

Smoke-free guide:

Determining an enclosed public place

Introduction

This guide contains information regarding clause 6, of the Smoke-free Environment Regulation 2007 (incorporating amendments made by the Smoke-free Environment Amendment Regulation 2009).

The provisions of clause 6 prescribe guidelines in relation to determining what an “enclosed public place” is, and when a covered outside area is considered to be substantially enclosed for the purposes of the Smoke-free Environment Act 2000 (the ‘Act’).

It is suggested that you read this guide in conjunction with the Act and Smoke-free Regulation 2007 (the ‘Regulation’). The Act and Regulation can be found at:

<http://www.legislation.nsw.gov.au/>

What is an enclosed public place?

A “public place” means a place, or vehicle, that the public, or a section of the public, is entitled to use or that is open to, or is being used by, the public or a section of the public (whether on payment of money, by virtue of membership of a club or other body, or otherwise).

In relation to a public place, “enclosed” means having a ceiling or roof and, except for doors and passageways, is completely or substantially enclosed, whether permanently or temporarily.

For the purposes of the Regulation, a public place is considered to be enclosed if the total area of the ceiling and wall surfaces (the total actual enclosed area) of the public place is more than 75% of its total notional ceiling and wall area (the total notional area).

What is the ‘total notional area’?

The total notional ceiling and wall area is the sum of:

- a) the wall surfaces, if all the walls were continuous and the same height, equal to the lowest ceiling point and,
- b) the floor area, within the walls, if the walls were continuous.

What is the ‘total actual enclosed area’?

The total actual enclosed area is the sum of the actual wall surfaces and ceiling surfaces.

Walls and ceilings

Clause 6 (7) of the Regulation provides the following definitions:

- A *wall* includes any structure or device (whether fixed or moveable) that prevents or impedes lateral airflow.
- A *ceiling* includes a roof or any structure or device (whether fixed or moveable) that prevents or impedes upward airflow.
- A moveable structure includes a retractable awning, umbrella or any other moveable structure or device.

How can I determine what is a wall or ceiling?

Walls and ceilings do not need to be continuous to be considered a wall or ceiling. They may have gaps and openings and can be made out of any material, including (and not limited to) shade cloth, plastic and/or louvres.

For example, if louvres in a wall are fixed in a completely open, horizontal position with substantial distance between them, it is unlikely the louvres will prevent or impede lateral airflow. Therefore it is unlikely the louvres will be considered a ‘*wall*’.

Similarly, if louvres in a ceiling are fixed in a completely open, vertical position the louvres are unlikely to prevent or impede lateral airflow. Therefore the louvres are unlikely to be considered a ‘*ceiling*’.

Once the louvres are angled, they may be seen to prevent or impede airflow and therefore may be considered to be a ‘*ceiling*’ or a ‘*wall*’.

Locked-open doors, windows, louvres, roofs with fixed or movable slats and retractable awnings

Clause 6 (7) of the Regulation provides the following definition:

A locked-open door or locked-open window means a door or window that opens directly to the outside and is locked fully open (that is, secured in its fully open position by means of a key operated lock) for the entire duration of the trading day.

Any locked-open doors or windows are treated as open space provided they open directly to the outside.

Louvres that are closed, or partially closed for any reason, for instance due to adverse weather at any point in a trading day, whether by manual or automatic means, do not comply with the definition of *locked open door or window* and will NOT be counted as open space.

A roof with fixed or moveable slats that is closed for any reason, for instance due to adverse weather at any point in a trading day, whether by manual or automatic means, does not comply with the definition of *locked open door or window* and will NOT be counted as open space or an unroofed area.

A roof or awning which is extended for any reason and so encloses, or partially encloses a smoking area, does not comply with the definition of *locked open door or window* and will NOT be counted as open space or an unroofed area.

How do I determine if a public place is enclosed?

In some cases it is possible to determine an enclosed public place by simply looking at the area.

In more difficult to determine areas measurements of the area will need to be undertaken to ensure that the total actual enclosed area does not exceed 75% of its total notional area.

As the layout of each area and establishment is different, you may wish seek advice and assistance from an architect and/or engineer.

Work out the percentage enclosed

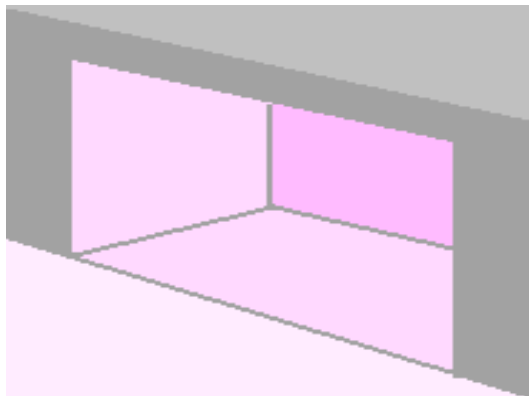
Once you have undertaken measurements and figured out your 'total actual enclosed area' and your 'total notional area' use this calculation:

$$\frac{\text{Total Actual Enclosed Area m}^2}{\text{Total Notional Area m}^2} \times 100 = \% \text{ Enclosed}$$

Following are some examples to assist you further in determining an enclosed public place.

Example 1: Area has a flat ceiling with one wall permanently open to the outside

(Diagrams not to scale)



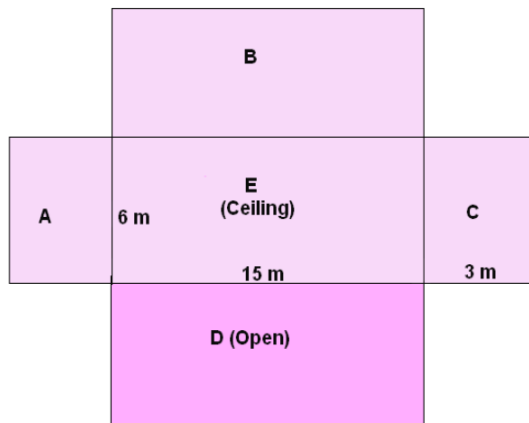
(Frontview)

Notional Area:

The sum of the wall surfaces (if walls were continuous) + the ceiling

Ceiling height = 3m

| | | |
|----------------------------|--------|---------------------------|
| Wall (A) | 6 x 3 | = 18m ² |
| Wall (B) | 15 x 3 | = 45m ² |
| Wall (C) | 6 x 3 | = 18m ² |
| Wall (D) | 15 x 3 | = 45m ² |
| Ceiling (E) | 15 x 6 | = 90m ² |
| Total Notional Area | | = 216m² |



(Overhead view)

Actual Area:

The sum of the actual surfaces, including the ceiling

| | | |
|----------|-------|--------------------|
| Wall (A) | 6 x 3 | = 18m ² |
|----------|-------|--------------------|

| | | |
|--------------------------|--------|---------------------------|
| Wall (B) | 15 x 3 | = 45m ² |
| Wall (C) | 6 x 3 | = 18m ² |
| Ceiling (E) | 15 x 6 | = 90m ² |
| Total Actual Area | | = 171m² |

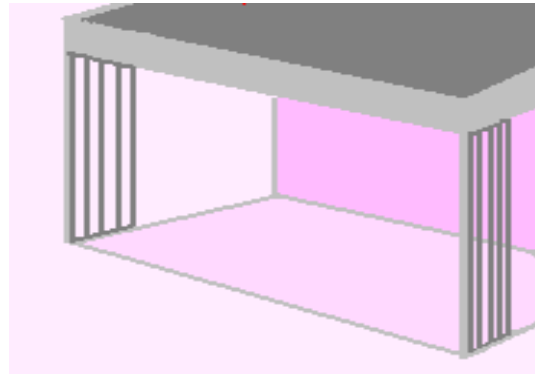
Actual Area ÷ Notional Area x 100 =

$$171 \text{ m}^2 \div 216 \text{ m}^2 \times 100 = 79\%$$

The area is enclosed and smoking is not permitted.

Example 2: Area has a flat ceiling, one wall permanently open to the outside & two walls with locked-open doors

(Diagrams not to scale)



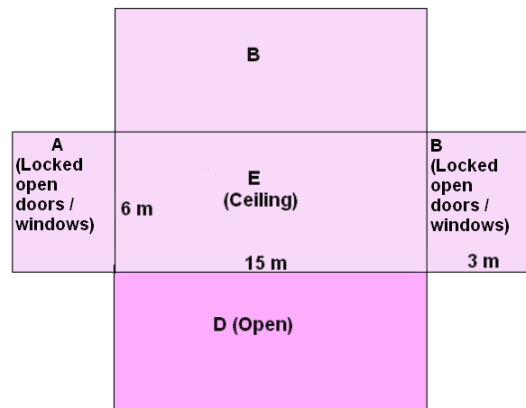
(Frontview)

Notional Area:

The sum of the wall surfaces (if walls were continuous) + ceiling

Ceiling height = 3m

| | | |
|----------------------------|--------|---------------------------|
| Wall (A) | 6 x 3 | = 18m ² |
| Wall (B) | 15 x 3 | = 45m ² |
| Wall (C) | 6 x 3 | = 18m ² |
| Wall (D) | 15 x 3 | = 45m ² |
| Ceiling | 15 x 6 | = 90m ² |
| Total Notional Area | | = 216m² |



(Overhead view)

Actual Area:

The sum of the actual surfaces, including the ceiling.

Note that locked-open doors/windows are treated as open space provided they open directly to the outside and are locked open for the entire duration of the trading day:

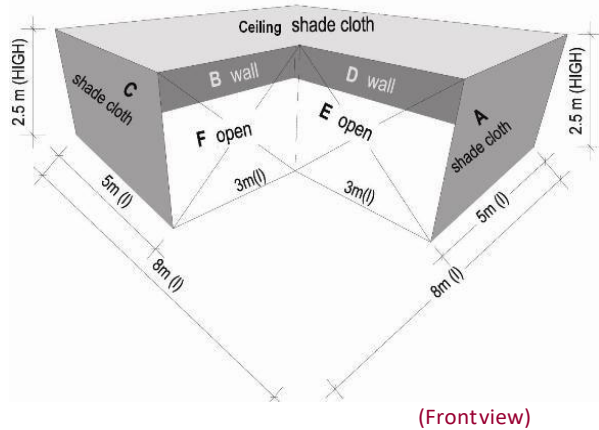
| | |
|-------------|---------------------------|
| Wall (B) | 15 x 3 = 45m ² |
| Ceiling (E) | 15 x 6 = 90m ² |

Total Actual Area = 135m²

Actual Area ÷ Notional Area x 100 =
 135 m² ÷ 216 m² x 100 = 62.5%
 The area is unenclosed when doors are locked open (for the entire duration of the trading day) and smoking is permitted.

Example 3:

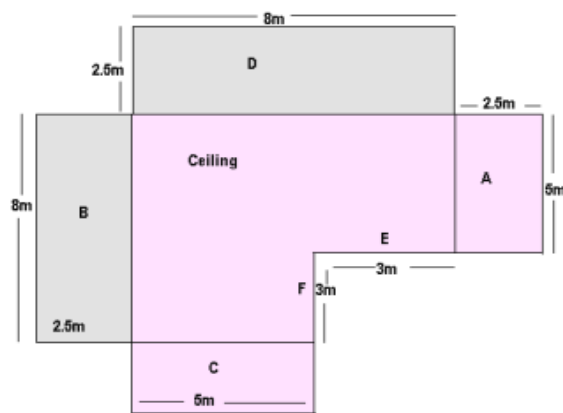
Outdoor area with shade cloth ceiling and walls and two permanently open walls
 (Diagrams not to scale)



(Frontview)

Notional Area:

| | | |
|----------------------------|------|-------------------------|
| Ceiling height | 2.5m | |
| Shade cloth wall (A) | | 12.5m ² |
| Wall of building (B) | | 20m ² |
| Shade cloth wall (C) | | 12.5m ² |
| Wall of building (D) | | 20m ² |
| Open to outside (E) | | 7.5m ² |
| Open to outside (F) | | 7.5m ² |
| Shade cloth ceiling | | 55m ² |
| Total Notional Area | | 135m² |



(Overhead view)

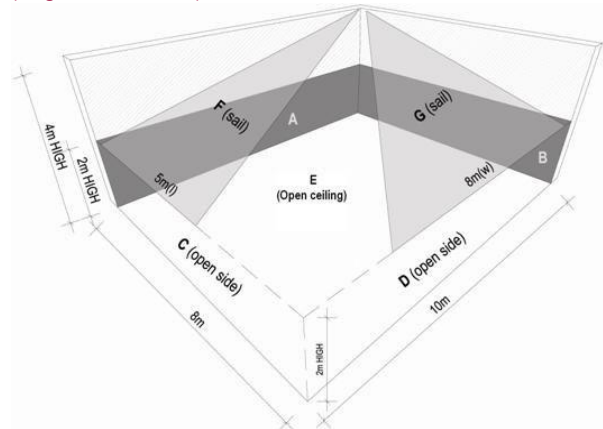
Actual area:

| | |
|--------------------------|-------------------------|
| Ceiling height | 2.5m |
| Shade cloth wall (A) | 12.5m ² |
| Wall of building (B) | 20m ² |
| Shade cloth wall (C) | 12.5m ² |
| Wall of building (D) | 20m ² |
| Shade cloth ceiling | 55m ² |
| Total Actual Area | 120m² |

Actual Area ÷ Notional Area x 100 =
 120 m² ÷ 135 m² x 100 = 89%
 The area is enclosed and smoking is not permitted

Example 4:

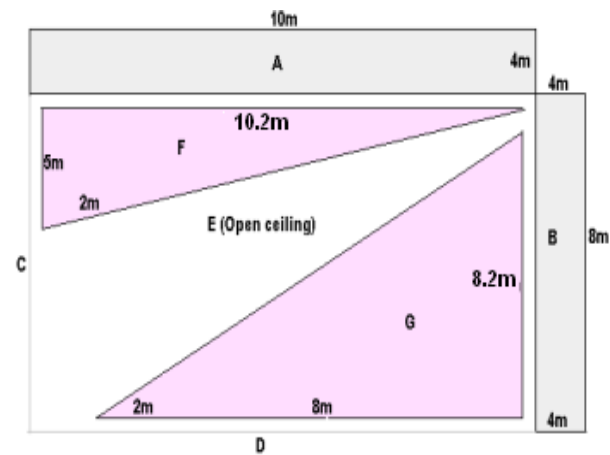
Outdoor area with sails as ceiling
 (Diagrams not to scale)



(Frontview)

Notional Area:

| | | |
|----------------------------|----|-------------------------|
| Ceiling height | 2m | |
| Wall of building (A) | | 20m ² |
| Wall of building (B) | | 16m ² |
| Open side (C) | | 16m ² |
| Open side (D) | | 20m ² |
| Ceiling | | 80m ² |
| Total Notional Area | | 152m² |



(Overhead view)

Actual Area:

| | |
|--------------------------|--------------------------|
| Ceiling height: | 2m |
| Wall of building (A) | 20m ² |
| Wall of building (B) | 16m ² |
| Sail* (F) | 25.5m ² |
| Sail* (G) | 32.8m ² |
| Total Actual Area | 94.3m² |

* Area of triangle = Length x width ÷ 2

Actual Area ÷ Notional Area x 100 =
 94.3 m² ÷ 152 m² x 100 = 62%

The area is unenclosed and smoking is permitted.

Disclaimer: This information is intended only as a guide and introduction to the relevant provisions of the Smoke-free Environment Regulations 2007. The State of New South Wales does not accept any liability for any expense, loss or damage suffered as a result of reliance upon the information contained in this document. Nothing in this document should replace the seeking of appropriate legal advice where considered appropriate.