

## 6.2 Sam Willoughby BMX Track Claim Progress Update

Report Reference

FRAC221011R6.2

**Moved Councillor Duncan**

**Seconded Mr Papa**

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.

**Carried Unanimously**

2.14pm the meeting went into confidence

The General Manager City Development introduced the item and provided an update on the Sam Willoughby BMX Track Insurance Claim outcome. It was noted that 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. Management were disappointed with the response commenting that it was poorly reasoned and denies significant evidence they had been provided.

It was noted that 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 Committee provided the following comments and feedback:

- The Committee questioned the cost for appealing the decision compared to the cost of the repairs. Management confirmed that council endorsed additional funding to remedy the track and are now seeking a reimbursement for the claimable amount in the order of \$50k - \$100k. It was noted the outcome will become public and the decision scrutinized.
- The Committee commented it may be necessary to appeal the decision for the reputation of the council, however also note there is a balance between a financial position and social / reputation position.
- The Chief Executive Officer commented the Council is still in a sound position to push back significantly, noting that there will come a point where this will no longer be beneficial.
- It was questioned whether a claim was raised against the contractor insurers. General Manager City Development noted the independent report by the Super Intendent concluded that there was insufficient evidence to determine that the work was defective. It was noted there were record amount of rainfall at the time and that the weather should be an insurable event.
- The Committee commented there is an argument that the contractors and UCI failed to communicate the appropriate curing time of the track. Had this been communicated appropriately, the track would not have been used when it was.

- The Committee queried whether we withhold retentions and should consider retaining 5% for a period of 12 months as a defects liability period. The Committee is supportive of Management looking for options to push back against the insurer and to continue to fight for the claim.

**Moved Mr Papa**

**Seconded Councillor Duncan**

**That the Finance, Risk and Audit Committee:**

1. Notes the Insurance claim outcome as detailed in this report and Attachment 1.
2. 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.

**Carried Unanimously**

2.29pm the meeting came out of confidence

**7 Adjourned Items - Nil**