Submission by David Farrar on the restructuring proposal for the InternetNZ Group

This submission is by me in a personal capacity, but reflects my long experience with InternetNZ including:

- InternetNZ Councillor, Secretary and Vice-President
- Chairman of InternetNZ's Public Policy Committee for around a decade
- Director of NZRS
- Director and Chair of DNCL
- Member of InternetNZ Executive Board
- Fellow of InternetNZ

As I am the current Chair of DNCL, a major focus is on the impact on .nz policy and regulation.

<u>Summary</u>

The revised proposal is a huge improvement on the original proposal and I congratulate Council for having listened to the feedback. While the original proposal was in my opinion unworkable, this revised proposal proposes a model that is overall workable and can produce some of the benefits that Council is aiming for.

I especially commend the aspect which keeps DNCL as a separate company but has the Group Chief Executive chair it. This is an elegant solution that has the following benefits:

- **All staff in the group are accountable to the Group CE, either directly or in his role as DNCL Board Chair**
- **The senior DNCL staffer has the Group CE as their boss in all regards – either as Group CE or as their Board Chair. This means there is no lack of clarity about reporting and accountability, yet will hopefully produce the desired benefits of a greater group culture.**

<u>.nz policy</u>

The only remaining aspect of the proposal which I think has serious negative consequences is proposing that .nz policy be moved from DNCL to InternetNZ. I think this is clumsy and undesirable as both the staffing and the governance level for multiple reasons.

Taking first the staffing issues

1. There are no separate policy and regulatory staff in DNCL. There are five roles which do both policy and regulatory. This is because .nz policy is very focused on how the .nz market operates – it is largely operational policy (different to public policy). Having the staff who deal with day to day regulatory issues also work on the policy papers and proposals allows their experiences to be incorporated in. It is hard to see that having an artificial division into two teams in two different organisations will result in better policy for the local Internet community.
2. There is not enough policy work to justify a .nz policy manager role. Most of the work of DNCL staff is on regulatory issues. When a major policy consultation is on then there is significant policy work also, but this is not all year around. If you separate our policy and

regulatory staff, you will have a policy role with not enough work full-time, or even at times part-time.

3. The Chief Operating and Policy Officer of DNCL was hired to do both regulatory and policy work. It is an important part of his job description. Removing policy from his role could be deemed significant enough under employment law to require us to treat his changed role as an entirely new job.

On the governance side, it has been proposed the DNCL Board have no role at all in .nz policy and this be done entirely by those Councillors not involved in the .nz market. I think this also has very significant drawbacks for the local Internet community.

1. This would see the decisions on .nz policy made solely by the same people responsible for the financial performance of the .nz registry. We are proposing that anyone other party with an economic interest in .nz policy be barred from decision making on .nz policy – yet allowing the governors of the .nz registry to be the sole decision makers.

2. This will inevitably impact .nz policy so that future policy decisions are heaving influenced by what is best for the financial performance of the registry rather than the local Internet community. An example of this is when .uk (which has such a model) opened up the second level. Their initial proposal was to auction off any conflicted names. This was a very logical decision for the people who run the .uk registry. It was deeply unpopular with the local Internet community and abandoned. Their next proposal was to simply allow co.uk registrations to trump all other second level domains, no matter how recent the registration. This benefited the registry greatly as it meant no conflicts and more registrations. But I think was inferior to our approach which was that no registrant at the third level would lose rights to their name at the second level without their consent.

3. If .nz policy is removed from DNCL, then there is little role for the independent directors on the DNCL Board. Regulatory decisions are made by the DNC, not the DNCL Board. Most corporate activities will be INZ. So the board would have almost no useful role if it has no say on policy.

What I propose is a shared decision making model. It would be:

1. DNCL staff are responsible for .nz policy proposals, but they would work with INZ staff with expertise in communications, consultations and where appropriate public and technical policy.

2. The policy consultation proposals and papers would be approved by the DNCL Board.

3. After consultation/s, DNCL Board will consider the submissions and make policy recommendations to the InternetNZ Council.

4. InternetNZ Council would approved or decline any proposed policy changes. If declines, DNCL could be asked to do further work, and come back with new recommendations.

I believe this is a good workable model. It makes use of the expertise of DNCL staff and the two independent directors on DNCL, yet has final decisions made by InternetNZ Council as the manager of the .nz country code. It would also benefit the INZ Council by protecting then from allegations of being motivated by financial return as they can point to DNCL having recommended the policy changes.

With the INZ Group CE as the DNCL Board Chair, then he or she would still have a key role in .nz policy, and would be recommending it to Council in his role as DNCL Chair rather than as the person

responsible for the registry performance. But he would have the backing of the independent DNCL directors.

Other issues

- I am not sure Council needs to set up a special sub-committee for .nz issues. With a robust conflicts of interest regime you could still have Council make all .nz decisions but Councillors with a conflict (ie registrar) would not take part in discussion or voting on .nz issues.
- It would be very beneficial to keep the title of the senior DNCL staff member as the Domain Name Commissioner, for the reasons the COPO has outlined.
- There are quite complex issues around how InternetNZ will do decision making around .nz while running the registry directly in terms of new services etc. These need not be decided at this stage, but they will be a key challenge for the new Group CE to implement
- I am very pleased the Group CE role will be externally advertised and believe there will be many high quality applicants
- I think the local internet Community will have more faith in a negotiated SLA for the registry rather than the registry deciding unilaterally on its own service levels. This issue can be resolved by the new Group CE though.

Again I thank Council for responding positively to the feedback from the first round and commend them for the vast improvements in this latest proposal. I look forward to their consideration of this feedback and eventual decisions.

David Farrar
25 September 2017