

# **LINX member governance consultation**

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# LINX member governance consultation

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# LINX member governance consultation

## INTRODUCTION

This document introduces and explains a number of changes that the LINX Board is proposing to the Memorandum and Articles of Association (M&A).

At this stage, it is for consultation with members, with the intention that the M&A change proposals (as modified in accordance with consultation feedback) will be presented for approval at the LINX96 general meeting, to be held in February 2017. This consultation document will be reviewed at the LINX95 member meeting to be held in November 2016.

This document was prepared for and reviewed in detail by the Board governance committee, and has been approved for issue to the membership by the Board.

### Consultation highlight

**Call-out boxes (like this one) throughout this document draw your attention to questions on which your feedback is particularly sought.** Some seek your support for the essence of our proposals, while others are “decision-points” that could be tweaked to adjust the proposal.

**We are, of course, interested in your views on any aspect of these proposals.**

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## BACKGROUND

### HISTORY: THE EVOLUTION OF A NON-PROFIT COMPANY

LINX is over twenty years old. It has changed considerably in that time. In its earliest days, working at LINX was much like working at another start-up: it was a small, driven team where everyone knew what everyone else was working on and what everyone else knew, and work and information was divided and shared very informally. There was very little “process”, almost everything was personal. The distinctive feature of LINX, as a membership cooperative, was the high degree of direct involvement in everyday matters by the membership, and especially those members on the Board.

After the membership rejected a proposed demutualisation in 2000, the Board and Executive Chairman resigned, and a large proportion of the staff left with the old executive Chairman, to join a competing venture. Being so dependent on the personal knowledge of particular members of staff, the company came perilously close to being incapable of operating. An urgent task for the incoming replacement CEO was the construction of a working management team and, to ensure that the company was never put at such risk again, the construction of process and systems to ensure that the company was not critically dependent on any specific member of staff, and had the mechanisms in place to replace any leavers.

At that time, in the early 2000s, LINX had around 100 members, and a little over twenty members of staff, and growing. A team of senior managers had responsibility for departmental areas, including improving process so that we could learn from our mistakes, but were themselves primarily experts in their departmental areas who personally undertook a significant amount of operational work. When it came to major activities, such as the construction of the annual budget or the development of a plan for a network upgrade, these were generally conducted primarily by the CEO and senior managers personally. While the role of the membership in direct intervention in operational matters reduced significantly during this period, the Board continued to play a significant role as a sounding-board and constructive critic; Board members were individuals with mostly technical experience, and gave their own detailed views on technical plans.

As we moved into the 2010s, LINX experienced continued success and growth: we approached the 500-member mark and, with the members relying on port-lagging to overcome the late delivery of the 100GE standard, the number of ports per member grew too. Our membership had ever increasing expectations of service quality (not only in technical performance, but also “customer service”), demands we were determined to meet and indeed surpass. The technical challenges grew much more complex too, notably the complete rebuild of LON1 when we moved from Brocade to Juniper in 2011, and the creation of “LINX-in-a-box”, that allowed us to efficiently build and operate smaller exchanges outside London. To meet these challenges, our internal management needed to grow. Engineering, our largest department, was first, transforming itself from a single team working under the CTO to four groups (Architecture, Engineering, Operations, and Service Delivery) each with their own middle manager. Our sales department followed, organising itself into business development, marketing and a newly identified member relations team. That first step wasn’t the last such change, but it was a breakthrough in reducing senior-manager bottlenecks.

With these changes showing real improvements internally, in 2013 the Board looked at itself and asked “Are we ourselves doing the best we can for LINX? What should we be doing? What is the proper role for the Board now?”. And thus began the governance review.

# **LINX member governance consultation**

## **GOVERNANCE REVIEW**

In the first phase of the Board governance review, with membership approval we brought in an independent Chair, someone with prior experience of Chairing Boards of other not-for-profit companies. His task, among others, is to help the Board continue the process that began with his appointment, to ensure that the Board itself also evolves with LINX's changing needs, to ensure it works as hard and as effectively for the membership as they would wish.

In the second phase of the Board governance review, the Board implemented a number of changes to its own working methods. The timing of Board meetings was adjusted to align with other aspects of the rhythm of LINX (the member meeting cycle, the budget cycle, a new annual strategic review cycle, and so forth), and senior management were given a timetable to work to in preparation for key dates. Internal reporting was adjusted, requiring senior management to present accessible summary reports to avoid information overload, and new performance indicators were introduced to enable processes to be monitored and to flag up any issues. The Board also instituted subcommittees for the better management of its own time: a governance subcommittee, an audit committee and a remuneration committee.

In this third phase, the Board is looking at its own composition and decision-making, together with some related matters like elections and term limits. This consultation proposes important changes to the make-up of the Board, so we are taking it forward very carefully to ensure that it has the full support of the membership.

In developing these proposals, we have tried to learn from our history and to draw out both those things that will need to evolve and change and those things we hold fundamental, that we must ensure remain protected and honoured by the company we are building. To this end, we have relied on a number of key principles.

# LINX member governance consultation

## KEY PRINCIPLES

In conducting this review, we have sought to honour and reinforce the following key principles:

1. **The principle of mutuality.** LINX is, remains, and must remain, a membership organisation run for the benefit of its members. Any change must protect and reinforce this principle, where necessary with appropriate safeguards to prevent the “executive” side of the organisation from losing track of this. The Board is ultimately responsible for safeguarding the interests of the membership, and must itself be responsive to the membership.
2. **The principle of conservatism.** LINX has a tradition of approaching governance changes slowly and cautiously, testing that one set of changes works before embarking on the next, and always consulting members fully and winning their support before pressing ahead. This has served us well over many years.
3. **The principle of continuous improvement.** LINX is a growing and evolving organisation that seeks continually to improve in all respects. Its own governance is no exception. Moreover, even to stand still, LINX’s governance must evolve to meet the growing needs of the rest of the organisation.
4. **The principle of cohesion.** The Board must work in cohesion with and with full input from those charged with running the business (e.g. the senior management team) in order to ensure the effective discharge of its responsibilities – including its responsibility to safeguard and uphold mutuality. Changes in the size or structure of the employed staff must not be allowed to create a divergence between a “Board view” and an “executive view” that would undermine the Board’s effectiveness. At least one executive director should join the Board in addition to the CEO.
5. **The principle of competence.** Board members should between them have personal attributes sufficient to enable appropriate Board-level oversight of the entire organisation. This means the Board should be made up of individuals of sufficient experience and qualities to be able to serve appropriately.
6. **The principle of equality.** Board members should work with each other on an equal footing, to foster open discussion and to allow robust challenge and accountability in an atmosphere of respectful courtesy.
7. **The principle of practicality.** The Board should not be increased to an unwieldy size or one that inhibits or limits discussion.
8. **The principle of oversight.** These days the Board has, and should have, less direct involvement in operational matters, but should oversee the development of LINX and take responsibility for prioritisation, risk management, and ensuring that LINX is capable of meeting its operational requirements.

### Consultation highlight

#### Do you broadly agree with the substance of these principles?

If you fundamentally disagree with these principles, it is unlikely that small tweaks to the details of our proposals will satisfy you. If so, please tell us what you think we have got wrong with our basic approach.

# LINX member governance consultation

## OVERVIEW OF PROPOSED CHANGES

The key changes proposed in this consultation are

1. To allow for up to three executive directors to join the Board.
2. To protect the special role elected non-executive directors (“NEDs”) have in ensuring that LINX remains true to the principle of mutuality and honouring the interests of its members as the core guiding aim by
  - a. Introducing into the Articles a new reserved power for elected NEDs to prevent decisions that they believe the membership would not wish to sanction – effectively, a veto;
  - b. Changing the power to dismiss the Chair so that it is exercisable exclusively by the NEDs (executive directors will not get a vote on this)
  - c. Removing from the Articles an unused power to co-opt external unelected directors;
  - d. Updating the M&A list of matters reserved for the Board, with greater detail.
3. To clarify the Board quorum requirement (at present the Articles only say that this is for the Board to determine, and there are no further rules on quorum).
4. To clarify term limits for elected NEDs, and to require Board members who have served for a very long time to sit out for a minimum of three years before standing again.
5. To change the name of LINX’s board of directors from “LINX Council” to “LINX Board”.

We are also asking for member views on whether to change the relative timing of Board elections, hustings for those elections, and the LINX meeting at which both the hustings and the election are currently held.

# LINX member governance consultation

## BOARD COMPOSITION

As LINX has grown and its own internal management structure has developed, the Board has become aware of the need to ensure that it too is keeping up with the changing needs of the company, and the new and increased expectations of the membership.

In part, this is a matter of the personal skills and experience of Board members. While in our early years the most important thing the Board could do for the members was to provide an independent technical review of technical decisions that might otherwise have been pretty much the sole decision of the CTO, this has now changed. A broader set of skills and experience is need to ensure that we spot gaps: areas where LINX could improve further, opportunities to reach higher.

We are also very aware of the risk that a more developed internal management could start to develop its own view of the world, quite separate from the view that elected Board members take on behalf of the membership. This would, if it occurred, undermine our commitment as a membership organisation always to put our members' interests' first. We are determined to meet this challenge.

Part of our solution is to propose that the Board be empowered to appoint up to three executive directors, on the recommendation of the CEO. We believe that having executive directors join the Board would help round out its skillset, enabling the Board to act more effectively. They would also aid cohesion between the Board and the employed staff. Executive directors, who took part in Board strategic decision-making, and who were responsible and accountable for carrying out those decisions, would help ensure a seamless commitment throughout the company throughout the strategic cycle, from inception through delivery, to monitoring, feedback and further improvement.

### Consultation highlight

#### **Do you support our proposal to create a power to appoint up to three executive directors?**

This power is created to address a number of issues and objectives to which we have drawn attention. If you don't support having executive directors, how else would you address those issues?

We did consider the possibility that the executive directors could be ratified by the membership, either initially upon their appointment, or every three years, to align with the three year term of elected NEDs. Against this, it was recognised that these are staff appointments, in which the membership is not currently directly involved. Moreover, if an executive director were to be removed from the Board by a failure to ratify, that could be treated as a dismissal, which could cause legal issues. Taking all these points into account, we felt that having the Board exercise the power of appointment on behalf of the membership, rather than the CEO make the appointment alone, strikes an appropriate balance.

### Consultation highlight

#### **Do you agree that executive directors should be appointed by the Board?**

If not, do you think the membership should ratify such appointments?



## **LINX member governance consultation**

While we believe that bringing some of our senior management into an environment where elected directors plan their vision of the evolution of LINX will help us avoid allowing a stress-fracture to develop between the vision of the elected non-executive directors (“NEDs”) and that of the employed staff, we are also fully aware that their presence will itself change the nature of the Board. We would not want this change to result in the Board itself becoming dominated by a “staff view”, separate from that of the membership. We are therefore proposing to introduce new safeguards, to ensure that the elected directors’ role in ensuring the primacy of member interests is not diminished.

We also propose to remove an unused power for the Board to co-opt outside directors.

### **RESERVED POWERS FOR NEDS**

We propose to introduce in the Article of Association two “reserved powers” for elected NEDs.

#### **RESERVED POWER TO SUSPEND A DECISION**

The first power is a power to suspend a Board decision that they consider would not be supported by the membership, effectively to veto it. In most circumstances, the Board would be capable of lifting the suspension and proceeding with the decision only if a vote of the membership authorised them to do so. This power will ensure that, should the elected NEDs ever feel that LINX is veering off in the wrong direction, the introduction of executive directors to the Board could not force LINX to go one way, when the members wanted another. The membership will always remain in control, and the elected NEDs on the Board will always be able to ensure that the memberships’ interest is protected.

#### **Consultation highlight**

**Do you support our proposal to give elected NEDs a veto-like reserved power?**

# LINX member governance consultation

## CONDITIONS FOR EXERCISE OF THAT POWER

Naturally, we do not expect such a power to be commonly used. The Board normally works through consensus, even though the formal rule in the Articles is majority vote, and we intend that to continue. But votes do occasionally occur, albeit rarely, and this reserved power will be there to supersede such a vote where necessary and appropriate.

When would it be necessary and appropriate? We discussed this at length. We agree that it should only be exercised when the issue is a matter of high significance and when some elected NEDs strongly disagree with the Board majority (made up, perhaps, of a combination of other NEDs and executive directors). However we believe it is impossible to predict the full range of circumstances in which this might come about, and very difficult to express a clearly meaningful test to determine whether they exist. Moreover, whatever conditions we set, someone would have to decide whether they were met, presumably the Chair. This would place the Chair in a difficult position if he agreed with the Board majority, and his decisions that the necessary conditions were not met might not satisfy any elected NEDs asking it to be exercised.

We therefore propose that this reserved power can be exercised whenever at least 50%<sup>1</sup> of the elected NEDs believe it is proper to do so, which shall be entirely within their discretion.

### Consultation highlight

**Do you agree that the decision on whether to exercise the reserved power should be wholly discretionary?**

If not, what formal conditions would you place on it? How would it be decided whether those conditions had been met?

### Consultation highlight

**Do you agree the threshold for suspending a Board majority decision should be “at least 50%” of the elected NEDs?**

If not, what threshold would you set? (Please bear in mind that raising the threshold too high effectively eliminates the power, and lowering it too low effectively turns the Board into a body that can only act unanimously).

We will say that the power can only be invoked in writing, by elected NEDs explicitly stating that they wish to invoke it. This will ensure it is clear whether the power has been exercised, and will avoid elected NEDs feeling inhibited from expressing their opinion for fear of accidentally triggering a power they consider excessive for the circumstances.

<sup>1</sup> We have six NEDs, and while this could change as a result of further governance review, we have no current plans to do so. A majority is normally considered to any fraction over 50%; precisely 50% is usually a tie. Six being an even number, 50% of it (three) falls short of a majority (four).

## LINX member governance consultation

### CONSEQUENCE OF EXERCISE

If the power is exercised by the elected NEDs, it will be as if the Board had not taken the decision to which they object. The Board may choose to put the issue to the membership to decide: a formal Resolution by the membership would authorise the decision (as it can authorise any decision), overriding any exercise of the power.

#### Consultation highlight

**Do you agree that the membership should be able to override the reserved power so as to authorise the Board majority decision?**

### FINAL SAFEGUARD

It is theoretically possible that the exercise of such a power could cause the company to break the law or its legal obligations to a third party, or would place the company's viability in peril, or that the attempt by the Board majority to have the membership authorise their position would do so. To avoid this, in strictly limited circumstances, we propose to give the Chair the right to override the reserved power. Any possibility of abuse of this final safeguard by the Chair is addressed by the power to remove the Chair.

#### Consultation highlight

**Do you agree that the Chair should have a last-resort power to protect the company?**

**If not, what else would you do** to protect against the risk that a minority of the Board could prevent the company from doing something absolutely essential and perhaps legally required?

### RESERVED POWER FOR REMOVAL OF THE CHAIR

To further safeguard the power of elected NEDs on the Board, we propose to alter the Articles so that only elected NEDs vote on the dismissal of the Chair.

Currently, the Chair may be dismissed by a majority of the Board. We propose that this be changed to "at least 50% of the elected NEDs". Note that as well as denying any new executive directors a vote on dismissal, this also removes the existing vote of the CEO.

#### Consultation highlight

**Do you support giving the NEDs exclusive control of whether to dismiss the Chair?**

Please note that this is done, at least in part, to balance the last-resort power of the Chair above.

## **LINX member governance consultation**

### **MATTERS RESERVED FOR THE BOARD**

The existing M&A embodies a list of matters reserved for the Board, but it is a long time since this list has been reviewed. We propose to update this, and we will present any proposals for change separately.

In the meantime, we have adopted a set of categories to guide what is and isn't included in the revised proposal:

1. Things that the Board should decide (as opposed to those matters where decision making is reserved by the membership or is delegated to the executive)
2. Things that the Board should be consulted about
3. Things that the Board should be informed about (and the timeliness of this)
4. Normal business as usual reporting

**General feedback from members in this area is most welcome.**

### **BOARD QUORUM REQUIREMENT**

The Articles state at present that the quorum for the Board is a matter for the Board to determine, but that in default of an explicit decision, the quorum shall be three directors.

The Board intends to look at this again, both with regard to the impact of having executive directors (one suggestion was to set the quorum at two elected NEDs plus one executive director), and to consider quorum requirements for Board subcommittees.

We do not propose to change the provisions on quorum in the Articles, as this gives the flexibility to have different quorum requirements for different purposes. We do, however invite member suggestions and comments.

#### **Consultation highlight**

**Do you think the Board quorum requirement should differentiate between elected NEDs and executive directors?**

# LINX member governance consultation

## TERM LIMITS

Members can currently stand for election to the Board for up to three consecutive terms of three years each. We propose that the Articles be changed to provide for a dormant period after a Board member stands down, of one year per term or part-term they have served. Members will still be able to run for three consecutive terms, but would then have to stand down for at least three years before running again. A member that served two terms as an elected director would, after two years, be treated in a subsequent election as standing for the first time.

### Consultation highlight

**Do you support having a dormant period proportionate to time served, between terms? Do you agree with one year per term served?**

## BOARD ELECTIONS<sup>2</sup>

### WHAT'S WRONG WITH THE CURRENT PROCESS?

At the AGM each May, there are two areas of formal corporate business:

- A small number of largely procedural resolutions
- The election of typically two elected NED Board members

Both of these happen at the AGM, which is part of the quarterly LINX member meeting where the hustings are held for the Board election. To give an extended period for voting, which currently must finish on the day of the AGM, voting in the election is open for a period well in advance of the hustings, so many members have voted before the hustings.

It also emerged in our discussions that the overall governance calendar of LINX was far from clear, even to members of the governance sub-committee, so we also propose to rectify this and make it a standard part of our process to publish a calendar for at least the year ahead.

### POSSIBLE CHANGES TO RESOLVE THIS

We can either bring forward the hustings, or delay the election. Bringing forward the hustings takes them away from the quarterly member meeting, so the only practical option would be to move them to a video presentation. Delaying the election separates the vote on the resolutions from the election, possibly increasing “voter fatigue”. In discussion it was felt preferable to keep the hustings live and at the quarterly member meeting. The whole thing will be presented to the members in as consistent a way as possible to minimise the impact of it being two votes, but keeping the option to revisit in the event that voter numbers were reduced as a result of the change.

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<sup>2</sup> Note: this section is unchanged, other than removing the word “preferred” before candidates in relation to the Board canvassing about standing for election.

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## THE AMENDED TIMETABLE

Timetable aspect	Actions
AGM – x weeks (currently a 3 week period to close of nominations)	Open the nomination period, Board encourages suitable candidates to stand.
AGM – 3 weeks	Send formal notice of AGM. Post and email resolution voting packs. (Could include notice of election and candidates if synchronised with close of nominations).
AGM – 1 to 2 weeks (Would be 3 weeks if synchronised with notice)	Nominations close, followed by 1 to 2 weeks to gather candidates' platforms and typeset and upload to website.
AGM	Hold hustings. Close vote on resolutions.  Post and email election voting packs (or just email) (could include link to hustings video)
AGM + 2 weeks	Voting closes, announce result.  Could schedule a Board video meeting in the event of issues

### The simplest case

Taking a three week period for nominations plus one week to typeset and print candidates' statements and synchronising close of nominations with the formal AGM notice simplifies the timetable to:

Timetable aspect	Actions
AGM – 7 weeks	Open the nomination period, Board encourages suitable candidates to stand.
AGM – 4 weeks	Nominations close, followed by 1 week to gather candidates' platforms and typeset and upload to website.
AGM – 3 weeks (Would be 3 weeks if synchronised with notice)	Send formal notice of AGM and election by snail mail and email.  (Includes <sup>3</sup> advert for hustings at AGM and clear statement to vote on resolutions at or before AGM and election after AGM)
AGM	Hold hustings. Close vote on resolutions.  Email voting instructions for election, link to candidates' statements and video of hustings.
AGM + 2 weeks	Voting closes, announce result  Could schedule a Board video meeting in the event of issues

<sup>3</sup> Could also include the candidate election statements?

# LINX member governance consultation

## RECOMMENDATIONS

We recommend the following:

1. Go with the simplest case timetable, synchronising close of nominations and the formal AGM announcement.
2. Monitor whether the two voting periods reduces the number of members voting in either the election or the resolutions. Reassess the timetable if so.
3. Ensure that any changes to the M&A to disassociate the election from the AGM allow further tweaking of the timetable to be carried out without need to a member vote.

Note that the existing elections process makes no reference to holding of hustings.

### Consultation highlight

**Do you support these recommended changes to the elections timetable?**

## NAME CHANGE FOR THE BOARD

When LINX was founded, the board of directors was named “LINX Council”. The precise reasons for this are lost in the mists of time, but probably relate to the greater degree of direct involvement members originally exercised in the day-to-day operations of the company, back when there were only seven members. This nomenclature is now confusing, and inconsistently used. We propose switching to use the term “LINX Board” consistently.

## CONTINUING REVIEW

As mentioned in the “Background”, these proposals have come about as the result of a multi-phase governance review process the Board has instituted. The Board intends to submit LINX’s governance to periodic review to determine whether there are opportunities for further improvement, and to this end has created a special subcommittee where ideas can be debated in detail.

As stated in the “Key Principles”, the Board believes LINX has benefited from a conservative approach to making changes to its governance, and does not believe in making change unnecessarily, nor too fast or without appropriate consultation. At the same time, the Board recognises that it is a key part of the Board’s function to ensure that LINX’s governance is fit for purpose.