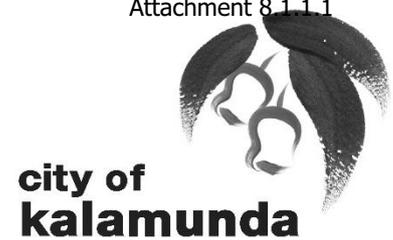


# Special Council Meeting 20 December 2018 Attachments

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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.