

Cabinet Sub Committee
(Medway Norse Ltd Shareholder Board)

6 June 2024

Governance Arrangements

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Summary

In July 2023 the Cabinet, agreed to revise its governance arrangements in respect of the Council's three LATCOs. Two of those LATCOs are wholly owned by the Council and thus revising arrangements was less complex. Medway Norse (MN) is a partnership with the Norse Group (NG) which is wholly owned by Norfolk County Council (NCC) and hence any changes required greater levels of collaboration. Proposed arrangements are detailed in this report.

1. Recommendations

1.1 That the Cabinet Sub Committee:

- 1.1.1. Notes the retirement from the Board of Directors and significant contribution by the Assistant Director for Frontline Services and thanks her for undertaking the role as a Medway Norse Company Director.
- 1.1.2. Approves the nomination of the Director of Place (as Chair) and the Chief Finance Officer as council appointees to the MN Board of Directors.
- 1.1.3. Approves the revised governance arrangements (internal to the Council).

2. Suggested reasons for decisions

- 2.1 The Sub Committee is requested to approve the recommendations above to improve the corporate governance of the Council's LATCO. The appointment of the officers to the Board of Directors will facilitate greater influence on the decision making by Medway Norse. The separation of roles, responsibilities and duties between client officers and the service provider avoids potential conflicts of interest that may arise.

3. Budget and policy framework

- 3.1 The decision is within the Council's policy and budget framework including the Council Plan.

4. Background

- 4.1 In July 2023 the Cabinet received a report in respect of the Council's wholly owned trading companies (LATCOs) recommending a number of changes to the governance arrangement for the companies. The Cabinet determined that three Cabinet sub committees would be established, one for each LATCO, (Kyndi Ltd, Medway Development Company (MDC) Ltd and Medway Norse Ltd).

- 4.2 Additionally, the Cabinet also agreed the following:

4.2.1. The Cabinet approved the establishment of three shareholder boards (Cabinet sub committees) for each LATCO (inclusive of their subsidiaries (decision No.112/2023).

4.2.2 The Cabinet agreed to delegate authority to each shareholder board to exercise decisions that are reserved to the shareholder and to respond to matters raised by the Board of Directors (decision No.114/2023).

4.2.3 The Cabinet agreed to delegate authority to the Assistant Director, Legal and Governance, in consultation with the relevant Chairperson for each shareholder board, to take decisions that are required as a matter of urgency (decision No.115/2023).

4.3 **Appointment of Directors.**

- 4.4 Historically many local authorities appointed elected members to the board of directors for their LATCOs and this was commented on in the report considered by Cabinet in July 2023. Following revised guidance issued by CIPFA, the Council reviewed its own arrangements and concluded that the appointments needed to be revisited, so that there were no elected members nor officers undertaking the role of a Director on Medway Development Company nor Kyndi. The Board of Directors for each of those companies consists of Non-Executive Directors (NEDs) and each company is in the process of recruiting to their boards.

- 4.5 Discussions via Medway Norse and Norfolk County Council regarding the appointment of NEDs to the MN board have taken place and they have advised that they will not be appointing NEDs to the company board;

The NCC model has NEDs appointed to the Board of Norse Group Limited (which is the ultimate holding company for all companies within the Norse Group (including the joint ventures)). This ensures that, as far as NCC is concerned, there is suitable independent oversight of the executive and the Group's activities.

For the individual joint venture companies, the “Norse” directors would include the Operations Director together with (typically) two senior Norse employees (with appropriate commercial and operational expertise). We would not appoint NEDs to individual joint ventures companies as NCC’s interests are already protected by:

- (i) having NEDs at the Norse Group level and;*
- (ii) by the “reserved matters” that are contained within the constitution of the joint venture and which require NCC (and Medway Council) approval.*

The position for Medway Council is slightly different as the company is a LATCo providing services back to the Council. Here, there is merit in appointing NEDs to create a clear separation between the Council (as a recipient of the services and as a shareholder) and the Board of Directors whilst also reducing any potential conflicts of interest.

4.6 The response from NCC was shared with senior officers and following consideration of the options it was unanimously agreed that the appointment of NEDs to the MN board unilaterally by Medway Council would disproportionately reduce the Council’s influence, whilst NCC through NG would retain theirs.

4.7 Following discussion with senior officers it is proposed that the following changes are affected to the Councils representation on the MN board.

- Assistant Director, Frontline Services Ms. R Du-Lieu retire from her position as Director.

and the following are nominated to the Board.

- Director for Place, Mr A Bryan (as Chairperson)
- Chief Finance Officer, Ms. K Durkin

4.8 **Internal Governance.**

4.9 Historically regular meetings took place with senior elected members and senior MN officers to discuss strategic matters and operational issues were with the officer core. Over time, the client role has diminished and whilst reviewing the overall governance of the LATCO it is opportune to strengthen that aspect and make changes to refocus the relationship so that it is more akin to that of a commercial setting.

4.10 The current governance structure is shown at Appendix 1. Columns headed (right to left)

- Norse Group; this is outside the control of the Council and thus no proposals are made.

- Company proposals are detailed in paragraph 4.7 above changing the Councils representation on the company's Board of Directors, partnership company board.
 - Council X. It is proposed substantial changes are made to the Council's internal governance of MN as set out in Appendix 2.
- 4.11 The Cabinet has already established a shareholder board as a subcommittee of the Cabinet and appointed members to oversee the work of MN. The Cabinet has delegated powers to each subcommittee with some matters reserved to the Cabinet. Oversight of the subcommittee is provided by the Council's Audit Committee and Regeneration, Culture and Environment Overview and Scrutiny Committee.
- 4.12 MN undertakes a number of operational functions for the Council, and these span several council divisions. In order to strengthen oversight, it is proposed that three liaison boards are established.
- Domestic refuse collection and HWRC
 - Green spaces and street cleansing
 - Facilities management
- 4.13 Each liaison board will;
- consist of council officers responsible for identified functions and their MN counterparts.
 - meet monthly, with an agenda and minutes.
 - discuss operational and performance issues.
 - develop any proposed changes to deliverables before submitting any proposals to the subcommittee for consideration.
 - will not have any decision making powers that can modify the contractual or financial relationship, but they can resolve day to day issues that may arise
 - as officer operational meetings, remits and membership can be revised by the lead officer and subsequently report to the subcommittee.
- 4.14 It is also proposed that relevant cabinet members are invited, but attendance is optional, to the meetings of the liaison boards so that they can be fully briefed on operational performance as these are likely to be raised with them when they are regularly held to account at the Overview and Scrutiny Committees.
- 4.15 The three liaison boards will report quarterly to the subcommittee to enable a holistic oversight of MN performance.

4.16 Urgent decisions

- 4.17 The cabinet delegated power to make decisions required as a matter of urgency to the Council's Monitoring Officer in consultation with the subcommittee chairperson (see 4.2.3 above). Since the date of the delegation and 28 May 2024 there has been no requirement to exercise that delegation.

5. Options

- 5.1 The appointment of Directors to the Board of MN is a matter for the shareholder. The Council had hoped to appoint NEDs who were not officers nor members to the Board but in light of the position taken by NG continuing with such a stance would weaken the council's influence on the company's Board. The proposal to appoint officers to the Board will maintain the Council's influence whilst balancing any potential conflicts of interests.

- 5.2 The establishment of the internal governance structure is a matter for the subcommittee. There is no prescribed format. The establishment of three liaison boards closely mirroring the functions conducted by MN will allow for much more closer contract management. With regular reporting to the subcommittee, it allows members to consider MNs performance across the suite of functions they perform.

6. Advice and analysis

- 6.1 For the reasons set out above, the preferred options are recommended.
- 6.2 A Diversity Impact Assessment (DIA) has not been prepared as the changes to the governance documents only impact on operational detail regulating the relationship between the shareholder and company.

7. Risk management

- 7.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community.

7.2

Risk	Description	Action to avoid or mitigate risk	Risk rating
The appointment of independent NEDs by the Council weakens its influence.	The NG have greater influence on decision making than the Council.	The appointment of council officers to the aboard maintains a degree of influence.	CIV
		The appointment of alternative officers to the MN Board reduces the possibility of conflicts of interest.	CIV
MN is not held accountable for delivery.	Undocumented contract management leads to poor management decisions.	The establishment of three liaison boards provides clarity on roles and responsibility, enabling better quality decision making.	CIV

For risk rating, please refer to the following table:

Likelihood	Impact:
A Very likely B Likely C Unlikely D Rare	I Catastrophic II Major III Moderate IV Minor

8. Consultation

- 8.1 A copy of this report has been shared with Subcommittee Chairperson, proposed council appointee Directors.

9. Climate change implications

- 9.1 [The Council declared a climate change emergency in April 2019](#) - item 1038D refers, and has set a target for Medway to become carbon neutral by 2050.

- 9.2 There are no direct implications arising from this report.

10. Financial implications

- 10.1 There are no direct financial implications for the Council arising from this report.

11. Legal implications

- 11.1 These are contained within the body of the report. The periodic review and adoption of revised governance frameworks documents following changes to good practice is part and parcel of good governance.

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Appendices

1. MN governance structure
2. Internal governance structure

Background papers

None