

6.2 Sam Willoughby BMX Track Claim Progress Update

Report Reference	FRAC221011R6.2
Originating Officer	Risk Business Partner – Tania Del Torre
Corporate Manager	Manager Office of the Chief Executive - Kate McKenzie
General Manager	Chief Executive Officer - Tony Harrison

CONFIDENTIAL MOTION

That pursuant to Section 90(2) and (3)(b) of the Local Government Act 1999, the Committee orders that all persons present, with the exception of the following persons: Chief Executive Officer, General Manager City Development, General Manager City Services, General Manager Corporate Services, Manager of the Office of the CEO, Chief Financial Officer, Manager City Activation, Unit Manager Governance and Council Support, Unit Manager Strategy and Risk and Risk Business Partner, be excluded from the meeting as the Committee receives and considers information relating to Sam Willoughby BMX Track Claim Progress Update, upon the basis that the Committee is satisfied that the requirement for the meeting to be conducted in a place open to the public has been outweighed by the need to keep consideration of the matter confidential given the information relates to commercial and financial information.

REPORT OBJECTIVE

The purpose of this report is to provide the Finance, Risk and Audit Committee (FRAC) with an update on the Sam Willoughby BMX Track Insurance Claim outcome.

EXECUTIVE SUMMARY

In January 2022, during a two-day event at the opening of the Sam Willoughby BMX Track, the track was significantly damaged. Since this time an insurance claim has been under assessment. Due to the complexity of the incident and multiple stakeholders involved, the claim took many months for the assessors to investigate. On 30 September 2022, the City of Marion received the assessors final determination, being that the indemnity cannot be granted.

RECOMMENDATION

That the Finance, Risk and Audit Committee:

1. **Notes the Insurance claim outcome as detailed in this report and Attachment 1.**
2. **Discusses and advises whether an appeal should be lodged or in the alternate, what next steps should be undertaken.**
3. **In accordance with Section 91(7) and (9) of the *Local Government Act 1999* the Committee orders that this report, Sam Willoughby BMX Track Claim Progress Update, any appendices and the minutes arising from this report having been considered in confidence under Section 90(2) and (3)(b) of the Act, except when required to effect or comply with Council's resolution(s) regarding this matter, be kept confidential and not available for public inspection for a period of 12 months upon which a review will be conducted. This confidentiality order will be reviewed at the General Council Meeting in December 2022.**

DISCUSSION

Background

On 22 January 2022, AusCycling hosted a two-day BMX National Competition event to formally open the new Sam Willoughby BMX Track, on Majors Road, O'Halloran Hill. City of Marion was a partner/sponsor of the event and assisted with the event operations and logistics.

In the lead up to and during the event, Adelaide experienced an unprecedented January rainfall. January 2022 was the fourth-wettest January on record for the state, and between the 21-24 January 2022 many sites recorded their highest January daily rainfall on record. Despite the weather, the event went ahead, and bikes continued to race on the track during the significant rain. As the event was held by AusCycling, City of Marion was unable to make the decision to postpone or cancel the race.

During the event, the new BMX track was significantly damaged. It appeared that several factors may have contributed to the failure of the track.

Discussion

An Insurance claim was lodged with LGA Asset Mutual Fund (LGAAMF) in January 2022 for damaged caused to the track following the event.

The complexity of the claim, the potential multiple causes that may have attributed to the incident and multiple stakeholders being involved delayed the determination of the claim.

LGAAMF engaged engineers to report on the cause of the loss, who consulted with various stakeholders to ensure an accurate and fair determination could be achieved. The claim was not straightforward, and was delayed further by one stakeholder not providing relevant information due to it being their intellectual property.

CoM has been in constant contact with LGAAMF on the progress of this claim and over the last 7 months there have been regular meetings with the Claims Consultant, Assessor and Engineer and regular emails sent for progress of claim.

On 30 September 2022, the City of Marion received the assessor's letter of final determination (see **Attachment 1**). The letter outlines some information received throughout the investigation around the suggested curing time for the track. For clarity, City of Marion was advised by the head contractor that the track was ready for use prior to the event going ahead.

Following the information provided to the assessor and their engineers and from the detailed investigation and consultation with stakeholders undertaken, the assessor and engineer determined that the track failed for the following reasons:

- The nature of the wear course system selected and used in the tracks construction
- Inadequate curing time
- Initial damage caused by riders training on the track prior to the race meet, which most likely caused tears/holes in the wear course top layers in some areas.
- Damage caused by riders during the event
- Continued track use after initial damage allowed rainwater runoff to permeate into the wear course and base course material, weakening the layers further
- Unclear design documentation with respect to cross falls and crack drainage
- Incorrect removal of standing water from the track.
- Poorly installed wearing course to the berms
- Inclement weather
- Compressed curing time
- Use of the track during adverse weather conditions

It is noted that the letter provided to outline these reasons are very brief and does not provide any additional details as to how these reasons were determined based on the evidence. On 5 October 2022, the City of Marion requested the thorough report to understand these reasons further, however this has not been received at the time of writing this report.

The LGA Asset Mutual Fund does not cover damage cause by or arising out of wear and tear, gradual deterioration, faulty workmanship or materials, inherent vice or latent defect, error or omission in design, plan or specification or failure in design. As such, the LGA Asset Mutual Fund have advised that indemnity cannot be granted on this occasion.

The City of Marion does have an opportunity to appeal this decision following an internal disputes resolution process. Given the LGA Asset Mutual Fund does not cover damage caused by or arising out of wear and tear, gradual deterioration, faulty workmanship or materials, inherent vice or latent defect, error or omission in design, plan or specification or failure in design, it is considered unlikely that an appeal would result in a different outcome. However, the views of the Committee are sought regarding if an appeal should be progressed.

ATTACHMENTS

Attachment 1 – LGA Asset Mutual Fund letter PR0034569 – 30 September 2022