

# Special Council Meeting

Agenda for Thursday 20 December 2018



**city of  
kalamunda**

**NOTICE OF MEETING  
SPECIAL COUNCIL MEETING**

Dear Councillors

Notice is hereby given that a Special Meeting of Council will be held in the Council Chambers, Administration Centre, 2 Railway Road, Kalamunda on **Thursday 20 December 2018 at 5pm.**



Rhonda Hardy  
**Chief Executive Officer**  
20 December 2018



## Core Values

- Service:** We deliver excellent service by actively engaging and listening to each other.
- Respect:** We trust and respect each other by valuing our differences, communicating openly and showing integrity in all we do.
- Diversity:** We challenge ourselves by keeping our minds open and looking for all possibilities and opportunities.
- Ethics:** We provide honest, open, equitable and responsive leadership by demonstrating high standards of ethical behaviour.

## Aspirational Values

- Creativity:** We create and innovate to improve all we do.
- Courage:** We make brave decisions and take calculated risks to lead us to a bold and bright future.
- Prosperity:** We will ensure our District has a robust economy through a mixture of industrial, commercial, service and home based enterprises
- Harmony:** We will retain our natural assets in balance with our built environment

*Our simple guiding principle will be to ensure everything we do will make Kalamunda socially, environmentally and economically sustainable.*

[www.kalamunda.wa.gov.au](http://www.kalamunda.wa.gov.au)

**city of  
kalamunda**

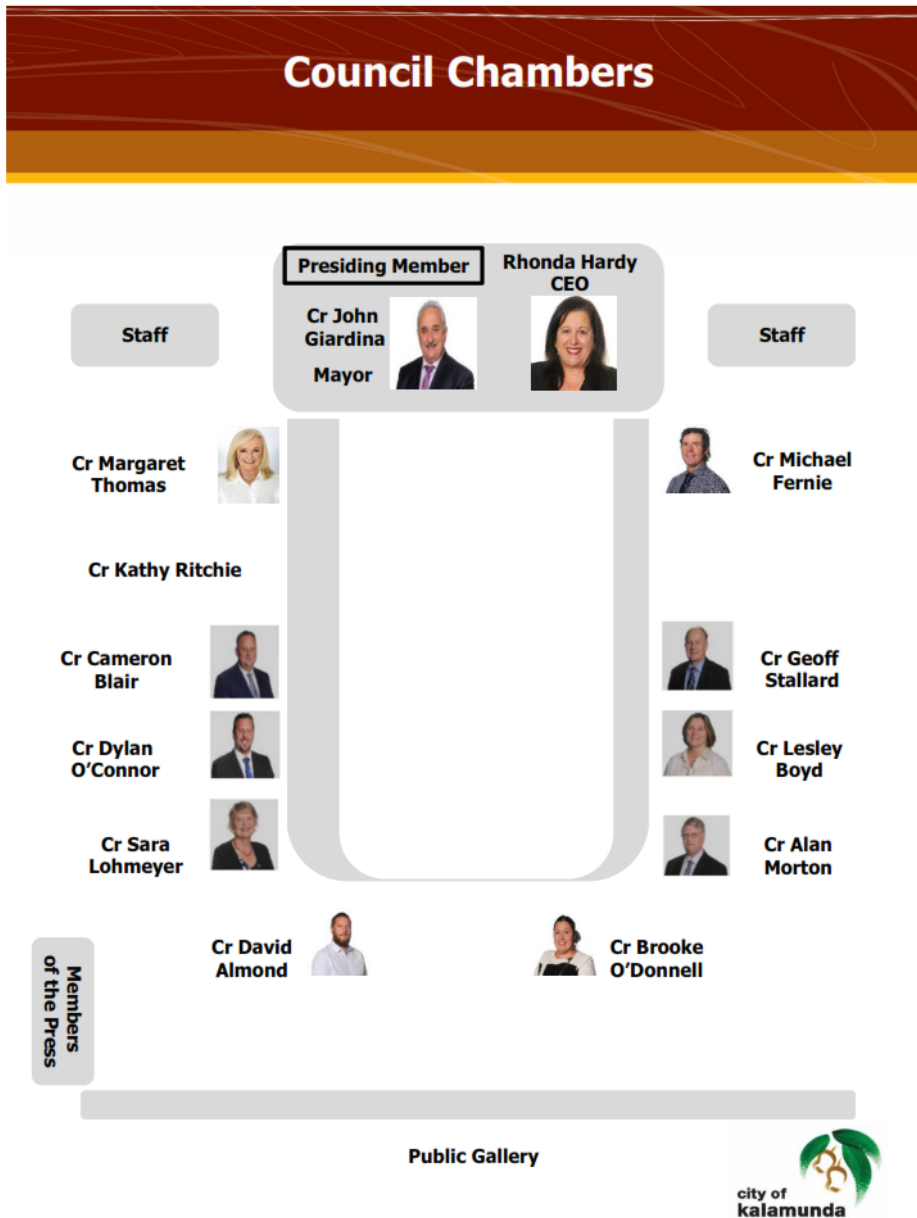


## INFORMATION FOR THE PUBLIC ATTENDING COUNCIL MEETINGS

Welcome to this evening's meeting. The following information is provided on the meeting and matters which may affect members of the public.

If you have any queries related to procedural matters, please contact a member of staff.

### Council Chambers – Seating Layout



### **Special Council Meetings – Procedures**

1. Council Meetings are open to the public, except for Confidential Items listed on the Agenda.
2. Members of the public who are unfamiliar with meeting proceedings are invited to seek advice prior to the meeting from a City Staff Member.
3. Members of the public are able to ask questions at a Special Council Meeting during Public Question Time on matters relating to the functions of this meeting.
4. To facilitate the smooth running of the meeting, silence is to be observed in the public gallery at all times except for Public Question Time.
5. All other arrangements are in general accordance with Council's Standing Orders, the Policies and decision of the City or Council.

### **Acknowledgement of Traditional Owners**

We wish to acknowledge the traditional custodians of the land we are meeting on, the Whadjuk Noongar people. We wish to acknowledge their Elders' past, present and future and respect their continuing culture and the contribution they make to the life of this City and this Region.

## **Emergency Procedures**

**Please view the position of the Exits, Fire Extinguishers and Outdoor Assembly Area as displayed on the wall of Council Chambers.**

**In case of an emergency follow the instructions given by City Personnel.**

**We ask that you do not move your vehicle as this could potentially block access for emergency services vehicles.**

**Please remain at the assembly point until advised it is safe to leave.**

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- 1. Official Opening**
- 2. Attendance, Apologies and Leave of Absence Previously Approved**
- 3. Public Question Time**

*A period of not less than 15 minutes is provided to allow questions from the gallery on matters relating to the functions of this meeting. For the purposes of Minuting, these questions and answers will be summarised.*

- 4. Petitions/Deputations**
- 5. Announcements by the Member Presiding Without Discussion**
- 6. Matters for Which the Meeting may be Closed**
- 7. Disclosure of Interest**
  - 7.1. Disclosure of Financial and Proximity Interests**
    - a. Members must disclose the nature of their interest in matter to be discussed at the meeting. (Section 5.56 of the *Local Government Act 1995*.)
    - b. Employees must disclose the nature of their interest in reports or advice when giving the report or advice to the meeting. (Section 5.70 of the *Local Government Act 1995*.)
  - 7.2. Disclosure of Interest Affecting Impartiality**
    - a. Members and staff must disclose their interest in matters to be discussed at the meeting in respect of which the member or employee had given or will give advice.

**8. Reports to Council**

**8.1. Chief Executive Officer Reports**

**8.1.1. Chief Executive Officer Performance Review 2017-2018:  
Reasons for the Decision**

*Declaration of financial / conflict of interests to be recorded prior to dealing with each item.*

Previous Items	Item 10.5.5 OCM 18 December 2018
Directorate	Office of the CEO
Business Unit	Chief Executive Officer
File Reference	2.00344
Applicant	Nil.
Owner	Nil.
Attachments	1. Memo to Acting CEO and Councillors - 19.12.2018 <b>[8.1.1.1]</b> 2. Local Government ( Administration) Regulations 1996 - Reg 11 <b>[8.1.1.2]</b>

**EXECUTIVE SUMMARY**

1. The purpose of this report is to recommend to Council that it should rescind resolution OCM 266/2018 of 18 December 2018, as passed, on the basis that:
  - a) it is not compliant with Regulation 11(da) of the *Local Government (Administration) Regulations 1996* (WA) insofar, amongst other things, it does not provide reasons of any kind for Council determining in a manner entirely opposite to the officer recommendation of that report, to terminate the employment of the Chief Executive Officer, which creates a serious risk to the City; and
  - b) further to the above, resolution OCM 266/2018 does not accord with the principles of merit, equity or fairness as prescribed in section 5.40 of the *Local Government Act 1995* (WA).
2. Alternatively, Council may choose to provide reasons for resolution OCM 266/2018 which would accord with Regulation 11(da) of *the Local Government (Administration) Regulations 1996*, however in doing so, Council must be aware that such a process, in circumstances where OCM 266/2018 is entirely opposite to the officer's recommendation, would still cause Council to arguably be in breach of the principles of merit, equity or fairness as prescribed in section 5.40 of the *Local Government Act 1995* (WA).
3. It is recommended that Council opt to rescind OCM 266/ 2018 for the reasons stated above, however, an alternative is provided for Council's consideration.

## BACKGROUND

4. Council at the OCM considered report 10.5.5 Chief Executive Officer's Performance Review 2017-2018 and resolved through an Alternative Motion to cease the employment of the City's Chief Executive Officer. No written reasons for the decision were provided to the City's Chief Executive Officer, or provided at all for the purposes of minuting.
5. Regulation 11(da) of the *Local Government (Administration) Regulations 1996* requires written reasons for each decision made at the meeting that is significantly different from the relevant written recommendation of a committee or an employee.
6. The City received legal advice on the following questions:
  1. whether Council must provide written reasons for its decision to resolve to terminate the Chief Executive Officer's contract at the OCM, as an alternative decision to the Officer's Recommendation in the OCM agenda;
  2. whether Council should deal with this at either a Special Council Meeting (SCM), or at the next Ordinary Council Meeting in February 2019; and
  3. if a SCM is called, whether the SCM should be called in sufficient time for Public Notice of the time, date and purpose of the meeting to be provided, which would allow the public to speak at the meeting.

## DETAILS

4. Details of the advice received in relation to these questions is provided in Confidential Attachment 1.
5. **Reasons for the Decision**

It is clear that there is a legal requirement for the Council to record its reasons where it has not followed the relevant officer's recommendation. The relevant officer's recommendation was not followed and as such, in accordance with Regulation 11(da) of *the Local Government (Administration) Regulations 1996*, reasons for the decision are required to be provided.

## STATUTORY AND LEGAL CONSIDERATIONS

6. Section 5.25(1)(f) of *the Local Government Act 1995*.
7. Section 5.40 of *the Local Government Act 1995*.
8. Regulation 11(da) of *the Local Government (Administration) Regulations*.

## POLICY CONSIDERATIONS

9. Nil.



**COMMUNITY ENGAGEMENT REQUIREMENTS**

**Internal Referrals**

10. Nil.

**External Referrals**

11. The City received external legal advice on this matter.

**FINANCIAL CONSIDERATIONS**

12. Termination of the CEO’s Contract will incur significant cost to the City.

**STRATEGIC COMMUNITY PLAN**

**Strategic Planning Alignment**

13. *Kalamunda Advancing Strategic Community Plan to 2027*

**Priority 4: Kalamunda Leads**

**Objective 4.1** - To provide leadership through transparent governance.

**Strategy 4.1.1** - Provide good governance.

**Strategy 4.1.2** - Build an effective and efficient service-based organisation.

**SUSTAINABILITY**

**Social Implications**

14. Nil.

**Economic Implications**

15. Nil.

**Environmental Implications**

16. Nil.

**RISK MANAGEMENT CONSIDERATIONS**

17.	<p><b>Risk:</b> The current decision of Council is subject to external investigation and legal challenge as a result of non-compliance with Regulation 11(da) of the Local Government (Administration) Regulations 1996 and section 5.40 of the <i>Local Government Act</i> 1995 (WA).</p>		
	<b>Likelihood</b>	<b>Consequence</b>	<b>Rating</b>
	Almost Certain	Major	Extreme
	<b>Action/Strategy</b>		
	Rescind OCM 266/2018, or alternatively provide detailed reasons for the same.		

18.	<b>Risk:</b> Termination of the CEO’s Contract will result in significant financial cost requiring Council to undertake budget review.		
	<b>Likelihood</b>	<b>Consequence</b>	<b>Rating</b>
	Likely	Significant	High
	<b>Action/Strategy</b>		
	Provide Council with advice on how to manage the budget impact.		

19.	<b>Risk:</b> Reputational damage if the community is not provided with clear and concise reasons that supports the OCM decision.		
	<b>Likelihood</b>	<b>Consequence</b>	<b>Rating</b>
	Likely	Significant	High
	<b>Action/Strategy</b>		
	Council provide written reasons for the decision.		

**OFFICER COMMENT**

20. The City repeats paragraphs 1-3 and 4-5.

**Voting Requirements: Absolute Majority**

**RECOMMENDATION**

That Council:

RESCIND its Resolution OCM 266/2018 of 18 December 2018, as passed, on the basis that:

- a) it is not compliant with Regulation 11(da) of the *Local Government (Administration) Regulations 1996 (WA)* insofar as it does not provide reasons of any kind; and
- b) given the above, does not accord with the principles of merit equity or fairness as prescribed in section 5.40 of the *Local Government Act 1995 (WA)*.

Moved: **Cr** \_\_\_\_\_,

Seconded: **Cr** \_\_\_\_\_,

Supported: **Cr** \_\_\_\_\_ and **Cr** \_\_\_\_\_, combined therefore, being at least 1/3 of the number of offices (whether vacant or not) of members of the Council pursuant to Regulation 10(1)(b) of the *Local Government (Administration) Regulations 1996 (WA)*.

Vote:

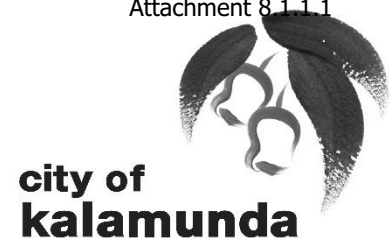
OR

That Council

PROVIDES written reasons to accompany the alternate motion and subsequent decision regarding Item 10.5.5 Chief Executive Officer's Performance Review 2017-2018 of the 18 December 2018 Ordinary Council Meeting to achieve compliance with Regulation 11(da) of Local Government (Administration) Regulations 1996:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

Date:	19/12/2018
Officer:	Simon Di Rosso



## Internal Memorandum

**Memo To:** Gary Ticehurst – Acting Chief Executive Officer,  
Mayor and Deputy Mayor  
All Councillors and Executive Management Team

**From:** Simon Di Rosso - General Counsel

**Subject:** Advice

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*Confidential and Privileged*

I have been requested to provide the following legal advice as settled by Tony Power of Counsel, at the request of the Acting Chief Executive Officer Gary Ticehurst, the Mayor and the Deputy Mayor.

The questions for consideration in this legal advice are as follows:

1. whether Council must provide written reasons for its decision to resolve to terminate the Chief Executive Officer's contract as it did at yesterday's OCM, contrary to the Officer Recommendation in the OCM agenda;
2. whether Council should deal with this at either a Special Council Meeting, or at the next Ordinary Council Meeting in February; and
3. if an SCM is called, whether the SCM should be called in sufficient time for Public Notice of the time, date and purpose of the meeting to be provided, which would allow the public to speak at the meeting.

The advice that I have received from Mr Power and with which I concur is as follows –

*It is clear that there is a legal requirement for the Council to record its reasons where it has not followed the relevant officer's recommendation. On your instructions, the relevant officer's recommendation was not followed and so this is such a case. In fact, the recommendation and the resolution are almost polar opposites.*

*It is clear that one of the reasons for this requirement is to ensure transparency. In a case like this one, where the CEO has been dismissed forthwith, contrary to the officer's recommendation and without any obvious reason, it is my view that the preferable course for Council to follow is not to allow the minutes to be amended some not insignificant time away from such an important decision. Rather, it would be preferable in my view for it to meet as soon as possible and formally record its reasons for decision, as required by law. Allowing the reasons to remain unrecorded, will in my view inevitably invite criticism and suspicion about the reasons for the decision, where the requirement for them is so patent.*

*The Council needs to be transparent and be seen to be so. If the former CEO takes legal action at some later date, I have little doubt that the patent failure to meet the legal requirement for reasons will be used against the City and will prejudice its defence.*

*It is clearly going to be preferable, that if there is to be a further meeting of Council to record the reasons for the decision that it be an open and transparent process.*

*If the [SCM] meeting were to be called for this Friday evening, it would be practicable to give notice to members of the public of it and what is to be considered at it. Again, action taken to withhold those reasons, or appearing to be for that purpose, is likely to invite the same criticisms and suspicions when the Council least needs them. It will likely have a similar prejudicial effect in any ensuing litigation. The opportunity for public scrutiny, as permitted by the relevant regulations, is the best antidote to allegations of impropriety by the Council.*

### **Recommendations given the above advice**

1. A Special Council Meeting be called with the purpose being to pass a resolution fully particularising the reasons concluded by Council as those which resulted in the Council's decision to pass a resolution in the alternative to the City's officer recommendation.
2. The aforesaid Special Council Meeting be held Thursday 20 December 2018.
3. The Acting Chief Executive Officer give local public notice in accordance with the *Local Government Act 1995* (WA) of the date, time place and purpose of the meeting.



**SIMON DI ROSSO**  
**GENERAL COUNSEL**

**11 . Minutes, content of (Act s. 5.25(1)(f))**

The content of minutes of a meeting of a council or a committee is to include —

- (a) the names of the members present at the meeting; and
- (b) where a member enters or leaves the meeting during the course of the meeting, the time of entry or departure, as the case requires, in the chronological sequence of the business of the meeting; and
- (c) details of each motion moved at the meeting, the mover and the outcome of the motion; and
- (d) details of each decision made at the meeting; and
- (da) written reasons for each decision made at the meeting that is significantly different from the relevant written recommendation of a committee or an employee as defined in section 5.70 (but not a decision to only note the matter or to return the recommendation for further consideration); and
- (e) a summary of each question raised by members of the public at the meeting and a summary of the response to the question; and
- (f) in relation to each disclosure made under section 5.65 or 5.70 in relation to the meeting, where the extent of the interest has also been disclosed, the extent of the interest.

**9. Meeting Closed to the Public**

**10. Closure**