

Special Council Meeting

Minutes for Thursday 20 December 2018

UNCONFIRMED



**city of
kalamunda**

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1. Official Opening

The Presiding Member opened the meeting at 5.05pm and welcomed Councillors, Staff and Members of the Public Gallery.

2. Attendance, Apologies and Leave of Absence Previously Approved

Councillors

South East Ward

John Giardina - (Mayor) (Presiding Member)

Michael Fernie

Geoff Stallard

South West Ward

Lesley Boyd

Allan Morton

Brooke O'Donnell

North West Ward

Sara Lohmeyer

Dylan O'Connor

North Ward

Cameron Blair

Kathy Ritchie

Margaret Thomas

Members of Staff

Chief Executive Officer

Rhonda Hardy

Executive Team

Gary Ticehurst - Director Corporate Services

Brett Jackson- Director Asset Services

Peter Varelis - Director Development Services

Simon Di Rosso - General Counsel

Management Team

Virginia Miltrup - Manager People Services

Nicole O'Neill - Manager Customer & Public Relations

Administration Support

Kristy Lisle - Legal & Governance Assistant to General

Donna McPherson - Executive Research Officer to Chief Executive Officer

Members of the Public - 186

Members of the Press - 1

Apologies

Cr David Almond - North West Ward

Leave of Absence Previously Approved - Nil.

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.

- 3.1 Mack McCormack – 81 Aldersyde Road, Piesse Brook – Owner of Chalet Rigi
Q1: *If the Mayor's position is being questioned in regard to whether he should stand down on acting on legal advice, should not all council members who were involved in that decision-making process on acting on that legal advice also stand down?*

Response by the Mayor

A1: The motion that was put forward was not through legal advice, but since that day, I have had legal advice. The motion stands, and there is no problem with that. There is a technicality. What we are dealing with tonight are the reasons why. According to our General Council I cannot answer legal questions.

- 3.2 Peter Bolden – 55A Snowball Road, Kalamunda.
Question to the General Counsel, Simon Di Rosso

Q1. *When were you made aware of decision to sack CEO?*

Q2. *Were you informed before or after the fact?*

Q3. *Were you asked for advice as to whether due process has been followed, and if so, what advice did you give?*

Response from General Counsel

A1. Approximately 12.15am on 19 December 2018.

A2. After.

A3. I was not asked to give legal advice.

- 3.3 Shayne Silcox – 17 Grenville Road, Gooseberry Hill

Q1. *Were councillors given any legal advice regarding the impacts and effects of the motion to terminate the CEO of Kalamunda?*

Q2. *Did all councillors have the opportunity to fully consider the legal and risk implications to the City before they resolved to terminate the CEO?*

Q3. *Were all councillors fully briefed equally about the motion to terminate the CEO before the motion was put, or only a portion of elected members caucused prior to the meeting, and if so – why?*

Q4. *Why did Council not give reasons for the termination?*

Q5. *Do you feel that, as Council, that you have exercised procedural fairness and given the CEO an opportunity to defend herself in this matter and do councillors realise the damage to the City's image in what can only be seen as a heartless exercise four days before Christmas?*

Response from the Mayor

A1. No.

A2. No.

A3. I will say No, but I can say that there has been over a period of time some disquiet amongst councillors, but I have said to the CEO in the past that if there were seven councillors that came to me with concerns, I would be knocking on her door and that is basically what happened.

A4. That was an oversight, not intentional, and we are here tonight to resolve that.

A5. I disagree with you, it is never a good time to terminate any officer, and this is not something that Council will ever take likely, in view of the fact CEO and I go back seven years. I have supported the CEO continually right up to the decision. I felt the CEO had ample opportunity to respond. We have been through two CEO reviews, but this goes back and there has been plenty opportunity for CEO to come good through KPI's and Council saw fit to terminate the CEO contract. Do you think the CEO should have been involved further, I thought sufficient involvement in prior meetings.

3.4 Peter Marklew – 19 Whistlepipe Court, Forrestfield

Q1. *What is the financial impact of the decision to terminate the CEO to ratepayers?*

Q2. *What awards has the CEO won in relation to her leadership, her role within Local Government, or anything else she has done or presented with the City of Kalamunda?*

Q3. *Has the CCC been in contact with the City since the termination?*

Response from the Director Corporate Services

A1. Approximately \$300,000

Response from Chief Executive Officer

A2. The City in the time I have been here has won a significant amount of awards for innovation, with the water harvesting system. Recently the City has also won Gold for Tourism. With tourism, we have won awards for Parks and Leisure. We have won awards for engineering developments. A range of awards that we have won over the years for the work the fantastic officers of this City do. Personally, I have won an award – Meritorious Award of Local Government Professionals, so I was recognised this year as being a leading Local Government Professional across that industry. Last year I was a finalist in the Telstra Women's Business Awards.

Response from the Director Corporate Services

A3. Yes

3.5 Stephen Lock - 16 Johnson Place, Wattle Grove

Q1. *Has this had anything to do with industrialisation of Wattle Grove South, any fallout?*

Response from the Mayor

A1. No.

3.6 Tracy Destree - 39 Byron Road, Kalamunda

Q1. *Regarding the motion OCM 266/2018 passed on 18 December 2018, in drafting the motion, did the Mayor seek legal advice on the compliance of the*

content to the motion. Was the advice internal or external independent advice?

Q2. *Can the Acting CEO clarify if advice was provided specifically in relation to this question as there is a conflict between General Counsel's response and the Mayor's.*

Q3. *Given the content of the report and it is unfortunate the draft motion is not available to all to review, are you of the view that items 4 and 6 in that motion, that relate to Council actually engaging a consultant and providing direct actions on staff is in fact compliant with the Local Government Act? The questions relate to Council directly engaging a consultant and as you are aware, Council does not have a budget nor does it have authority to expend money – it provides direction to the CEO of the local government authority to do that. The other question relates to activities and engagements that the Mayor and Council do with staff, again in the absence of directing a CEO. My question is are you of the view that is compliant with the Local Government Act? I think the report before you proves this has not been the case.*

Response from Mayor

A1. I did not seek advice at all. Once the motion was put and won, our General Counsel was asked to come. He read the motion and he said that it was okay. The CEO was here also. There was no other confirmation of that motion being scrutinised by a legal person, no.

Response by Director Corporate Services

A2. I cannot provide clarifications, for two reasons:

A2 i. I was not acting CEO, and

A2 ii. I was not here at the time the meeting took place as myself and other directors had left for the day.

Response from Mayor

A2. I will say that the following day I met at an Executive meeting, my deputy was here also. I was met by a Governance gentleman, who said that the thing missing off my motion was that we had not given reasons. Nothing else has been said that the motion was incorrect, that we got about two minutes to five this afternoon.

A3. As far as I am concerned, what we do as a Council complies with the Local Government Act. The report before us today I wish I had the report this morning, but I was unable to see General Counsel before 3pm today so I have had to go and seek advice from somewhere else.

Reply – General Counsel

A3. *Mr Mayor, I will say, to clarify and clear the record, I was not asked to give legal advice, after or before that motion to Council and nor did I tell you that motion was correct.*

Response by Cr O'Connor:

Mr Mayor, as an attendee of that meeting can I clarify a point that has been raised? Legal Counsel informed us that a motion passed on Tuesday night was invalid and said we need to hold a meeting tonight because the reasons were not attached.

Mayor:

Correct, that is the only reason, not what we have before us tonight. It has only to do with what he believes now is that the motion is invalid. If it is to do with other than what we are here to do this evening – to give a reason – I think I should have been told that motion was invalid for other reasons

General Counsel:

As you will see in the report of this evening, external legal advice has been sought and provided. The reason the report is drafted in such a manner is on the basis of that legal advice.

3.7 Lex Barnett - 160 St Georges Terrace Perth

Q1. *I have a great deal of respect for you, the elected members, your Executive and staff who I rate as some of the best in Local Government. Are the Mayor and councillors aware of how highly respected their CEO is in the broader community and the value she brings to the quality and reputation of the City's overall administrative operation? I have worked with this Council, and been a regular observer of her broader industry involvement through participation in property industry discussion in local government forums, CEO groups and the like, and I have always found the CEO to be a staunch*

campaigner for the interests of the City of Kalamunda and a great advocate for its achievements.

Q2. *Do the members genuinely believe they will be able to recruit a person who will carry out the CEO's role more effectively and represent the City's interests more strongly than the current CEO? I do work with most local governments in metropolitan area, and without wanting to labour the point, I find your current CEO as one of the best.*

Response from Mayor

A1. Are we aware that our CEO has done good work amongst where she travels, either doing speeches or presentations, I have no doubt, and that is why Rhonda has been here so long, and as I said my decision was not made easily to do what I had to do, to vote the way I did.

A2. No doubt, there are many other CEO's out there that can do what Rhonda does, or better, Mr Silcox here this evening – I have greatest admiration for that guy. I have no doubt that there is always better and there are worse, but I am sure we can.

4. Petitions/Deputations

- 4.1 Mack McCormack – 81 Aldersyde Road, Piesse Brook gave a deputation.
- 4.2 Warwick Carter – 6 Vetiver Link, Atwell. Former Director Development Services gave a deputation.
- 4.3 Tony Fowler – 10 Marie Way, Kalamunda gave a deputation.
- 4.4 Kevin Bennett – 782 Welshpool Road East, Wattle Grove gave a deputation.
- 4.5 Rhonda Diana Hardy – 5 Springhill Place, Two Rocks gave a deputation.
- 4.6 Dick Lovegrove – 41 Brentwood Road, Wattle Grove gave a deputation.
- 4.7 Sue Bilich – 34 Worrell Ave, High Wycombe gave a deputation.
- 4.8 Roy Walker – 12 Collins Road, Kalamunda gave a deputation.
- 4.9 Caroline Babbage – 84 Union Road, Carmel gave a deputation.

5. Announcements by the Member Presiding Without Discussion

- 5.1 Nil.

6. Matters for Which the Meeting may be Closed

6.1 Nil.

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*.)

7.1.1 The Chief Executive Officer, Rhonda Hardy, declared a direct financial interest in Item 8.1.1 Chief Executive Officer Performance Review 2017-2018: Reasons for the Decision as the Report is in relation to her Contract of Employment.

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.

7.2.1 Nil.

The meeting sought advice from General Counsel as to whether the matter should be considered in the presence of the CEO and not behind closed doors. General Counsel advised this is a decision of Council. A motion to consider the matter behind closed doors was put and did not receive a mover therefore lapsed.

Reason for Confidentiality: *Local Government Act 1995 (WA) Section 5.23 (2) (a) - "a matter affecting an employee or employees."*

RESOLVED OCM 268/2018

That Council consider Item 8.1.1 Chief Executive Officer Performance Review 2017-2018: Reasons for Decision in the presence of the Chief Executive Officer.

Moved: **Cr Sara Lohmeyer**

Seconded: **Cr Cameron Blair**

Vote:	<u>For</u>	<u>Against</u>
	Cr Michael Fernie	Cr John Giardina
	Cr Geoff Stallard	
	Cr Lesley Boyd	
	Cr Allan Morton	
	Cr Brooke O'Donnell	
	Cr Sara Lohmeyer	
	Cr Dylan O'Connor	
	Cr Cameron Blair	
	Cr Kathy Ritchie	
	Cr Margaret Thomas	

CARRIED (10/1)

The Meeting was advised by the CEO the Mayor had received a letter from the CEO's external legal representative and this matter should be brought to the attention of all Elected Members. A motion was put to the vote to adjourn the meeting to provide Elected Members the opportunity to receive this correspondence.

RESOLVED OCM 269/2018

That Council adjourn the meeting.

Moved: **Cr Geoff Stallard**

Seconded: **Cr Lesley Boyd**

Vote: **CARRIED UNANIMOUSLY (11/0)**

The meeting was adjourned at 6.33pm.

RESOLVED OCM 270/2018

That Council recommence the meeting following an adjournment.

Moved: **Cr Margaret Thomas**

Seconded: **Cr Sara Lohmeyer**

Vote: **CARRIED UNANIMOUSLY (11/0)**

8. Reports to Council

**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.

The Chief Executive Officer, Rhonda Hardy, declared a direct financial interest in Item 8.1.1 Chief Executive Officer Performance Review 2017-2018: Reasons for the Decision as the Report is in relation to her Contract of Employment.

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 [8.1.1.1] 2. Local Government (Administration) Regulations 1996 - Reg 11 [8.1.1.2]

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

7. Details of the advice received in relation to these questions is provided in Confidential Attachment 1.
8. **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

9. Section 5.25(1)(f) of *the Local Government Act 1995*.
10. Regulation 11(da) of *the Local Government (Administration) Regulations*.

POLICY CONSIDERATIONS

11. Nil.

COMMUNITY ENGAGEMENT REQUIREMENTS

Internal Referrals

12. Nil.

External Referrals

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

FINANCIAL CONSIDERATIONS

14. Termination of the CEO's Contract will incur significant cost to the City.

STRATEGIC COMMUNITY PLAN

Strategic Planning Alignment

15. *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

16. Nil.

Economic Implications

17. Nil.

Environmental Implications

18. Nil.

RISK MANAGEMENT CONSIDERATIONS

- | 19. | <p>Risk: 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.</p> <table border="1"> <tr> <th>Likelihood</th> <th>Consequence</th> <th>Rating</th> </tr> <tr> <td>Almost Certain</td> <td>Major</td> <td>Extreme</td> </tr> </table> <p>Action/Strategy
Rescind OCM 266/2018, or alternatively provide detailed reasons for the same.</p> | Likelihood | Consequence | Rating | Almost Certain | Major | Extreme |
|----------------|---|------------|-------------|--------|----------------|-------------|---------|
| Likelihood | Consequence | Rating | | | | | |
| Almost Certain | Major | Extreme | | | | | |
| 20. | <p>Risk: Termination of the CEO's Contract will result in significant financial cost requiring Council to undertake budget review.</p> <table border="1"> <tr> <th>Likelihood</th> <th>Consequence</th> <th>Rating</th> </tr> <tr> <td>Likely</td> <td>Significant</td> <td>High</td> </tr> </table> <p>Action/Strategy
Provide Council with advice on how to manage the budget impact.</p> | Likelihood | Consequence | Rating | Likely | Significant | High |
| Likelihood | Consequence | Rating | | | | | |
| Likely | Significant | High | | | | | |
| 21. | <p>Risk: Reputational damage if the community is not provided with clear and concise reasons that supports the OCM decision.</p> <table border="1"> <tr> <th>Likelihood</th> <th>Consequence</th> <th>Rating</th> </tr> <tr> <td>Likely</td> <td>Significant</td> <td>High</td> </tr> </table> <p>Action/Strategy
Council provide written reasons for the decision.</p> | Likelihood | Consequence | Rating | Likely | Significant | High |
| Likelihood | Consequence | Rating | | | | | |
| Likely | Significant | High | | | | | |

OFFICER COMMENT

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

Voting Requirements: Absolute Majority

RESOLVED OCM 271/2018

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 Dylan O'Connor**

Seconded: **Cr Cameron Blair**

Supported: **Cr Sara Lohmeyer** and **Cr Kathy Ritchie**, 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: **CARRIED UNANIMOUSLY/ABSOLUTE MAJORITY (11/0)**

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. _____

Moved:

Seconded:

Vote: **Not voted upon given resolution OCM 271/2018.**

Voting Requirements: Simple Majority

RESOLVED OCM 272/2018

That Council:

Request the Chief Executive Officer re-present the Chief Executive Officer's Performance Review Report and supporting Key Performance Indicators by 15 April 2019.

Moved: **Cr Geoff Stallard**

Seconded: **Cr Lesley Boyd**

Vote: **CARRIED UNANIMOUSLY (11/0)**

LOCAL GOVERNMENT (ADMINISTRATION) REGULATIONS 1996 - REG 11

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.

[Regulation 11 amended in Gazette 23 Apr 1999 p. 1717.]

9. Meeting Closed to the Public

9.1 Nil.

10. Closure

There being no further business, the Presiding Member declared the Meeting closed at 7.13pm.

I confirm these Minutes to be a true and accurate record of the proceedings of this Council.

Signed: _____
Presiding Member

Dated this _____ day of _____ 2019.