

*The following email replies to an email from Adelaide City Council staff expressing “disappointment” at the item in the January 2017 edition of Pedal Update entitled “Hit a Bollard in/around the City? Sue the Council!”.*

*We have not sought permission to reproduce the email from the ACC staff member in full. However to provide context, the it did say among other things:*

*We do acknowledge that a lot of installations of bollards may not meet current Standards, however met standards at the time of installation. We also acknowledge that unauthorised access to Park Lands is evident around the City with multiple occurrences of damage to infrastructure and property within Park Lands where bollards or gates are not present or not installed properly to prevent vehicular access.*

*Following is the response of BISA’s Chair, Fay Patterson:*

Thank you for contacting me. BISA will be pleased to provide information about bollards in ACC. For reference, though, I do feel that I need to clarify a few points.

1. Most of ACC’s bollards DID NOT meet the standards at the time of installation. The bollards Council continues to install to the present DO NOT meet the current standards – which have been in existence and basically unchanged since 1996. This is our frustration and part of the cause of your civil liability issue. Read the Australian Guide to Road Design Part 6A: Pedestrian and Cyclist Paths, chapter 10: Path Terminal Treatments, and look at a bollard. Please.
2. Re: unauthorised access to the Park Lands:
  - BISA notes that bollard installations indicate haphazard and random usage: their presence or otherwise does not appear to relate to either an experience with or policy on unauthorised vehicular access. Bollards aren’t the only way of preventing unauthorised access and we would be happy to work with you in developing alternative design solutions.
  - While damage to infrastructure is regrettable, BISA does not believe that this warrants ignoring ACC’s duty of care to cyclists, much less placing cyclists at risk of injury.
  - If it is considered that unauthorised vehicular access might pose a safety issue (which you do not state is the case), in the event of a civil liability case ACC will be required to present a documented risk assessment explaining how this risk has been identified as being greater than that of inappropriately located and designed bollards. We do not believe that such an assessment has ever been considered and would like to see a copy of such an assessment if it exists. We note that in the 1990s, Pedal Power ACT pointed out that their members would prefer to meet an unauthorised vehicle upon occasion than bollards in the path every day.
  - BISA was informed that the greatest issue about inappropriate behaviour on shared paths was caused by ACC employees. We suggest ACC reconsiders abrogating responsibility for the control and disciplining of ACC staff and ignoring its duty of care to cyclists. This is especially true for bollards located not at intersections with roads but on the approach to bridges within the Park Lands, which are clearly not located in order to limit access to the Park Lands. (Why, then, are they there?)
3. BISA will be pleased to work with ACC on this matter – as we did as stakeholders for your award-winning 1995 *City of Adelaide Bicycle Plan*, the 2000 *Integrated Movement Strategy – Bicycle Report* and the 2002 *Strategic Bicycle Plan*, when we also highlighted the safety problems caused to cyclists by bollards:
  - The 1995 document was prepared by Kym Dorrestyn, then a leader in Australian bicycle design practice with a significant role in preparing the 1996 standards. We

believe he would've identified bollards as a safety issue in the 1995 Plan, though our corporate recollection is a little hazy.

- The 1999 document notes in "Appendix A: Issues Raised During Consultation", in summarising the four main issues raised: "Unsafe conditions are produced where bicycle lanes or shared use paths terminated in hazardous locations without further provision or adequate end treatment." The term 'adequate end treatment' refers to the use of bollards as terminal devices for paths.
- The 2002 document was prepared in response to the collapse of HIH and overturning of the 'highway rule' as a legal defence for municipalities across Australia. (Under the highway rule, road authorities could be guilty of misfeasance, i.e. not acting on an issue or doing something wrong, but not nonfeasance, i.e. not doing anything at all. This encouraged authorities to choose wilful ignorance so that they could plead nonfeasance, and was overturned by the High Court decisions known as Brodie and Ghantous in 2001). The 2002 document adopted a risk management paradigm aligned with the High Court ruling, which is why it included a Road Safety Audit of all Park Lands paths (attached). This naturally identified bollard issues, including bollards that needed to be removed, and is the other cause of your civil liability issue: the legal defence of nonfeasance does not apply to identified safety issues. Further, your comment about bollards meeting the standards of their time references a legal defence that meeting previous standards implies that these historic installations could be considered as being acceptable. However, as all bollards were assessed in the Road Safety Audit, even those that meet the pre-1996 standards would probably still present a liability issue for ACC.

BISA will be pleased to resubmit and update the list of bollards we previously provided to Council in 2011. At the time, BISA pointed out ACC's civil liability issue and provided an update about bollards re: new ones and ones that had been removed since the 2001 Road Safety Audit. I was not a BISA Committee Member at the time but recollect advice to BISA that a member of ACC staff was conducting an audit of Park Lands paths, had identified bollards as a safety issue and that the budgetary process was such that bollards wouldn't be able to be removed until the next budgetary cycle.

And we will be particularly pleased that the response to BISA regarding our (repeated) verbal requests to Council staff will no longer be that the traffic section is aware of the safety and liability issues bollards present but cannot remove these because the Park Lands section won't let them.

4. We are glad to hear that ACC will be auditing Park Lands paths. We would like to point out that removing the bollards previously identified as needing to be removed, and addressing any other issues associated with them (e.g. chains across the path), would also eliminate your current liability issue. ACC does not have to wait to complete a new audit to do this. While many bollards have since been removed/added, BISA's 2011 submission (as well as the additional audit we believe occurred since then) would provide a good basis for action. And as one premise of the current standards is not to install bollards when they aren't needed, removing virtually all bollards is pretty much a precursor to ACC identifying where terminal treatments might actually be needed, so an approach of identifying bollards through your asset management system and removing them would be a simple and effective first step.

In summary, the Bicycle Institute of SA has been working with ACC, other Councils and DPTI on bollards for over 20 years. We have advised, fed back, commented, raised, asked and pleaded. Repeatedly. Although the coronial inquest has yet to be conducted, it appears that twenty years of inaction and non-compliance across South Australia has now caused

someone's death and the reaction from local councils has been a deafening silence. For this reason, the BISA Committee decided to elevate bollards to be a central issue in its 2016-17 campaign year.

Unfortunately, ACC is an obvious target for BISA to use to raise the profile of the bollard issue. The City is a major destination/through route for cyclists. It has many paths because of the Park Lands. It has a high profile as the state's capital. And, for at least the last 15 years, ACC has not been ignorant of the safety hazards caused by bollards; it has chosen to ignore these.

BISA has taken advantage of the post-Xmas lull to point out that if ACC knowingly puts cyclist property and safety at risk, then it is reasonable for cyclists to pursue Council for compensation. In many ways, the point of civil liability claims is to ensure responsible agencies exercise their duty of care to the public – something ACC has been failing to do for a decade and a half. We regret that our campaign appears to coincide with ACC undertaking something that might in the future amount to action. When ACC removes its non-compliant and dangerous bollards, we would be more than happy to publicise and celebrate ACC's leadership. BISA also notes (as I think we have previously) that action on bollards would be entirely compatible with Lord Mayor Haese's desire to see positive action for cyclists, in a way that doesn't inconvenience motorists and is cheap and easy to achieve.

I am sorry that this is a less helpful response than you were probably hoping for. The history of this issue pre-dates your time at ACC and BISA appreciates that neither the current staff nor Councillors are the root cause of the issue. However, they are part of a saga that has already spanned over 20 years. We are told by lawyers that there is a constant trickle of personal injury claims relating to bollards in SA. Now someone has died. For us, enough is just too much.

Yours sincerely,

Fay Patterson, MAITPM  
Chair

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