

Women Leading Locally

Roles & Responsibilities of being a councillor

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Roles & Responsibilities of being a Councillor in Victoria

Key content

Governance 101:

- Good governance in local government
- Role clarity: governance vs management
- Legal frameworks
- Director's duties
- Financial obligations & risk management

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Roles & Responsibilities of being a Councillor in Victoria

Key content (continued)

Getting down to business

- Chairing and participating in meetings
- Ethical decision making and voting
- Getting along and conflict resolution

- **Break-out groups for governance scenarios**

Good governance in local government

What is good governance?

Good governance is about having good processes for making and implementing decisions.

Having good processes generally leads to better outcomes for local governments and their communities.



Why is good governance important?

- Promotes community confidence
- Encourages elected members and council officers to be confident
- Leads to better decisions
- Helps local government meet its legislative responsibilities
- Supports ethical decision-making

What is local government and how does it operate?

- Council and the Elected Members
- The CEO and Administration
- Unique features of local government

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What does local government do?

- Planning and monitoring
- Service delivery
- Lawmaking and enforcement
- Policy development
- Representation
- Advocacy

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What does “community” mean?

1. Residents
2. Ratepayers
3. People and bodies who conduct activities

Role Clarity

Governance vs management

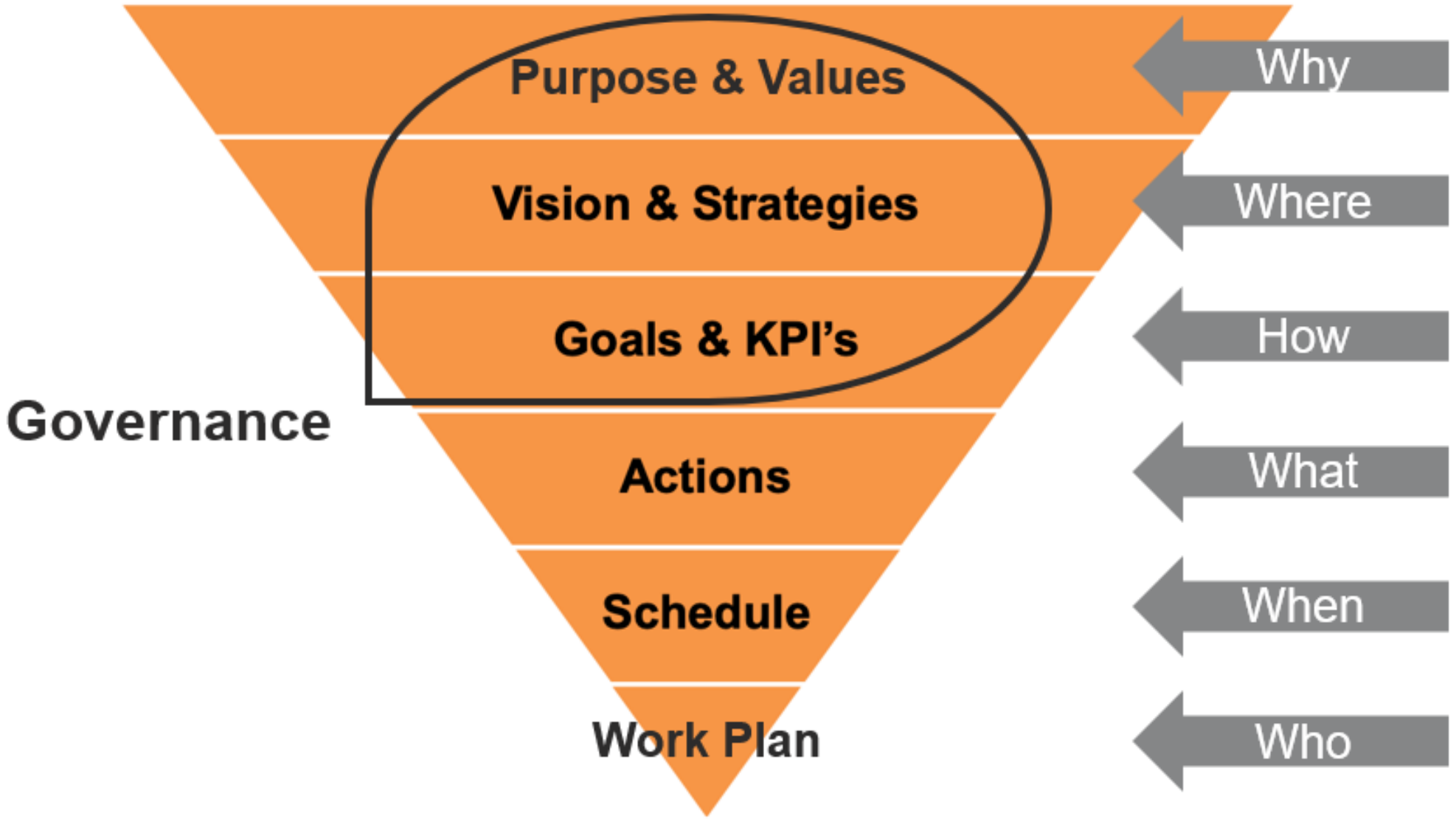
Governance vs management

Clarity of roles is essential to govern effectively

Question 1:
What is the role of Governance?

Question 2:
What is the role of Management?




Purpose & Values
Vision & Strategies
Goals & KPI's
Actions
Schedule
Work Plan
Governance
Why
Where
How
What
When
Who
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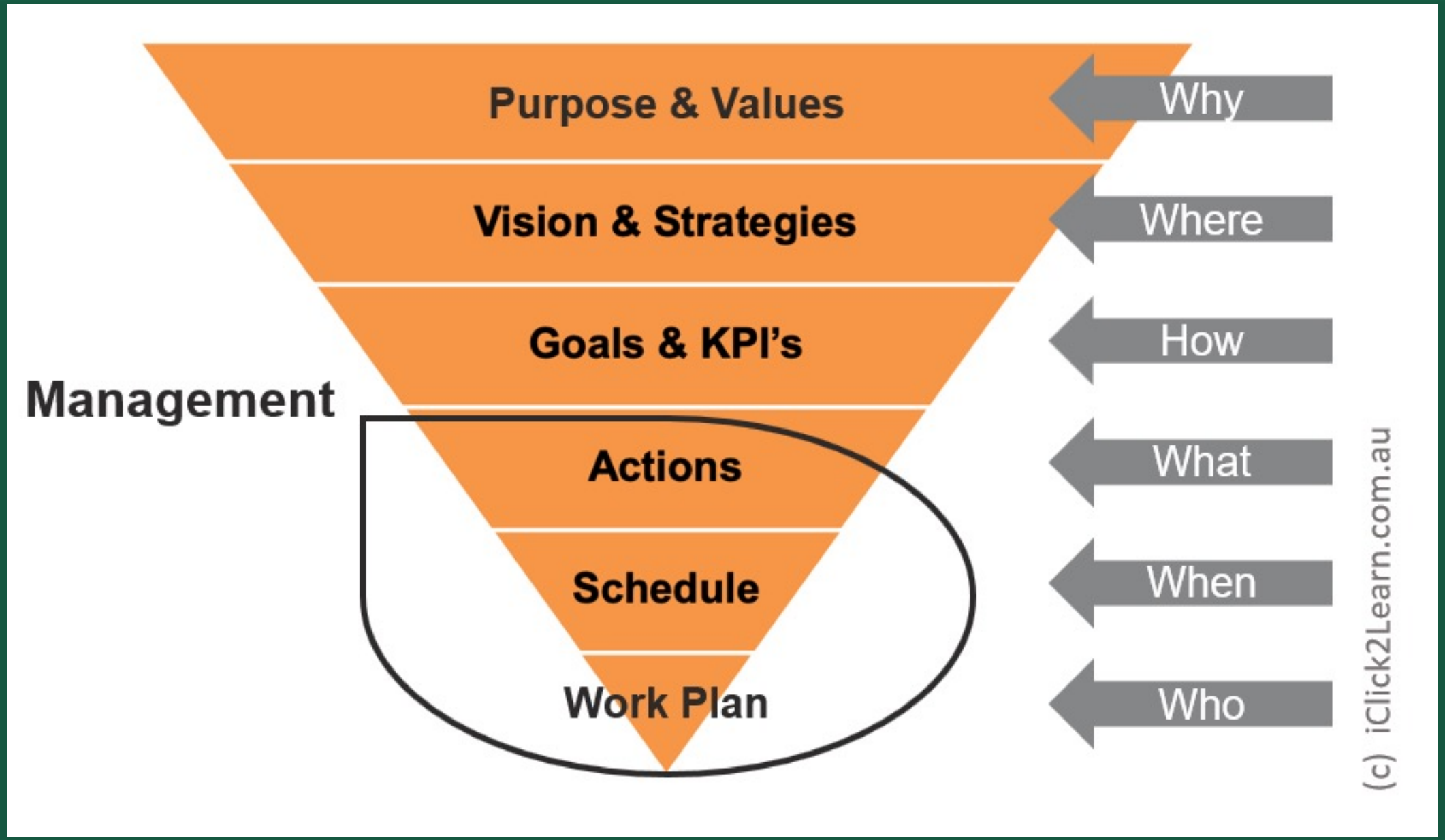
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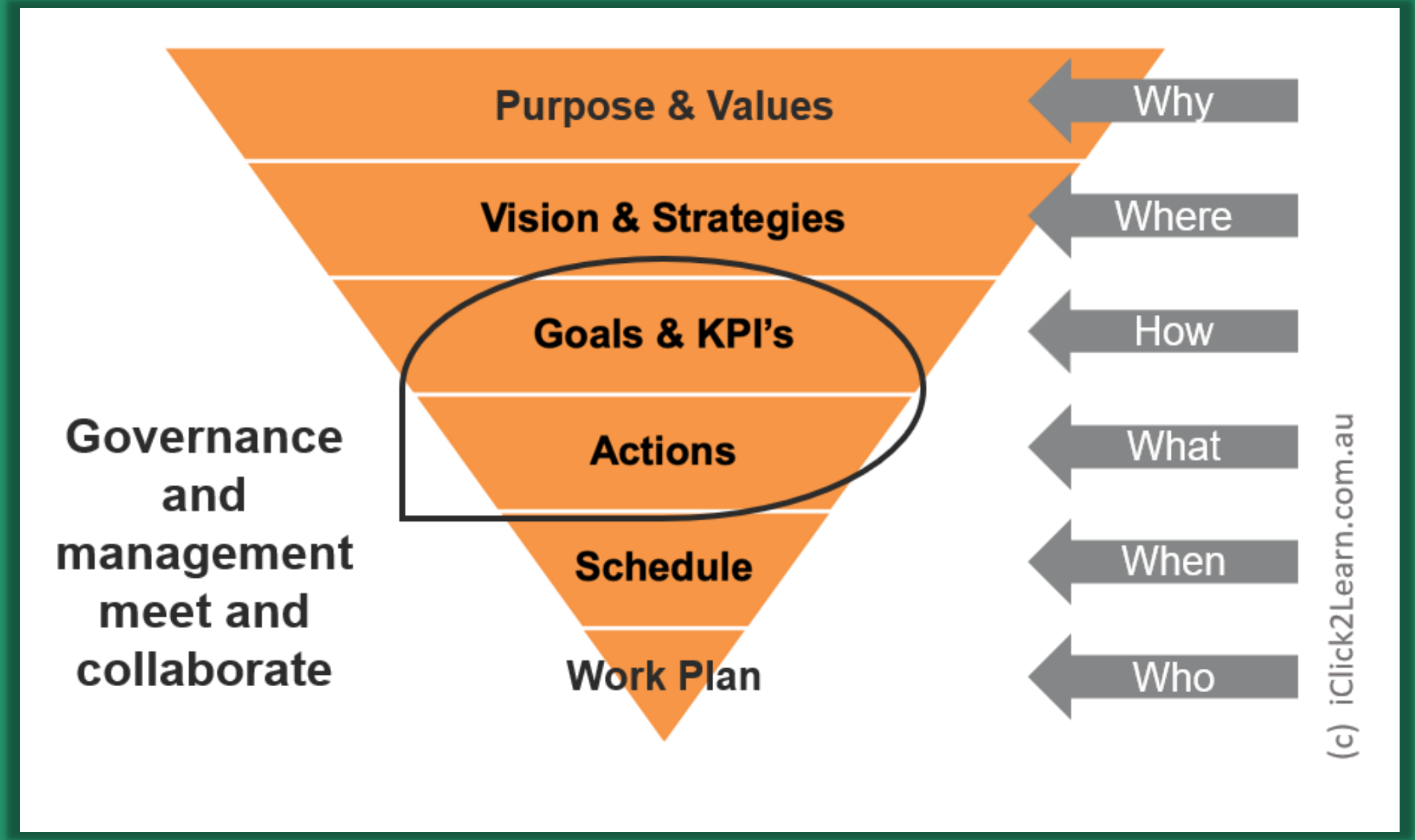
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Governance and management meet and collaborate
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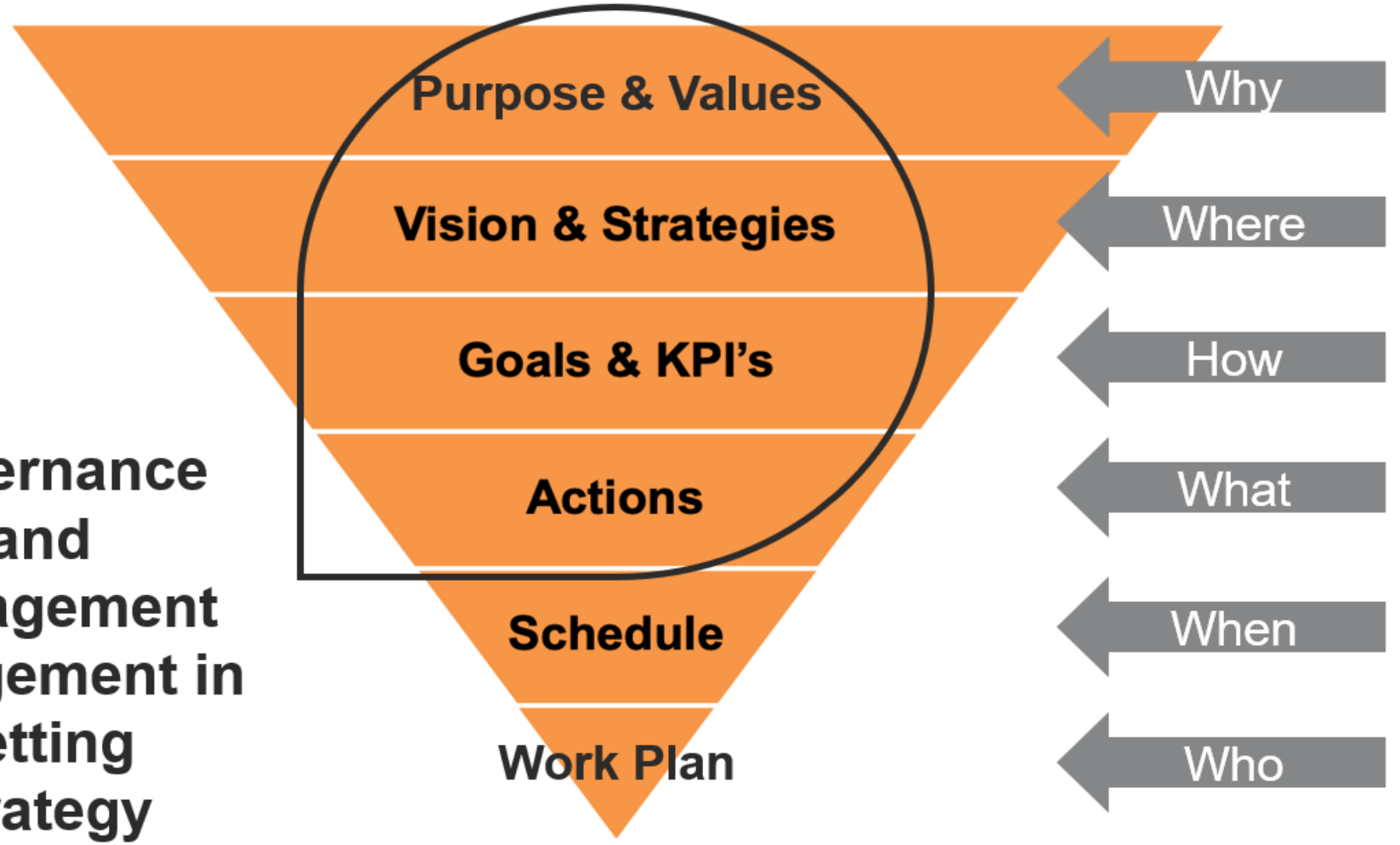
Governance and Management engagement in setting strategy



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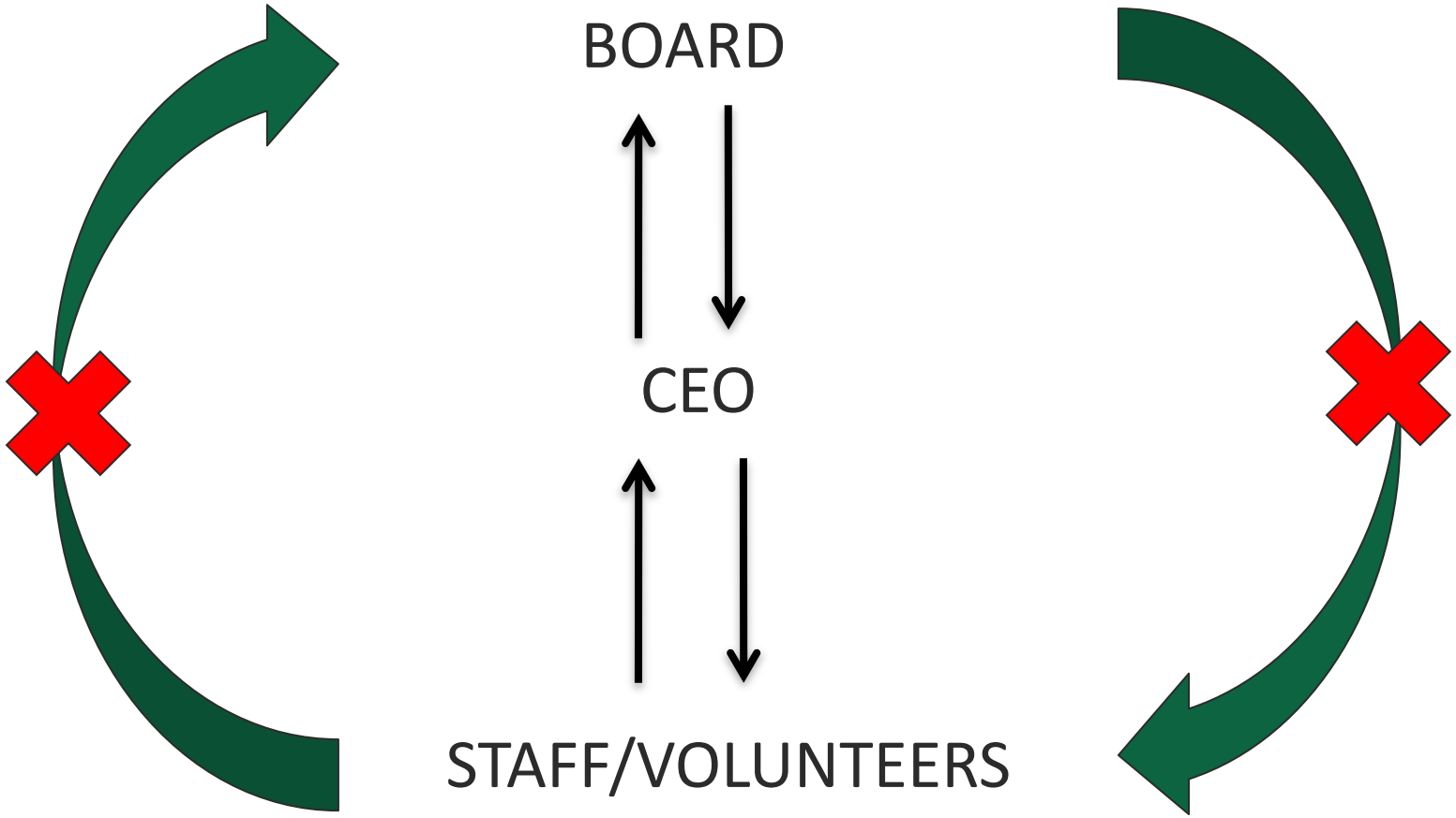
BOARD
CEO
STAFF/VOLUNTEERS

Legal Frameworks

The legal context

Local Government Act (2020) Vic: https://www.legislation.vic.gov.au/as-made/acts/local-government-act-2020

Regulations under the local government Act, including electoral, planning and regulation, governance and integrity etc.

And some individual local council Acts, can be found here: https://www.localgovernment.vic.gov.au/council-governance/acts-and-legislation

Council policies

The legal context

Codes of conduct

Codes of conduct for both councillors and staff are required under the *Local Government Act 1989*. They help councils identify and agree on the desired standard of behaviour. They also clearly state the consequences of any breaches of the code.

Institute of Community Directors – Policy Bank

Acceptable Use of Electronic Media Policy
View more

Acceptable Use of Vehicles & Equipment Policy
View more

Access & Equity Policy
View more

Affirmative Action Policy
View more

Family Friendly Policy
View more

First Aid Policy
View more

Fraud Risk Management Policy
View more

Governance Policy
View more

https://communitydirectors.com.au/tools-resources/policy-bank

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Director’s Duties

Legal duties (of individual board members)

- Duty to act *bona fide in the best interests of the company
- Duty to exercise powers for proper purposes
- Duty to retain discretion
- Duty to avoid conflict of interest
- Duty to not improperly use your position in the company
- Duty to treat confidential information properly
- Duty to treat related-party transactions properly
- Duty to treat payments to directors in the proper fashion
- Duty of care, skill and diligence
- Duty to prevent insolvent trading



** Bona fide – genuinely, without intention to deceive*

Fiduciary Duties



- All councillors have a duty of trust and are held responsible under the Act.
- This means that by law they must act honestly and in the best interests of the organisation.
- This is known as *fiduciary duty*.

The duty to avoid conflict of interest



A conflict of interest occurs when a person who is part of the decision-making process is considering an issue in which they or a family member etc. (not arms-length) stand to benefit in some way.

Conflicts of interest are not a problem in themselves or something to feel ashamed about.

The problem only starts when a conflict of interest is not properly dealt with.

Common forms of conflict of interest



- **Self-dealing,** in which public and private interests collide; for example issues involving privately held business interests
- **Outside employment**, in which the interests of one job contradict or conflict with another
- **Family interests,** in which a spouse, child, or other close relative is employed (or applies for employment) or where goods or services are purchased from such a relative or a firm controlled by a relative
- **Gifts** from friends who also do business with the person receiving the gifts. Such gifts may include intangible things of value such as transportation and lodging.

The duty to avoid conflict of interest



- **What are the important issues for the individual, for the club and for its stakeholders?**
- **What are ways of resolving potential conflicts of interest and associated embarrassment?**

1. Policy – Charter (declaration)
2. Register of interests
3. Declare interests before discussing issues (even non agenda items)
4. Give opinion if asked or required to, but do not seek to unduly influence
5. Excuse yourself from decision-making process or implementation
6. Record declaration and actions in meeting minutes

Maintaining confidentiality

What information is confidential to the board?

How would you manage a breach of confidentiality?

A tip for maintaining confidentiality might be that instead of talking about what board members should NOT talk about (which may lead to people thinking even more about it!), instead the Chair notes what CAN be taken outside the board room.



The duty to act with care, skill and diligence

Can you tick the boxes?

1. Maintain appropriate levels of skill ✅
2. Receive regular reporting ✅
3. Question management and record responses ✅
4. Exercise independent judgement at all times ✅
5. Act honestly ✅
6. Ensure you have sufficient information ✅
7. Don’t be afraid to be the stick in the mud where appropriate ✅
8. If the matter is significant – seek EXPERT advice ✅



The duty to act with care, skill and diligence



In general terms you will meet the duty of care and diligence if you:

- Make a decision to take, or not to take, action in good faith and for a proper purpose; and
- Do not have any material personal interest in the matter* ; and
- Inform yourself about the matter to the extent you reasonably believe is appropriate; and
- Reasonably believe that your judgement is in the organisation's best interests.

**Material personal interest means you won't gain anything personally out of decisions you make on the board*

The duty to prevent insolvent trading

Insolvent trading provisions compel board members:

- not to allow the organisation to trade while insolvent (unable to pay debts);
- not to allow the organisation to become insolvent.

You will breach this duty if you dishonestly fail to prevent your organisation from incurring a debt, when a reasonable board member would have been aware that there were reasonable grounds for suspecting the organisation's debts could not be paid as and when they fell due.

An offence is committed in Australia if the organisation becomes insolvent by incurring the debt in question, even if the organisation was solvent at the time of incurring the debt.

We are yet to see a committee member charged under these provisions!



Fiduciary Duties



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Financial Obligations and risk management

Finance: some thoughts

While it’s about finance, it's not about finance!

Key items to consider:

- Know what you can and can't delegate
- Understand basic finance and strategy
- Examine your decision process
- Participate
- Review your information flows

Financial roles and responsibilities

Councillors have a responsibility to:

- set the direction of the organisation, through the **strategic plan**
- May agree with the ways and means, through the **business plan**
- May sign off on the specifics, through the **annual budget**

Throughout the year they must also:

- ask for explanations of any significant **variance from the budget**
- ask for explanations of any significant **variance from projected outcomes**
- require **remedial measures** to be taken where the budget's going astray.

What do you need to know and understand?

- A statement of financial performance
- A statement of financial position
- A comparison of budget versus actual
- Some commentary on variances and other assumptions
- A cash flow statement
- An up-to-date download of bank account balances

Key elements of a board financial report

- Comprehensive but concise and understandable
- Covers reporting period
- Functional by program
- Compares actual to date with budgeted figures – notes variances
- Provides a commentary on the organisation's finances
- Verification of the cash position
- If you have people who don't understand finance, paint them a picture
- **Is provided to councillors in time for them to interpret**

	Financial Position/ Balance Sheet	Profit & Loss	Cash Flow
Timing	For a point in time	For a period	For a period
Useful for	• Ability to repay current liabilities • Are your assets tied to liabilities? • Trends • Liquidity	• How much you have earned • Fluctuations in the period • Making or losing money? • Budget planning & tracking	• Cash management • Ascertain liquidity & profitability • Meeting day to day payments • Where the cash comes from
Limitations	• Historical • Doesn't accurately reflect fluctuations • Some values are estimated	• Delayed reflection of values • Does not reflect assets (like land) • Doesn't reflect the organisation's abilities	• Strong cash flow can be confused as sustainable operations • Cash flow is not net income • It might not be your cash.....

Key budget process questions

1. Where did we end up last year?
2. Are our income sources rising or falling?
3. Are our expenses under control?
4. Do we have sufficient reserves?
5. Is our cash flow adequate?

Cont ...

Key budget process questions

6. Does our financial activity mirror the budget?
7. Are our financial and strategic plans consistent?
8. Is our staff productive?
9. Are we filing all compliance documents on time?
10. Are appropriate cost classifications identified?

Financial Risk Management

- Review risk management documents
- What do / should you budget for?
- What's missing and should be considered?
- Have you thought about
  - Market risks (esp. with change to online?)
  - credit risks?
  - liquidity risks?
  - operational risk?



QUICK BREAK

TIME TO STAND
AND STRETCH,
GRAB A TEA
AND FRESHEN UP.



Council Meetings

Chairing and participating

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Why do we have meetings?

Share your ideas in the chat box

Roles in local government

The mayor, council, councillors, Chief Executive Officer and administration all play an important role in the successful operation of a local government.

Having a good understanding of these roles, and how each role relates to and interacts with other contributes significantly to good governance. In local government



Mayor

- Chairing council meetings
- Ceremonial role at events
- Promoting good relationships
- Managing and modelling good conduct



Councillors

Councillors' responsibilities include:

- strategic planning for the whole municipality
- determining the financial strategy and allocating resources via the council budget
- representing ratepayers and residents
- advocating on a broad range of issues
- liaising and coordinating with other levels of government, non-government, community groups and the private sector
- overseeing the management of community assets
- facilitating community participation
- managing the relationship with, and employment of, the chief executive officer.



Chief Executive Officer

The Chief Executive Officer (CEO) has a number of responsibilities which are set out in Section 94 A of the Local Government Act 1989. These include

- establishing and maintaining an appropriate organisational structure for the council
- ensuring that council decisions are implemented promptly
- overseeing the daily management of council operations
- following the council plan
- developing a code of conduct for council staff
- providing timely advice to the council.
- the CEO is also the main person to which council delegates powers.



Council administration

The primary role of council administration is to support the council. This includes by:

- implementing council's goals and strategies
- managing the delivery of municipal services
- providing advice and support
- recognising and supporting the governance role of the council

Voting and decision-making

General approach to decision-making

The basics of good meetings:

- Councillors understand their roles & responsibilities
- Generally understood approach and agreement about appropriate and productive behaviour
- There is an agenda (a clear plan)
- All councillors contribute
- Decisions are made and accepted by all
- Action items are agreed upon

Shared culture and approach

As a Council, you must:

- Set the tone
- Set an example to all
- Enforce the standards

At least a week in advance, the CEO or council governance officer sends out the

MEETING PAPERS

The Meeting Papers contain:

- Agenda
- The background information councillors need
- The basic arguments for and against different options
- Often the wording for the motions that will be voted on
- Minutes from the last meeting – if they have not already been ratified

If it's important enough to be discussed at the council meeting, it's important enough to have some paperwork saying why that's so

During meetings

- Ensure quorum
- Declare conflicts of interest
- Move through agenda
- Propose motions
- Make decisions – ensure council solidarity
- Record decisions in the minutes



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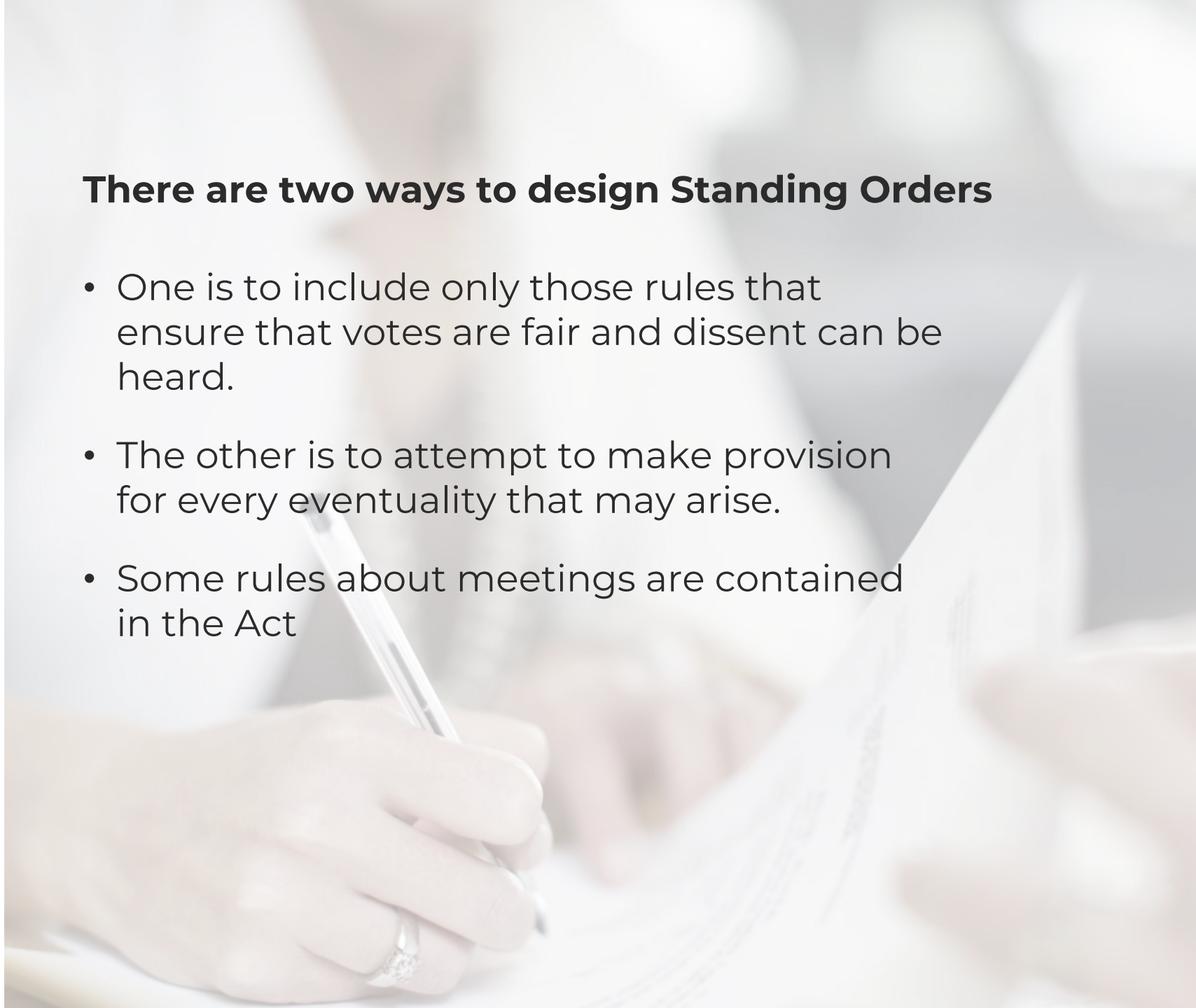
MOTIONS

- Best when circulated in advance
- May be seconded by another councillor
- Can be moved at the meeting
- Can be amended
- ***Must be in writing***
- Should be clear about what's to be done, who's to do it, and when it's to be done by

Meeting Procedures & Standing Orders



There are two ways to design Standing Orders

- One is to include only those rules that ensure that votes are fair and dissent can be heard.
- The other is to attempt to make provision for every eventuality that may arise.
- Some rules about meetings are contained in the Act

Follow-up after meetings

- Distribute minutes for checking
- Confirm minutes at start of next meeting
- Ensure those who are responsible for action items know who they are and when these actions need to be performed by
- Record all decisions in the Decision Register



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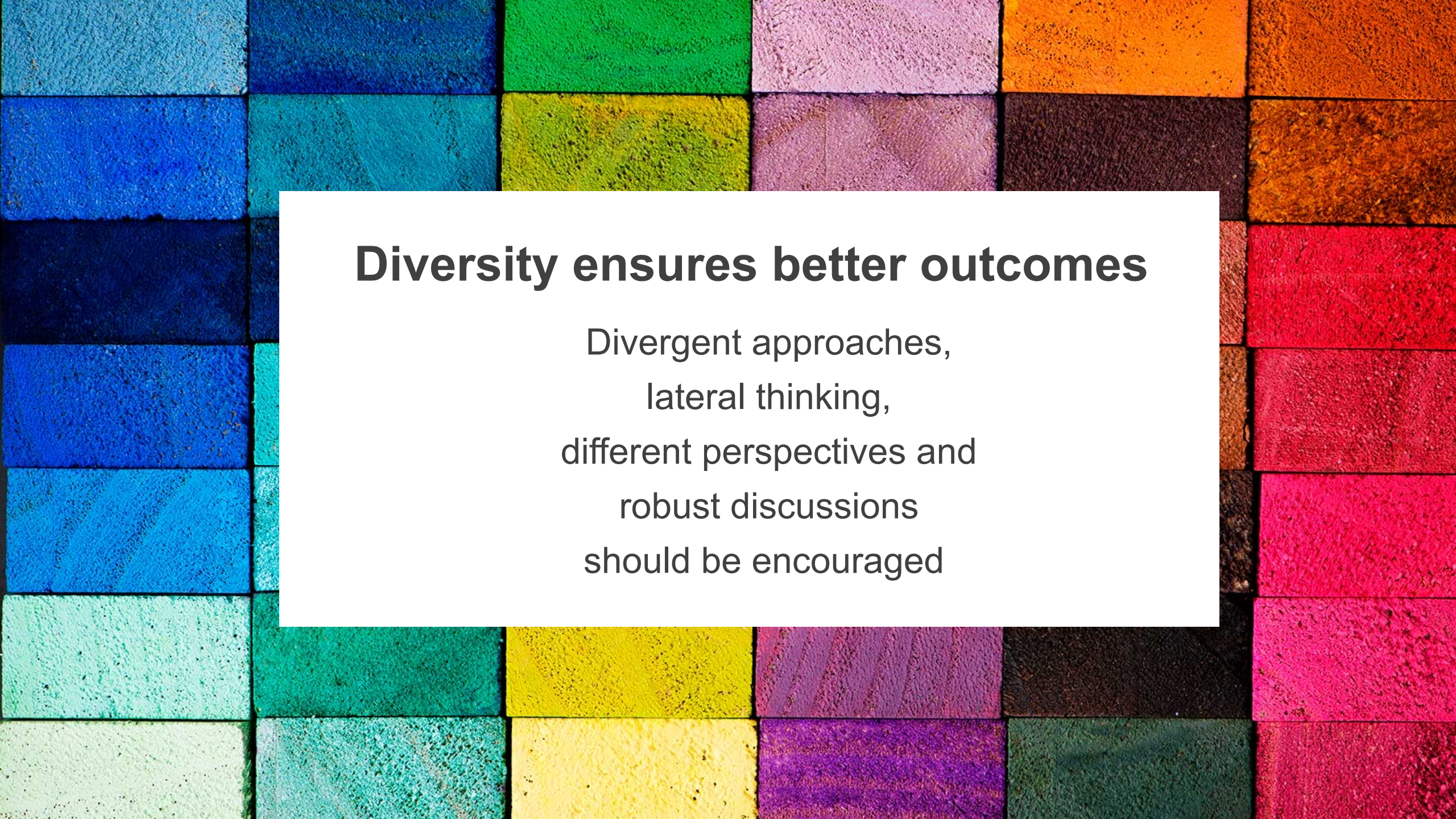
Getting along and conflict resolution



Diversity ensures better outcomes

Divergent approaches,
lateral thinking,
different perspectives and
robust discussions
should be encouraged

Emotions Matter



Decision-making is not always rational.

It can often be *emotional*

The importance of compromise and acceptance.

The council should make decisions that everyone is willing to accept and live with.

Win/win approach:

- Focus on underlying needs
- Recognise and value differences
- Be open and willing to adapt your position in light of shared information and attitudes
- Address the problem
- Depersonalise issues and don't attack individuals

"The most important win/win manoeuvre you can make is to change course by beginning to discuss underlying needs, rather than only looking at solutions"

Why does that seem to be the best solution to you?

What's your real need here?

What interests need to be served in this situation?

What values are important to you here?

What's the outcome or result you want?

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Key skill: Questioning

- Used to elicit further information or to seek clarification
- **Closed** questions elicit a Yes OR No response
  - End the exchange
- **Open** questions begin with:
  - How, What, When, Where, Who…?
  - Tell me about …
  - How do you feel about….?

Key skill: Listening

- What do good listeners do?
- What are the impacts of good listening?

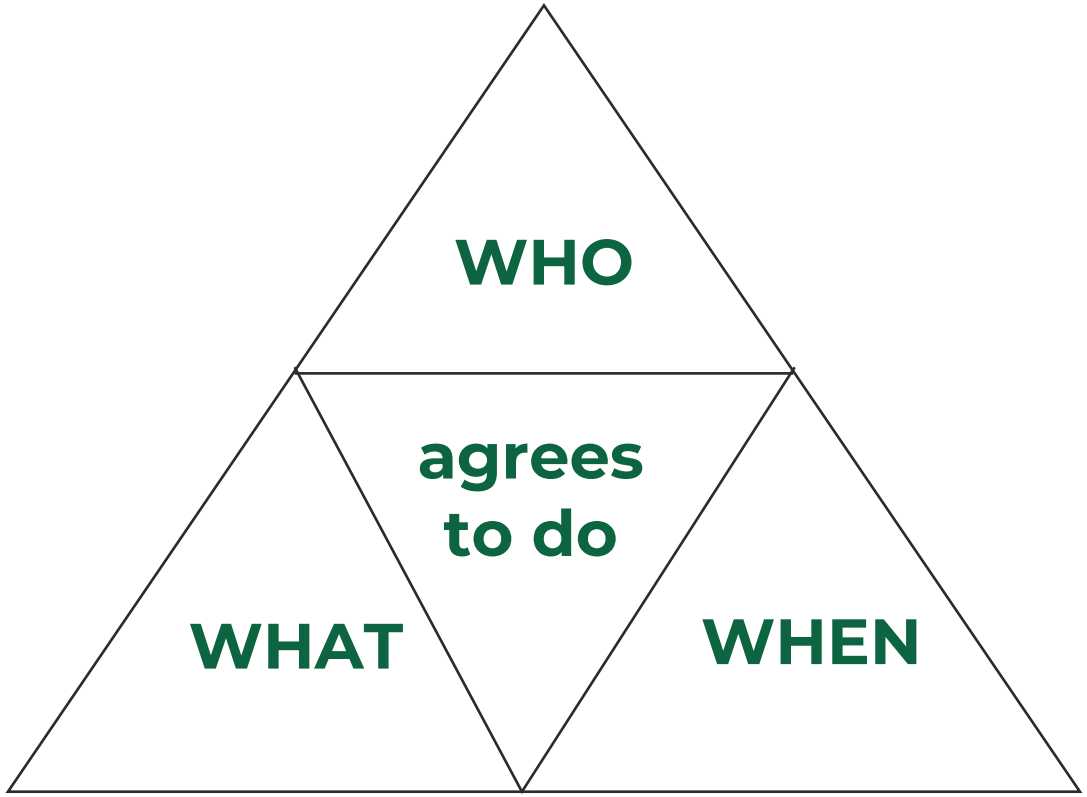
Key skill: Reflective Listening

- Reflective listening is “active”
- Paraphrase facts and feelings
- Clarify with open questions
- Validate feelings – from THEIR point of view

Key skill: Reframing

- Be “hard” on the issues and “soft” on the person.
- Move from:
  - Person to problem
  - Positions to interests
  - Past to future
- Neutral language and “I” statements.
- Describe the speaker’s feelings, not the other person’s character or actions.

Agreements



IN WRITING

Resolving conflict – with external mediation

A mediator:

- is responsible for process
- facilitates discussion
- is impartial
- demonstrates real empathy
- helps everyone feel empowered



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What is mediation?

- Impartial third party
- Facilitated, neutral discussion
- Parties work to a mutually-agreeable solution

What are the benefits of mediation?

- Interest-based
- Preserves relationships
- Quick
- Flexible
- Participants in control
- Increased chance of procedural fairness

Council Governance Case Studies

From the VLGA Local Governance Association

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Council Governance Scenario Simulations

Instructions

- You will be placed into your online breakout “room”. Your representative will let you know which scenario you have been allocated.
- You will need to elect a Mayor to guide the discussion, a scribe to take notes of the discussion and a spokesperson to report back to the community (in this case the “community” will be the larger group of Fellowship holders)
- Identify the governance issue and the problem(s) for your scenario
- Brainstorm some possible solutions
- Make a decision on further actions
- Agree on how to best report this decision back to the larger group

Prompts

- What is the issue?
- What are the potential governance problems?
- How would you tackle this situation?
- Do you need more information about anything contained in the scenario? Are there systems, policies, processes or actions that could assist?
- What should you do?
-

#1 Dealing with disaffected Councillors

John is a councillor in an outer urban municipality. He’s recently been on the losing side of a series of votes including the council plan, the budget and some key projects. Now he‘s feeling marginalised and has started to publicly criticise the council and its processes. The majority of his fellow councillors respond in-kind which has led to poor behaviour, both inside and outside the chamber.

#1 Problem

If councillors believe their views are not being considered in the decision-making process, they will look for alternative ways to have an impact. Public or private criticism of other councillors and the administration, leaking of information, and failing to distinguish between the views of the council and individual opinions can all make the process of decision making more difficult, as well as undermine the council's reputation in the local community.

#1 Suggestions for tackling

- the mayor needs to determine whether the councillor's motivations are legitimate or deliberately destructive – the outcome may be the same, but the way the issue is handled can vary considerably
- as the leader of the council, the mayor's role is to ensure every councillor feels that they have a meaningful part to play in the processes and that their views are being heard
- both the mayor and the Chief Executive Officer should talk to the councillor and hopefully agree on a more productive way of dealing with the situation
- if confidential information has been leaked, the councillor must be made aware of the provisions and penalties contained in the Local Government Act 1989 and told that they will be enforced
- local government associations may be able to provide mediation or impartial advice to resolve the issue.

#2 Forcing council decisions

Mary who has been a councillor for a number of years, is insisting that council make a particular decision on the hotly contested issue of the location for the new municipal offices. Her main argument in support of her position is that ‘it’s just common sense’.

#2 Problem

There can often be a number of legitimate views on an issue even when there is good information and advice. Labelling one view as ‘common sense’ can imply that all the other views are not valid and that their proponents lack common sense. The debate then often focuses on the meaning of ‘common sense’ and personalities rather than on the issue itself.

#2 Suggestions for tackling

- ensure there is good process in place for making decisions
- base the decision on advice and information, rather than on subjective views, such as ‘it’s just common sense’
- ensure there is a good consultation process to find out what stakeholders really think
- focus on the issues rather than on personal opinion
- provide opportunities for all councillors to voice their opinion – the mayor’s role is important in providing leadership in the council.

#3 Lacking financial accountability

An inner urban council has a system of portfolio councillors. Lily is the portfolio councillor for finance. She has assured her fellow councillors that they don't really need to worry about studying the financial accounts this year because she has been through them with the CEO and can guarantee that they are all well and truly in order.

#3 Problem

Council is collectively responsible for the council's finances and each councillor is responsible for their own vote.

All councillors must ensure that they have all the information they need so that they can make informed decisions and vote accordingly on financial matters.

#3 Suggestions for tackling

- financial reports need to be presented in the most accessible way possible so that all councillors can understand the information
- councillors must ask questions about any information that is not clear
- council needs to ensure the portfolio system (if applicable – for e.g. if one councillor has a finance portfolio) is seen as a means of improving information exchange and communication, not as a means of outsourcing accountability.

#4 Reacting to the loudest voices in the community

The council plan has identified a small branch library for closure because patronage has been falling significantly in recent years. During the same period, pressure on the main branches has increased. The local Friends of the Library group has been running an active media campaign. There have also been noisy demonstrations at council meetings. In the face of this, council has decided, yet again, to defer a decision.

#4 Problem

Council seems to regularly placate the most active and the noisiest elements of the community when making decisions. Because of this, the interests of every section of the community are not being taken into account.

#4 Suggestions for tackling

- councillors should acknowledge that this is happening and consider which feedback from constituents, community groups and the media is relevant
- councillors need to have another look at the council plan outside of the normal review process
- the mayor should play a leadership role as the leader of all councillors
- councillors must pay attention to the consultation processes – everyone affected by important decisions should be listened to, not just those who shout the loudest
- council should have been aware of stakeholder views before making the decision
- council should review the decision-making processes for their openness and transparency
- the administration needs to ensure the advice reflects all the issues, consequences and options
- councillors need to be reminded that placating the 'loudest voices' not only creates precedents which can be difficult to break, but also impacts badly on the public perception of local governments.

#5 Councillor confusion over CEO loyalties

Following recent local government elections in a regional municipality, a new group of councillors have come into office with quite different policy ideas to those of the previous council. These councillors have become frustrated because the policies of the previous council continue unchanged for some time. They begin to express dissatisfaction with the Chief Executive Officer (CEO) and believe that things won't happen until they can appoint their own CEO.

#5 Problem

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#5 Suggestions for tackling

- councillors and the CEO need to find a way to work together because it is not appropriate for every new council to appoint a CEO
- councillors need to understand that policies only change as a result of a majority vote at a council meeting
- new councillors should be briefed on how policies can be changed or implemented
- councillors and the administration both need to understand the role of the council – it sets the strategic goals and the administration helps to achieve them
- councillors need to understand the role of the administration – the relationship between the mayor and CEO is important in achieving this
- everyone needs to understand that the entity of council continues unchanged from one council term to the next and it takes time and good processes to change policies and directions
- councillors and the administration need to devote time and energy to the council planning process so that goals are understood and owned by all
- council and the CEO need to agree on what the CEO is expected to deliver – this should provide a fair platform for the CEO's performance appraisal

#6 Councillor and administration breakdown

Communication between councillors and council officers has completely broken down in a large suburban council.

Councillors regularly make inflammatory statements to the local media claiming that they have no power because council officers are really making all decisions.

#6 Problem

If councillors and the administration don’t understand each other’s roles or the processes for making decisions, this can lead to serious misunderstandings and dysfunctional relationships. When this happens, the relationship is characterised by public criticism of each other and a general lack of respect.

#6 Suggestions for tackling

- the mayor and Chief Executive Officer (CEO) must work together to provide leadership, as well as model respect for the administration and elected members
- expectations need to be clarified to avoid bad feelings – councillors and senior management need to discuss the issues and how they can be addressed
- roles need to be reviewed, redefined and understood by all – everyone should be given the opportunity to contribute on aspects that affect their role
- the quality of advice, systems and processes – particularly on the hot issues – should be reviewed
- protocols should be developed to handle criticism – public outbursts should not be tolerated and all sides need to be open to constructive feedback
- the CEO should ensure that the administration's culture supports democratic governance – this involves leadership from senior management and training for staff
- the mayor and CEO need to ensure that councillors understand what can reasonably be expected from the administration and how contact can be made (protocols can help)
- local government associations should be contacted for assistance if a serious breakdown occurs.

#7 Split voting on key council decisions

An inner urban council has seven councillors. Four are pro-development and three are pro-environment. All major decisions are made on a 4:3 vote reflecting these divisions. The environmentalists feel like they have no power and have started to become publicly critical of the council's processes and decisions. As a result council's reputation is suffering.

#7 Problem

When there's a pattern of split or close votes on key issues, the councillors on the 'losing' side start to feel alienated and powerless. It can be very frustrating for councillors if they believe their opinions have not being taken into consideration in the decision-making process. It can also mean that diversity of community views are not being fully represented by council. Decision making simply becomes a numbers game which is not good for the municipality in the long run.

#7 Suggestions for tackling

- the mayor and councillors need to find ways to bring the ‘losing’ councillors back into the governance loop
- the mayor, who may be on the ‘winning’ side, needs to actively engage with the minority councillors, both within and outside the council chamber
- part of the mayor's role is to ensure that debate and decision making is open and inclusive
- part of the Chief Executive Officer's role is to ensure that information and advice takes into account all councillors, not just the group which appears to have the numbers
- the council plan and other important strategic documents should be reviewed to see if there is a basis for the majority and minority views – the council plan should ideally reflect the diversity of community views.

#8 Leaking information to the media

A regional council is considering a major and expensive sports ground redevelopment. Chris, a longstanding councillor, opposes the project but doesn't think he has the numbers to win the vote. So he leaks confidential briefing material, which focuses on the downsides of the proposal, to generate media interest and provoke community outrage.

#8 Problem

Individual councillors are using the local media to score points and pursue political goals. Using the media to force particular decisions, attack colleagues and undermine the council is neither appropriate nor legitimate. It deliberately subverts the democratic decision-making process. Leaking confidential information is a breach of the Local Government Act 1989 and is punishable. It also reduces the confidence and willingness of external bodies to deal with the council.

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#9 Influencing recommendations to councils

Susan strongly believes that a new housing development should contain expensive environmentally sustainable features. She thinks her fellow councillors will support the idea if the administration makes the recommendation. She's been calling the relevant director and various council officers constantly trying to persuade them that the environmental features should be included in the recommendations to council. She's also attempted to put pressure on them at task group and public meetings.

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#9 Suggestions for tackling

- the mayor and Chief Executive Officer (CEO) need to ensure that everyone has a clear understanding of roles – the administration's role is to advise and implement, the council's role is to consider the advice and make the decision
- the mayor and CEO should provide leadership to reinforce these roles
- the mayor and CEO should encourage good relationships between councillors and the administration so that
- communication does not spill over into undue influence
- councillors and council officers should be clear that improper or undue influence is against the law
- the administration and council need to ensure there are plenty of opportunities (as part of briefing sessions or in other ways) for councillors to investigate all the available options.

#10 Leading debate from the council chair

David, who is mayor of a suburban council, strongly supports a recommendation which is currently being discussed at the council meeting. A vigorous debate is taking place as a number of councillors are not in support of the recommendation. David provides extra time for those arguing in favour, while restricting those arguing against to the precise time limit set out in the local law. He comments unfavourably on every speech which argues against the recommendation, and also takes the opportunity to make a speech in its favour from the chair.

#10 Problem

The mayor has an important role in managing the meeting so that all councillors get a chance to present their views and be heard by their colleagues. Taking a partisan position during a debate can detract from the mayor's capacity to manage the meeting in the interests of fairness and participation by all. Even the perception of partisan management of the meeting can negatively impact on the decision-making process and can ultimately affect the degree to which a decision is 'owned' by all councillors. Members of the community may also think the mayor is not being impartial which can undermine confidence in the council.

#10 Suggestions for tackling

- the mayor must manage the council meeting in a way which facilitates good decision-making processes and the participation and engagement of all councillors
- the mayor should be impartial and fair in managing the meeting, allowing all councillors to have the same opportunity to present their views
- if the mayor chooses to participate in the debate, they should make it clear that they are speaking in their capacity as councillor, and not as mayor of the council
- if the mayor is required to use a casting vote, they should be aware that they are voting in a different capacity (this time as leader of the council) and should therefore consider the customs associated with the use of the casting vote (the mayor's casting vote need not be the same as their collaborative vote).

References

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