoke-free for a period of 10 years.

Unlike Section 52 of the Act, which will generally allocate a significant period of time, applications under Section 51, have a short life span. Should the Council determine to proceed with non-smoking at all, or some specific events, an application for each event (of three (3) days duration, or less) under Section 51 of the Act will need to be made annually. A requirement as part of any application for a smoke-free declaration is community consultation. For the City of Norwood Payneham & St Peters, which holds a significant number of events, a requirement to undertake annual community consultation for each event, could be an onerous and resource intensive task. However, the Minister for Mental Health and Substance Abuse advised in writing in December 2012, that although comprehensive consultation with relevant key stakeholders is required for an application to be considered under Section 51 or 52 of the Act, if an application is for an area or event previously approved and declared smoke-free, the ongoing or subsequent application does not require the same level of consultation. However, the applicant (i.e. the Council) would still need to be able to show, on an annual basis, that the ban is working well, or is addressing any problems or negative community impacts. The State Government has advised the Council that although an application under Section 51 of the Act for smoke-free areas and events needs to be submitted each year, there would not be a need to undertake consultation each year, but an evaluation of the previous smoking-ban would need to be undertaken. The extent of consultation that is required to be undertaken may influence the Council's decision to pursue designating events as smoke-free under the Act. In this instance, the Council would have to determine whether the benefit of having events declared smoke-free under Section 51, outweighs the additional cost of the resources dedicated to this task.

Unlike some of the other smoke-free areas being considered, in relation to events, the Council does not have as many options for applying a smoke-free status, particularly when the events are not held on Council owned land. Therefore, notwithstanding the uncertainty surrounding the consultation and evaluation requirements, a decision by the Council to pursue smoke-free events is best undertaken through an application to the Minister for Mental Health and Substance Abuse, under Section 51 of the Act and Section 52, as required.

Adopting a smoke-free position for all Council events would show significant leadership by the Council and would follow the example of many of the interstate councils.

9.1.1 Recommendation

Given the family friendly nature of most of the events held by the Council, it is recommended that all of the Council's events be designated as smoke-free, within the defined boundaries of the event, through an application to the Minister for Mental Health and Substance Abuse, under Section 51 and 52 of the Act. For example, the St Peters Fair will be smoke-free within the boundaries of Dunstone Grove-Linde Reserve and The Parades on The Parade, which are held as part of the Adelaide Fashion Festival, will be smoke-free along The Parade, between Osmond Terrace and George Street. Adopting this policy simply means that at events where there is a high congregation of people, smoking will not be permitted.

9.2 Council owned buildings and facilities

As a consequence of the legislation introduced in 2004, which banned smoking in all enclosed workplaces and as a responsible employer and land owner, the Council has introduced policy into its Work Health & Safety (WHS) Manual, that prohibits smoking in all Council facilities including the Norwood Town Hall, Glynde Depot, Payneham Library and Facilities, Norwood Library, St Peters Library and St Peters Town Hall Complex, Payneham Community Centre, Norwood Swimming Centre, Payneham Swimming Centre and the St Peters Child Care Centre.

Whilst all of the enclosed Council buildings listed above are automatically subject to the existing legislation, outlined under the *Tobacco Products Regulation Act 1997*, the introduction of a smoke-free ban at the Council's two (2) Swimming Centres and the external areas of the Council's Depot demonstrates the

Council's commitment to ensuring a high standard of health and safety for its community and all of its employees, which is a requirement under the South Australian *Work Health and Safety Act 2012*.

Banning smoking at the Swimming Centres and the outdoor areas of the Council Depot is an example of where the Council, like any other land owner, has set policy to ban smoking on a particular site that falls within its specific ownership. The key difference between the smoking restrictions applying to the enclosed buildings and the smoking restrictions applying to the Swimming Centres and the outdoor areas of the Depot, is that the enclosed buildings are legislated policy, which enables the smoking bans to be legally enforced, whilst the smoking restrictions applying to the Swimming Centres and the outdoor areas of the Depot are simply Council Policy. As Council Policy, any smoke-free policy introduced would simply be implemented and enforced as a condition of entry and code of behaviour, in that particular facility, rather than through legislative procedures.

Whilst the Council could select to formalise the non-smoking policies at the two (2) Swimming Centres under Section 52 of the Act, the only additional benefit would be the ability to enforce the policy under legislation. Notwithstanding the absence of legislative enforcement, compliance at the Swimming Centres is very high, which demonstrates people's acceptance of the non-smoking policy and their willingness to self-regulate.

Following the examples of other interstate Councils, the Council could establish a non-smoking perimeter around all, or some of its council owned buildings, for example a smoke-free ban within ten (10) metres of the libraries. Whilst there is considerable benefit in adopting a smoking ban of this nature, its implementation and enforcement is not as straight forward, particularly around the St Peters Town Hall Complex and The Parade, where a smoking ban would encompass a broader area than what is intended because of the close proximity to other buildings. Introducing such a policy also raises other issues, which need to be addressed as part of these considerations. For example, does the Council apply such a policy to all of its Council owned building or does it restrict it to specific buildings, does the Council designate specific smoking areas, in order to avoid concentrated smoking in specific locations. Notwithstanding these issues, there is considerable benefit in introducing a smoke-free perimeter, particularly around libraries, which are frequented by children.

9.2.1 Recommendation

It is recommended that the Council pursue the establishment of a ten (10) metre smoke-free perimeter around all Council owned buildings and facilities, including the three (3) of the libraries and the two (2) Council owned Swimming Centres, under Section 52 of the *Tobacco Products Regulation Act 1997*.

9.3 Parks and reserves (including Norwood Oval)

The City of Norwood Payneham & St Peters has forty-seven (47) parks and reserves, some of which include sporting grounds and fields, scattered throughout the Council area. With the exception of playgrounds, specifically a ten (10) metre perimeter around children's playground equipment and a policy introduced by the Norwood Football Club for the Norwood Oval, which bans smoking in the stands, smoking is permitted in these locations. In some instances, the new playground smoking restrictions mean that a large portion of the park or reserve is now by default a smoke-free area (i.e. Coke Park). However, in the majority of cases where playgrounds are not located within a particular park or reserve, or where the size of the park or reserve exceeds the legislated banned area, smoking is still permitted. This therefore presents a dilemma for the Council, as to whether or not the Council pursues the option of designating all parks and reserves as smoke-free areas, or whether it continues with the status quo.

Whilst pursuing smoke-free areas would demonstrate to the community the Council's commitment to establishing clean, safe and healthy environments, it could also demonstrate a discrimination against smokers. The question in this instance, is whether or not, by restricting a person's ability to smoke in such an open air environment, the Council is really benefiting the community as a whole and if so, what type of benefit it is providing, given that parks and reserves are open air environments, and other than when there is a specific event held at a particular venue, they are generally not overcrowded. Therefore, in terms of the parks and reserves, any restrictions to smoking, could be argued, would provide greater environmental as well as social and cultural benefits, than what it would provide in terms of health benefits.

Norwood Oval is the standout exception to this argument, as events at the Oval generally attract a high concentration of people in close proximity to one another. Therefore, in terms of the Norwood Oval, a smoking ban in this locality would have significant health benefits as well as social benefits. The introduction of a smoking ban at Norwood Oval is one example where there will be a need to investigate the allocation of a specific smoking area, as there is a strong risk that smokers will generally request pass-outs and congregate at the entrances and exits of the oval. Therefore, the way that this is managed is critical to the success of the smoking restrictions.

In terms of the social and cultural benefits, by restricting smoking in areas that are frequented by children, the Council is contributing to the de-normalising of smoking. The less common that smoking becomes, the less likely it is that children and young adults will select to pursue it. It can also be argued that where the Council provides assets and services intended to be for the benefit of children and other members of the community, the Council has an obligation to promote public health outcomes.

Whilst it can easily be argued that by banning or restricting smoking there are a whole host of benefits, any radical change in smoking policy does open the door for criticism. As with any of the smoking bans recommended in this Position Paper, there is a risk that the Council may be seen as 'jumping on a popular bandwagon', and simply discriminating against smokers. Alternatively, given that there are no other Councils in South Australia that have adopted such a holistic approach to smoking bans in parks and reserves, the Council could be seen as playing a leading role in addressing the negative health impacts of smoking. This is an approach which has been adopted widely by New South Wales councils (refer to **Appendix A**).

In the event that the Council resolves to ban smoking in its parks and reserves, the Council can implement this decision in a number of ways.

Firstly, the Council can, pursuant to Section 52 of the Act, apply to the Minister for Mental Health and Substance Abuse, to declare by Regulation either all, or specific parks and reserves within the City of Norwood Payneham & St Peters, as smoke-free areas. Preliminary advice received from the State Government's Tobacco Control Unit, has indicated the possibility that, whilst this action will provide the highest level of control, the Minister may not support the Council's application to designate these localities as smoke-free, although the legislation does allow for this to occur. Council has also been advised that a clear case and a legitimate passive smoking risk would need to be established as part of this application. It is likely that community support for this application would also need to be demonstrated. In the event that the Council is unsuccessful, the Council can pursue the option of introducing a By-Law banning smoking in these locations. Alternatively the Council could, as the land owner, establish policy banning smoking at all of its parks and reserves. The difference between the first two (2) options and the Council Policy option, is the degree of enforcement.

Research undertaken by the State Government has found that there is a high level of public support for smoking restrictions in public places, in particular smoking bans at outdoor sporting grounds.⁵

9.3.1 Recommendation

It is recommended that the Council pursue a smoking ban at the Norwood Oval and all of the parks and reserves located within the City of Norwood Payneham and St Peters, as provided for in Section 52 of the Act. In the event that the Council is unsuccessful under Section 52 of the Act, the Council introduce a By-Law under Section 238 of the *Local Government Act 1999*, restricting smoking at the Norwood Oval and all of its parks and reserves.

9.4 Outdoor Dining Areas

Currently, smoking is only banned in Outdoor Dining Areas on public footpaths, pursuant to the provisions of the *Tobacco Products Regulation Act 1997*, where more than 70% of the area is enclosed. With the introduction of the new legislative changes, it is timely for the Council to consider extending the non-smoking restrictions in the Outdoor Dining Areas.

Whilst the introduction of smoke-free outdoor dining within the City of Norwood Payneham & St Peters may appear to be contentious, the State Government is currently working with the Australian Hotels Association

(SA) and the Restaurant and Catering Association of South Australia to achieve 100 per cent smoke-free Outdoor Dining Areas in all hotels and restaurants throughout South Australia by July 2016. As part of this State Government initiative, venues are being encouraged to voluntarily make their outdoor dining areas smoke-free.

Introducing smoking restrictions not only protects patrons, it also protects the staff that work in the restaurants and cafes that are confronted with the second hand smoke continuously. By restricting smoking in Outdoor Dining Areas, it simply gives staff in these establishments, the same level of protection that most other employees take for granted.

The designation of smoke-free dining areas may be an influencing factor for some patrons, when taking into consideration, where they choose to dine or not dine. For some patrons, the availability of a smoke-free outdoor dining environment may be the influencing factor in selecting a restaurant, while for others, particularly smokers, it may be the contributing factor in not selecting a restaurant.

In the event that the Council resolves to make outdoor dining smoke-free, there are a number of options available to the Council regarding the designation of smoke-free Outdoor Dining Areas. Firstly, the Council could, pursuant to Section 52 of the *Tobacco Products Regulation Act 1997*, make an application to the Minister for Mental Health and Substance Abuse to have all Outdoor Dining Areas within the City of Norwood Payneham & St Peters declared non-smoking by Regulation.

If this approach was successful, the Council would also need to make an application to the Minister for Mental Health and Substance Abuse, for suitably skilled Council officers to be authorised under the Act to enable the Council to enforce it. The Council could select to either, adopt an authoritarian approach and have its authorised officers police the non-smoking Outdoor Dining Areas, or it could adopt a more light handed approach and encourage compliance through education and warning.

Given that footpaths fall within the definition of a road, the Council is unable to introduce a By-Law to restrict or prohibit smoking on Council land that is used for outdoor dining.

Alternatively, the Council could decide to encourage smoke-free outdoor dining through an incentive scheme which encourages Outdoor Dining Permit holders to make their Outdoor Dining Areas smoke-free, similar to the incentives that are used by both the Adelaide City Council and the City of Unley. An option under this scenario, which is similar to that adopted by the Adelaide City Council and the City of Unley, is to offer a 50 per cent discount to businesses which agree to make their Outdoor Dining Areas smoke-free. In September 2012, the Adelaide City Council extended its smoke-free outdoor dining incentive scheme. A sliding scale of discounts reducing to zero by 2016, was introduced to the incentive scheme in anticipation that the State Government will introduce its non-smoking legislation by July 2016. The intent of the incentive scheme is to assist traders and patrons in their transition to a smoke-free environment, rather than waiting for it to become mandatory. The sliding scale brings with it both advantages and disadvantages. Whilst the reduced discount annually, prepares the trader for the incentive to be removed, the sliding scale also reduces the incentive for the traders to continue, which may result in many traders waiting until the smoking restrictions become mandatory.

Whilst there is an opportunity for different sections of Outdoor Dining Areas to be designated as smoking and non-smoking, this option would be more practical in some scenarios than it would be in others. In some instances, it would be difficult to ensure that the smoking and non-smoking areas are sufficiently separated to ensure that the desired outcome is achieved. Therefore if the Council was to adopt a smoke-free outdoor dining policy, proprietors would be required to designate an Outdoor Dining Area as either smoking or non-smoking for the purposes of their Outdoor Dining Permit. The only exception would be a business that has two (2) street frontages and outdoor dining was permitted on both frontages. Under this scenario one (1) street frontage could be designated as smoking whilst the other is designated as non-smoking. In instances where only one (1) street frontage is designated smoke-free, whilst the other remains smoking, businesses would only be eligible for a 25 per cent fee reduction in permit fees, in recognition that one (1) of the street frontages is retained as a smoking area.

Under an incentive scheme, the application of the Council's non-smoking policy would be optional and traders would have the opportunity to determine their own individual uptake depending on the demands of their patrons. In the event that the take up is successful, the introduction of a fee reduction for smoke-free Outdoor Dining Areas would result in a reduction in Council revenue, from the issuing of outdoor dining

permits. Notwithstanding this loss in revenue for the Council, the proposed reduction in fees will be the catalyst that encourages businesses to consider making their Outdoor Dining Areas smoke-free. It is also a positive step towards encouraging smoke-free outdoor dining in accordance with the aims of the South Australian Tobacco Control Strategy for 2011-2016. The absence of any incentive to provide non-smoking Outdoor Dining Areas, such as a discounted rate for outdoor dining permit fees, may mean that businesses would not consider establishing such areas until the State Government introduces mandatory legislation.

Enforcement under this scenario, given that it is simply a policy position rather than a legislated position that can be enforced under Regulation may be difficult, as the Council does not grant exclusive rights of occupation within these Outdoor Dining Areas, when an Outdoor Dining Permit is issued. The Adelaide City Council has endorsed its policy on the understanding that persons who smoke in designated Outdoor Dining Areas cannot be prosecuted or expiated. Under this scenario the Council would not take action against the individual but rather record the breach of condition of the permit and if there is repeated evidence of this occurring then the 50 per cent (or 25 per cent for one (1) street frontage) annual fee discount, that is given to the individual business, would be withdrawn, making the full amount of the fees due and payable.

A decision by the Council to offer a reduction in annual outdoor dining fees in exchange for the non-smoking Outdoor Dining Areas would have a positive impact on the health and amenity of the community as it would reduce smoking in these localities. However, there is a risk that it may be perceived as further chastising smokers.

Alternatively, the Council could introduce smoking bans in Outdoor Dining Areas through a smoke-free clause in the Outdoor Dining Permit. As each permit is renewed, transferred or altered, the new clause is included that prohibits smoking and requires the venue to display signage to inform patrons that the area is smoke-free. Whilst this approach would deliver the desired outcome, it is a more heavy handed approach than the voluntary approach that could be adopted through an incentive scheme.

Adopting a non-smoking policy with a focus on eliminating smoking from Outdoor Dining Areas, where a significant number of people congregate, will not only reduce the negative health effects of passive smoking, it will also assist in influencing and assisting individual smokers to consider quitting.

In addition, whilst venues are being encouraged to voluntarily make their Outdoor Dining Areas smoke-free, preliminary advice received in October 2013 from the State Government's Tobacco Control Unit, suggested that the Minister may look to implement legislation ahead of the scheduled date. For example, utilise The Parade as a 'test case' of how this legislation will work in practice.

9.4.1 Recommendation

It is recognised that the exposure to second hand smoke is significantly increased where people are under an overhead cover, and as the number of nearby smokers increase. Therefore, in outdoor areas where people tend to congregate (such as Outdoor Dining Areas) the presence of people smoking can present a health risk to patrons and staff.

However, given the timeframe required to submit an application to the Minister for Mental Health and Substance Abuse, under Section 52 (minimum six (6) months) of the *Tobacco Products Regulation Act 1997* (the Act) and the fact that mandatory State Government legislation banning smoking in Outdoor Dining Areas will come into effect by July 2016, it is no longer considered beneficial to introduce an Outdoor Dining Permit Reduction Scheme in order to establish smoke-free Outdoor Dining Areas in the City. Therefore, this course of action is not the recommended.

Despite the fact that some Outdoor Dining Areas fall below the 70% enclosed requirement, it is recommended that the Council resolves to support the designation of Outdoor Dining Areas as smoke-free through the introduction of the State Government's mandatory legislation to ban smoking in Outdoor Dining Areas by July 2016.

9.5 The Parade

One of the locations within the City of Norwood Payneham & St Peters that would have a huge impact as a non-smoking area is The Parade. As a high pedestrian traffic strip, eliminating smoking would not only

provide health benefits, it would also deliver significant social benefits. However, unlike many of the other pedestrian malls around Australia that have been designated smoke-free, such as Rundle Mall, Harbour Town, Chatswood Mall in Sydney and Queen Street Mall in Brisbane, which are all pedestrian focussed malls, The Parade is still very much a car dominated mainstreet. Notwithstanding its car dominated character, there is still potential to designate The Parade as a smoke-free area, just as Time Square in New York has been designated as a smoke-free area.

The only way that The Parade can be designated as a smoke-free area is through Regulation under Section 52 of the *Tobacco Products Regulation Act 1997*. Given that it is defined as a road, the Council is unable to introduce smoking restrictions through a By-Law.

Nonetheless, it is recognised that there are some limitations with a decision to ban smoking along The Parade, particularly given that smoking bans in Outdoor Dining Areas and licenced outdoor areas have to be considered separately and are generally the source of most of the second hand smoking complaints which the Council receives. A large proportion of these limitations can be overcome with the introduction of a complete smoking ban introduced through Section 52 of the Act.

As set out in Section 9.4 of this Position Paper, the State Government is currently working with the Australian Hotels Association (SA) and the Restaurant and Catering Association of South Australia, to achieve 100 per cent smoke-free outdoor dining areas in all hotels and restaurants throughout South Australia by 2016. Whilst venues are being encouraged to voluntarily make their Outdoor Dining Areas smoke-free as part of this proposed initiative, preliminary advice received in October 2013 from the State Government's Tobacco Control Unit, suggested that the Council proceed with an application to designate the whole of The Parade as smoke-free, as (as previously discussed) the Minister may look to implement legislation ahead of the scheduled date for the mandatory State Government legislation and utilise The Parade as a 'test case' of how this legislation will work in practice.

As set out in Section 9.4 of this Position Paper, in the absence of a legislated smoking ban that applies to the whole of The Parade or alternatively to all of the Outdoor Dining Areas along The Parade, an alternative mechanism for introducing non-smoking in Outdoor Dining Areas would be to introduce a voluntary non-smoking policy through an Outdoor Dining Permit Reduction Scheme. The intent of this policy would be to encourage Outdoor Dining Permit holders to make their Outdoor Dining Areas smoke-free through the use of the incentive. The disadvantage with this approach is that it is voluntary and therefore may not capture all Outdoor Dining Areas, resulting in a non-smoking policy along The Parade that has isolated pockets where smoking is still permitted. The only other option would be for the Council to introduce a non-smoking clause in its conditions for outdoor dining permits. This would force Outdoor Dining Areas to be smoke-free. Whilst this approach would ensure the desired outcome of making Outdoor Dining Areas smoke-free, it is a heavy handed approach and may be received with some resistance.

In the event that the Council determines to designate The Parade as a smoke-free area, the extent of its application will need to be determined by the Council. For example, should the smoke-free policy apply along the full length of The Parade or should it be confined to the high pedestrian traffic areas between Osmond Terrace and Portrush Road.

In selecting to designate The Parade as a smoke-free area there is a risk that the Council may be seen as 'jumping on a popular bandwagon' and simply discriminating against smokers, particularly given that pedestrians are exposed to the exhaust fumes that are emitted from vehicles driving along The Parade. Alternatively, there is a strong possibility that the Council could be seen as a leader in taking a step to reduce the risks that the pedestrians are confronted with. Whilst it could be argued that the amount of second hand smoke that a person is exposed to while walking along The Parade is limited, a person's cumulative exposure over time could result in significant health issues. Notwithstanding the health benefits associated with smoking restrictions, banning smoking along The Parade would have significant social benefits. Given the large number of pedestrians, including children that walk along The Parade, removing their exposure contributes to the goal of de-normalising smoking – 'out of sight out of mind'. It also sends the message that the Council is serious about protecting the health and wellbeing of its community.

As part of the Council's deliberations regarding the declaration of The Parade as a smoke-free area, significant consideration will need to be given as to whether or not the Council establishes specific 'smoking areas', in an attempt to minimise concentrated smoking at the perimeter of the smoke-free area. Without

designated smoking areas, there is a strong risk that smokers will generally congregate at either 'end' of the smoke-free area or along residential streets on either side of the boundary, where smoking is still permitted.

9.5.1 Recommendation

Despite the possible limitations in restricting smoking along The Parade, it is recommended that the Council pursue through Section 52 of the *Tobacco Products Regulation Act 1997*, the blanket designation of The Parade as a smoke-free area, to come into effect at the same time as the mandatory State Government legislation banning smoking in all Outdoor Dining Areas (i.e. July 2016). Whilst it is recognised that this could be controversial given the car dominated nature of the strip, the implementation of a strong education and awareness campaign, will ensure that a large proportion of The Parade complies with any smoking restrictions implemented. By adopting a smoke-free designation for The Parade, not only would the Council be taking a leadership role, it would also be encouraging the acceptance of the smoke-free bans in the Outdoor Dining Areas along The Parade.

10.0 Conclusion

The purpose of having smoke-free areas is to protect the health of the community and increase the comfort and enjoyment of all people who use the public space, in particular the public areas that may be crowded or where people congregate. In addition to promoting a healthier lifestyle and reducing the harmful effects of smoking, smoking bans also contribute to improving local amenity and protecting the environment. The new legislation introduced by the State Government, banning smoking within public transport waiting areas and within ten (10) metres of children's playground equipment, together with any additional smoking bans introduced by the Council, will have a positive impact on the health and wellbeing of the Community, in general.

Given that smoking bans reduce smoking prevalence and consumption, it can be argued that increasing the number of outdoor bans will only help to reduce the smoking rate. Therefore in the interest of the health of the local community and the environment, the Council will endeavour to introduce the recommendations in this Position Paper that relate to smoke-free outdoor areas and events. Adoption of these recommendations will assist in the fight to de-normalise smoking in the community.

Hand-in-hand with the adoption of some, or all of the recommendations contained in this Position Paper, is an education and awareness strategy to ensure that the community is fully informed of the Council's smoking restrictions and its benefits. The education and awareness strategy will need to focus on both the health and environmental issues associated with smoking, as well as the benefits of creating cleaner, healthier and happier spaces for people to live, work and play. The intent of the education and awareness strategy will be to achieve community support for the additional smoke-free areas and events, rather than adopting a heavy handed enforcement approach. By encouraging a self-regulated approach the Council will minimise the amount of compliance required, which will also minimise any negative stigma associated with smoking bans. A similar approach was adopted by the Mosman, Manly and, Warringah Councils in New South Wales, when they introduced their suite of Smoke-Free Zones in 2004.

At its meeting, held on Monday 2 March 2015, the Council adopted the recommendations contained in this Position Paper. By implementing the recommendations contained in this Position Paper, the Council will be supporting the preferences of the majority of the population that do not smoke.

References

1. Action on Smoking and Health Australia (Ashaust), **FACT SHEET 1 Why are outdoor smoke-free areas important for your Council?**
2. Action on Smoking and Health Australia (Ashaust), **ASH Australia: Smokefree Outdoor and Partly Enclosed Public Areas**. <http://www.ashaust.org.au>
3. Cancer Council, **Tobacco in Australia I Facts and Issues, A Comprehensive Online Resource**, 2008.
4. Cancer Council, **Tobacco in Australia I Facts & Issues, A Comprehensive online resource**, <http://www.tobaccoinaustralia.org.au/Chapter15-smokefree-environment/15-7-legislation>
5. Government of South Australia, SA Health, **Going Smoke-free. A policy guide for sporting and recreation organisations**, June 2011.
6. Government of South Australia, **South Australian Tobacco Control Strategy, 2011-2016**, May 2011
7. Heart Foundation, **Information from the Heart Foundation – Passive Smoking**, February 2002
8. Heart Foundation, **Information from the Heart Foundation - Tobacco Control Policy**, August 2002
9. Heart Foundation, **Second-Hand Smoking and Your Health**
10. Heart Foundation, **Tobacco and Cardiovascular Disease – Policy Paper**, October 2007
11. Heart Foundation, <http://www.heartfoundation.org.au/driving-change/current-campaigns/local-campaign>
12. Tobacco Control Research and Evaluation, Cancer Council, **Key Smoking Statistics for SA-2011, Adelaide Australia**, May 2012.
13. Tobacco Control Research and Evaluation, **Key References Regarding Smoking, Briefing**, 25 January 2011
14. Wikimedia Foundation, Inc., **Wikipedia - Sidestream Smoke**, 4 September 2012



APPENDIX 1

DESIGNATED SMOKE-FREE ZONES AND EVENTS IN EIGHT NEW SOUTH WALES COUNCILS

SMOKE-FREE	LEICHHARDT COUNCIL	MANLY COUNCIL	MARRICKVILLE COUNCIL	MOSMAN MUNICIPAL COUNCIL	RANDWICK CITY COUNCIL	CITY OF SYDNEY	WARRINGAH COUNCIL	WAVERLEY COUNCIL	WILLOUGHBY CITY COUNCIL
Alfresco dining	<i>All alfresco dining areas on Council land</i>	<i>On Council land</i>		<i>Designated smoke-free alfresco dining areas on Council land</i>					<i>All alfresco dining areas on public land</i>
Beaches									<i>Northbridge Baths only</i>
Bus stops/bus shelters		<i>Bus Shelters</i>	<i>Within 10m</i>	<i>Bus Shelters</i>				<i>Bus Stops</i>	<i>Bus Stops</i>
Bush land areas									
Carparks									<i>Within 10m of council owned or managed carparks</i>
Children's facilities									<i>Within 20m</i>
Council owned buildings/land/properties	<i>Within 10m of properties</i>	<i>Within 10m of properties</i>	<i>Within 10m of Council owned or managed buildings</i>	<i>Within 10m of properties</i>		<i>Community Centres</i>	<i>Within 10m of land</i>		<i>Within 10m of Council owned or managed buildings + The Concourse</i>
Events	<i>All Council Events</i>	<i>All events run or sponsored by the Council</i>	<i>All Council Events</i>	<i>All Council Events</i>					<i>All events run or sponsored by the Council</i>
Malls									<i>Chatswood Mall</i>
Public hospital building or boundary (within 10m of any)									
Parking stations		<i>Council owned</i>							
Parks and reserves									
Playgrounds/children's play areas	<i>Within 10m</i>	<i>Within 10m</i>	<i>Within 10m</i>	<i>Within 10m</i>			<i>Within 10m</i>		<i>Within 20m</i>
Playing fields/ sporting grounds		<i>Council owned</i>	<i>Council owned or managed</i>						
Public squares				<i>Mosman Square & the Village Green</i>					
Sporting facilities			<i>Recreational /Leisure Facility</i>						
Swim centre		<i>Manly</i>							
Taxi ranks									
Underground car parks				<i>Vista Street & Bridge Point)</i>					

