

The Internet Society of New Zealand Inc

**Papers for Council Meeting
Vol 2**

InternetNZ Structural Review Papers

16 June 2007

Structural Review Task Force

Final Report to Council

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1. Introduction

Over the past year, a taskforce has worked with consultants to review InternetNZ's structure. The objective of the review was to consider how the Society and its subsidiary bodies work together and propose any improvements that would improve our ability to achieve our objects.

The outcomes of the review are outlined in this report, and covered in more detail in the appended report from the consultants (Westlake Consulting Ltd). They propose building on the successful structural framework from the deployment of the SRS in 2001-02 to further enhance the organisational structure.

If adopted, the Review's outcomes should facilitate a more efficient organisational structure better poised to deliver value to its members and stakeholders. The remainder of this report explains the outcomes in greater depth and how they can improve our ways of working across InternetNZ.

This report was written with the expectation that the reader has already familiarised themselves with the detail of the consultants report, attached at Appendix I.

2. Background

After the Shared Registry System structure was adopted by InternetNZ (that is, the creation of the .nz Oversight Committee to manage the policy framework, and NZ Registry Services to manage the .nz register), there was a general agreement that once the framework had bedded down it would be useful to take a broad look at the structure of the whole organisation, to see if it was robust and efficient.

With the adoption of the .nz dispute resolution process last year, the SRS implementation has finally been completed, and Council commenced this structural review.

It is worth noting that the context of the review is one of success. Since the separation of duties for the management of .nz to NZRS and NZOC occurred, InternetNZ has been able to more fully pursue its overarching objectives relating to the promotion and protection of the Internet, while maintaining and improving our world-best standard ccTLD management

for the .nz domain name space. As such, a valid option for the review would have been to recommend the retention of the status quo.

There are no external pressures driving this review: on the contrary, by reviewing now before any particular problems become evident, the organisation can be in the best possible position to meet the challenges of the future.

3. Structural Review Process

A brief summary of the process followed to date to conduct the Review is as follows:

- A Terms of Reference for the review was developed and agreed by Council, who appointed a Structural Review team, comprising members of Council, NZOC and NZRS, and chaired by Roger Hicks.
- A closed tender to 14 possible consultants saw 4 useful bids shortlisted, and final selection of Westlake Consulting.
- Priority has always been the quality of outputs rather than meeting deadlines in the course of the Review process.
- The consultants conducted numerous interviews with members holding diverse views, including current and former Council members, members, and external stakeholders.
- Council was briefed regularly by Westlake Consulting during the course of the review.
- Members were consulted on strawman model in February by Westlake Consulting.
- The Structural Review Task Force and then Council agreed to separate out the “charitable status” issue from the structural review – issues relatively exclusive to each other.
- Ongoing progress with application for charitable status to the Charities Commission and then seek IRD determination for charitable status for taxation purposes.

The remaining steps are:

- Council consideration of this report and the Review report from Westlake Consulting.
- Members’ consideration and decision on the key recommendations at the 2007 AGM.
- An implementation project for the remaining recommendations that do not require constitutional or other changes.

4. Key Recommendations arising from the Review

Having considered the structure in total, and leveraging from the success of the NZOC and NZRS models, the overarching recommendations from the Review are centred around the following issues:

- Elevating Council to a more strategic role by adopting the successful model of subsidiary governance already applied to NZRS and NZOC for operational governance of the Executive Director’s office and a proposed charitable Foundation (and consequently abolishing the Executive Committee).
- Changing the size and composition of Council, such that it ends up a twelve-person body with one third of Council elected every year for a three year term.
- Incorporating NZOC as a limited liability company
- Replacing the direct members’ election of Council officers with Council election of a President and Vice President. Term limits would apply to these positions.

- Task forces that contribute to the work of the Society to be appointed by and managed through the Executive Director.

The consultants identify twenty-five distinct recommendations that apply to a range of issues including governance, management, sub groups and taxation issues.

In considering the Review's recommendations the Task Force endorses without comment the following (the numbers refer to recommendations in the consultants Report):

- 3.1 Council has a strategic focus.
- 3.2 The current Executive Committee is phased out.
- 3.3 NZRS remains a company.
- 3.5 Establishment of the Foundation as a Charitable Trust
- 3.6 The Executive Director reports to an oversight committee.
- 3.7 The role of Council is strategic and high level.
- 3.12 Subsidiary appointments are by the full Council on recommendation of a Nominations Committee.
- 3.13 Separation of powers.
- 3.14 General rules affecting board members.
- 3.15 Remuneration of Council and board members.
- 4.1 The Executive Director's office manages advocacy and support functions.
- 4.2/3 No changes to management structure for NZRS and DNC.
- 4.4 A part-time General Manager for the Foundation.
- 4.5 No group CEO.
- 4.6 Management committee to maximise efficiencies.
- 4.7 Implementation of shared services.
- 5.1 Sub-groups and task-forces (operational task-forces report to the ED, Council committees e.g. Audit and Risk are committees of Council).
- 6.1 InternetNZ (ISOCNZ Incorporated) seeks charitable tax status.
- 7. The SRTF supports Council hiring a professional implementation manager, reporting to Council, to assist with the implementation of the proposed structure.

The following recommendations are presented with comment. These issues may be matters of balance and judgement, have weak or non-unanimous support from the Task

Force or be thought to be generally contentious.. Under each recommendation is a summary of arguments in favour or against the recommendation, drawn from the consultants' report and the deliberations of the Task Force. The Task Force's view and recommendation is enclosed in a box below the pros and cons arguments.

3.4 The incorporation of NZOC as a limited liability company.

Pros:

- NZOC is the part of the Society most likely to face legal action and a company structure helps quarantine legal liability (or expenses) that may arise in such a situation, protecting the Society's assets.
- Administrative simplicity for external parties who are more used to dealing with companies than Incorporated Societies.

Cons:

- NZOC is not a commercial body, so a commercial structure is not appropriate.
- Another legal entity within InternetNZ is an unnecessary overhead.
- Potential reduction in Council's ability to control .nz policy.

This recommendation is, on balance, supported by the SRTF but support is weak and members are not unanimous that the benefits of incorporation outweigh the costs.

The SRTF recommends that Council formally seek the views of the DNC and NZOC on the benefits and costs of incorporation for NZOC.

3.8 The size of Council is reduced to twelve, with three-year terms.

Pros:

- A more manageable size that meets the need for balance between representative and governance functions.
- Longer term gives Council members more time to understand their role and make a quality contribution.
- Staggered term expiry increases the stability of the Society's governance.

Cons:

- Possibly more difficult to effect major changes in direction (but the EGM process largely deals with this concern).

This recommendation has strong support. There was debate about term limits for Council members but this was resolved in favour of no term limits, leaving Councillors' tenure to the democratic process.

This proposal is supported by the SRTF.

3.9 That Council have the power to co-opt up to two additional members, to fill skills gaps if required.

Pros:

- Provides an ability to supplement Council's skill set or capability if a gap is identified among elected members.

Cons:

- Allows for the appointment of people beyond the direct democratic processes of the Society.
- Could be used to slow changes that are driven by members through the democratic process.

Support for this recommendation is weak and some members of the SRTF have concerns about potential complications of appointing co-opted members.

The proposal has weak, non-unanimous support from the SRTF.

3.10 That the President and Vice-President be elected by Council rather than the membership at large.

Pros:

- Ensures Council's leadership has the support of the Council, avoiding the possibility of a 'lame duck' President.

Cons:

- Reduced direct member input into the selection of the President/Vice President.
- This issue has already been discussed and resolved after extensive consideration in 2001, which led to the change to the current system.

This issue has been often debated and a number of SRTF members have expressed ongoing reservations about the shift from directly elected officers to a President and Vice-President elected by Council.

This recommendation is supported by a majority of the SRTF.

3.11 The composition of governing bodies of subsidiaries, particularly requiring minimal cross-membership between Council and governing bodies.

Pros:

- Avoids confusion of Councillor roles between high level governance responsibilities and lower level governance on the separate Boards.
- Provides a clear distinction and strong accountability of subsidiary Boards to Council, which becomes less clear if more Councillors are on subsidiary Boards.
- Ensures accountability of subsidiary Boards is through formal effective mechanisms.

Cons:

- Especially for EDOC, the Committee will be overseeing the provision of some services direct to Council, and so there is a legitimate interest in greater Council representation.
- A lack of Council representation leads to a lack of Council control over the subsidiary.
- Creates a need to recruit large numbers of external governors.

There has been considerable debate about the requirement for a majority of independent (of Council) members on the subsidiary boards. Questions have been raised about the term limits on subsidiary boards and

the mathematics suggest the changes, overall, may see InternetNZ need to recruit significant "new blood" at a time where there is a so-called "war for talent".

This proposal is supported by the SRTF, which appreciates that it is fundamental to the logic of the model proposed by Westlake Consulting and recommend against setting that aside.

There were no recommendations from Westlake Consulting which were opposed by the SRTF.

While individual Task Force members have different views of some specific recommendations, overall the Task Force believes that the proposals made by Westlake Consulting do provide a substantial improvement on the status quo, and that as such they should be supported in principle by Council and referred to the members for their consideration.

5. Benefits of change, and questions to consider

Benefits

The Task Force has considered the report and the recommendations carefully and offers the following summary comments for Council's consideration:

- The Review's recommendations are not novel: they propose to replicate existing successful practices from NZOC and NZRS and applying the positive experience of these business units to better govern the Executive Director's office. By replicating an existing model existing activities will be better managed, and the scope will be there for new areas of work to be developed with the same successful model if required.
- By emphasising the strategic role of the Council and removing detailed operational business to subsidiary boards, the proposed changes should improve the ability of the elected Council to drive InternetNZ's strategic direction. Council will spend less time on administrative matters and more time doing the strategic thinking required to better enable the fulfilment of the organisation's objectives.
- Members' role remains much the same apart from the change to election of Council officers – the direct election of "officers" which was implemented in 2001 is proposed to be removed, but members will continue to elect its councillors.
- An expected outcome of clearer governance rules for Council and professional boards guiding the business units is that the Society's staff will be able to do their jobs better, improving outcomes from the resources spent.

Some of the expected benefits to Members can be summarised as follows:

- A clearer and better defined role for the Council, acting on behalf of the members
- A more dedicated focus from the Council on supporting and communicating with members
- More opportunities for InternetNZ members to take up governance roles
- An increased ability for staff to use InternetNZ members, including Councillors, on projects and workstreams, by removing the conflict that currently exists between the governance and 'thought leadership' roles of Councillors (removed, that is, by means of the ED having a separate oversight board).

The benefits to Council are:

- Improved reporting lines for senior staff, with clearer accountabilities for management and governance
- The Council taking on a more strategic role, freed up from day to day operational governance
- Greater accountabilities of governance boards and officers to the Council, and through the Council to the members
- Improved accountability between the group governing the Executive Director's Office and the Council
- Longer terms for Councillors, to enable them to gain more experience in their roles

Some general benefits are:

- A structure which may allow the different operating sections to support shared services in agreed areas such as finance
- The creation of the proposed Foundation allowing external funding for public good projects to be sought
- A better legal and tax structure to minimize risks and costs to InternetNZ

Council and members should note the following: as the implementation plan is developed, the benefits outlined in this report will be captured in a way which allows the measuring, monitoring and reporting of the success (or otherwise) of each of the changes.

Questions / Issues

In considering the recommendations of the Review, the Task Force recommends the Council and members give consideration to the following issues, in addition to the more specific comments relating to specific recommendations in the previous section:

Fragmentation

The proposed restructure is for 4 Boards overseeing 4 managed entities and with a clear separation between the governance role of the Council and the focused operational roles of the managed entities. It is identified that this could create a situation where the operational entities become independent 'silos'. This is where the Council has task of overseeing the Boards and ensuring their activities are aligned. The "Statement of Direction and Goals" that it is recommended that Council regularly negotiate with each Board is a vehicle for this alignment as is the regular meeting between Council and each Board.

In addition there will be regular (quarterly) meetings where the chairs of each Board and the President and Vice-President will meet.

At a tactical level, a formal management committee is proposed that will be a forum for the management of each entity to liaise, look for synergies and ensure alignment

Members Influence and Control

A primary way that the members control the Society is by the electing of Councillors. Under the proposed changes the Council will be elected by the members at the AGM for 3 year terms, rather than current two year terms. As the Council has focus on the governance and strategic roles for the Society this longer term will enhance continuity and the development of long term strategies.

Members' opportunities to engage with Council will continue unaltered, through the members' list, members' consultation meetings, AGMs and the opportunity to attend Council meetings. The option of calling a special general meeting will continue.

With 4 Boards responsible for the operation of the Society, members who wish to participate directly will have more opportunity than with the current 2 Boards.

There will continue to be projects run by the Society and these will rely on the skill, expertise and enthusiasm of members as at present.

Appointments

It will be important that the full Council is engaged in appointments to the boards. One question that Council and the implementation manager should consider is, "how does Council ensure that it is engaged in the appointments process and that decisions around appointments are not captured by the Nominations Committee"?

Council Support Services

Support services for Council and Councillors will be managed by the Executive Director, who is accountable to an oversight committee and not directly to Council. One question to consider is, "how does Council exercise influence over its own affairs without breaking the model of delegated accountability"? One option might be for the Council to have a purchasing agreement with the Executive Director's oversight committee that is separate from other funding and governance arrangements.

Benefits management and realisation.

It is important that the structural review delivers the benefits outlined or, at least, Council understands where benefits have not been delivered. The Task Force advises Council to measure and manage the delivery of benefits during and after implementation. Finding a way to do this might be part of the implementation manager's job. The question remains, "how will the benefits of the structural review be measured and managed"?

6. Conclusions

This Structural Review has proposed a more coherent model for InternetNZ's future organisational structure and operation. It marks an evolution of the Society: bringing the successful models applied in the .nz space to the core operations of the Society.

The Task Force commends the report to Council and makes the recommendations overleaf.

Roger Hicks

Chair, Structural Review Task Force
June 2007

7. Recommendations to Council

1. THAT Council receive with thanks this report of the Structural Review Task Force, including the “Structural Review – Final Report” from Westlake Consulting Ltd.
2. THAT Council publish this paper and the Structural Review – Final Report to members for their consideration, endorsing the concept of a four unit organisational model as proposed by the Review.
3. THAT Recommendation 3.4 – the incorporation of NZOC as a limited liability company – be considered further through formal consultation with the DNC and NZOC, and a decision made at the Council meeting following consultation with the members at the 2007 AGM.
4. THAT Recommendation 3.8, shrinking the Council to 12 with four elected each year, and no term limits, be endorsed and this endorsement be advised to the members at the 2007 AGM.
5. THAT Recommendation 3.9, allowing the cooption of up to two people to the Council, be endorsed and this endorsement be advised to the members at the 2007 AGM.
6. THAT Recommendation 3.10, requiring the election of President and Vice President by Council instead of by the Members, be endorsed and this endorsement be advised to the members at the 2007 AGM.
7. THAT Recommendation 3.11, regarding the limited Council participation on governing bodies, be endorsed and this endorsement be advised to the members at the 2007 AGM.
8. THAT Council include in the 2007 Annual General Meeting agenda consideration of the Structural Review.
9. THAT Council move the following constitutional amendments for consideration by members in the run up to the 2007 Annual General Meeting:

a) New Council size

THAT Clause 6.2 of the Constitution be deleted and replaced with the following Clauses 6.2 and 6.2.1:

6.2 The Council of the Society shall consist of Officers and Elected Council Members. The total number Council members shall be 12, with the number of Elected Council members varying as necessary to maintain this number.

6.2.1 The application of Clause 6.2 is subject to the transitional clauses set out in Schedule 2 of the Constitution, which applies until no longer relevant.

Note: the only change in this clause is changing the number of Councillors from 14 to 12.

b) New Council election rules

THAT Clause 6.5 of the Constitution be deleted and replace with the following Clauses 6.5 and 6.5.1

6.5 Council Members shall be elected for a three-year term, until the conclusion of the AGM held in the year their term expires. Council Members may hold office for consecutive terms. Four members of Council are elected at each Annual General Meeting.

6.5.1 The application of Clause 6.5 is subject to the transitional clauses set out in Schedule 2 of the Constitution, which applies until no longer relevant.

c) New election of Officers

THAT Clauses 7.3 and 7.4 of the Constitution be deleted (these clauses establish the roles of Secretary and Treasurer) and that the remaining clauses in section 7 be consequentially renumbered.

AND THAT current Clauses 7.6-7.8 of the Constitution be deleted (these clauses specify the current election process for Officers).

AND THAT new Clauses be added as follows:

7.4 At the first meeting of Council after each AGM, the Council will elect from their number a person to be President, and a person to be Vice President (collectively called the Officers).

7.5 The term of office for an Officer shall end at the AGM following the AGM at which they were elected.

7.6 No person is eligible to be elected as President or as Vice President for more than three terms, whether such terms are consecutive or not, and this term limit applies for life.

AND THAT the phrase “or Officer(s)” be deleted from Clauses 6.5, 6.6 and 6.7.

AND THAT the phrase “Officers and” be deleted in Clauses 10.2.3 (c) and 10.2.3 (d).

AND THAT Clause 10.2.3 (f) be deleted.

d) Abolition of the Executive Committee, and provision for cooption to Council

THAT Clause 6.9 of the Constitution (which establishes the Executive Committee) be deleted, and replaced with the following Clause 6.9:

6.9 From the AGM 2010 Council shall have the authority to co-opt up to 2 additional persons to sit on Council subject to a super majority of two thirds of Council co-opting the person. The term of office of a co-opted Council member shall be for a single term of up to three years, subject to ratification by Council following each Annual General Meeting by the

same super-majority. This is lifetime limit for co-option. Any co-opted person must be a Member of the Society prior to and during the period of their co-option.

e) The Common Seal

THAT the last word of the first sentence of Clause 13, “President”, be deleted and replaced with the word “Secretary”.

f) New Schedule 2 – Transitional Provisions

THAT the following Schedule be added to the Constitution as Schedule 2, providing for the transitional arrangements required by the implementation of the Structural Review’s recommendations:

Schedule 2

1. *This Schedule governs the transition from the Constitution in force in June 2006 to the current text as adopted by the Members at the 2007 Annual General Meeting.*
2. *At the 2007 Annual General Meeting the following provisions apply:*
 - 2.1 *The retiring Councillors and Officers at this Annual General Meeting are the President and Vice President, and the five Councillors elected at the 2005 Annual General Meeting (or their replacements, if the Councillors originally elected in 2005 have left the Council and been replaced by other Councillors in by-elections).*
 - 2.2 *Members will elect a President and a Vice President, and four Councillors rather than the five which would otherwise have been elected under the previous Constitution.*
 - 2.3 *The President and Vice President will be elected for a one year term, until the 2008 Annual General Meeting, at which point they will become ordinary Councillors whose term continues for a further two years, until the 2010 Annual General Meeting. This term for these Officers is not included in the term limits provided for in the Constitution.*
 - 2.4 *The two top-polling Councillors will be elected for a three year term (until the 2010 AGM).*
 - 2.5 *The subsequent two Councillors will be elected for a two year term (until the 2009 AGM).*
 - 2.6 *The size of the Council therefore will be thirteen Councillors from this AGM until the 2008 Annual General Meeting.*
3. *At the 2008 Annual General Meeting the following provisions apply:*
 - 3.1 *The retiring Councillors and Officers at this Annual General Meeting are the Secretary and Treasurer, and the five Councillors elected at the 2006 Annual General Meeting (or their replacements, if the Councillors originally*

elected in 2006 have left the Council and been replaced by other Councillors in by-elections).

- 3.2 *Members will elect six Councillors at this meeting.*
 - 3.3 *The four top-polling Councillors will be elected for a three year term (until the 2011 AGM).*
 - 3.4 *The subsequent two Councillors will be elected for a one year term (until the 2009 AGM).*
 - 3.5 *The size of the Council therefore will be twelve Councillors, which is the new permanent number of Councillors.*
 - 3.6 *The Council will elect a President and a Vice President from among its number at the first meeting after the AGM, with their terms being included in the term limits as set out in Clauses 7.4 – 7.6 of the Constitution.*
4. *At the 2009 Annual General Meeting the following provisions apply:*
 - 4.1 *The retiring Councillors at this Annual General Meeting are the two lowest-polling Councillors elected at the 2007 Annual General Meeting (as provided for in 2.5 of this Schedule), and the two lowest-polling Councillors elected at the 2008 Annual General meeting (as provided for in 3.4 of this Schedule).*
 - 4.2 *Members will elect four Councillors at this meeting, who will serve a three year term (until the 2012 AGM).*
5. *By this stage the transition from the June 2006 Constitution is complete.*

THAT an Implementation Manager be commissioned by the Executive Director (with the consent of Council), reporting to Council and tasked with working through the other recommendations in the Structural Review to develop an implementation plan, for consideration by Council after the AGM.

Appendix I:

Structural Review – Final Report (Westlake Consulting Ltd)

Commercial: In Confidence

Internet Society of New Zealand Inc

Structural Review – Final Report

Prepared for Structural Review Task Force, Internet Society of New Zealand Inc (“InternetNZ”)

April 2007



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Section i

Introduction



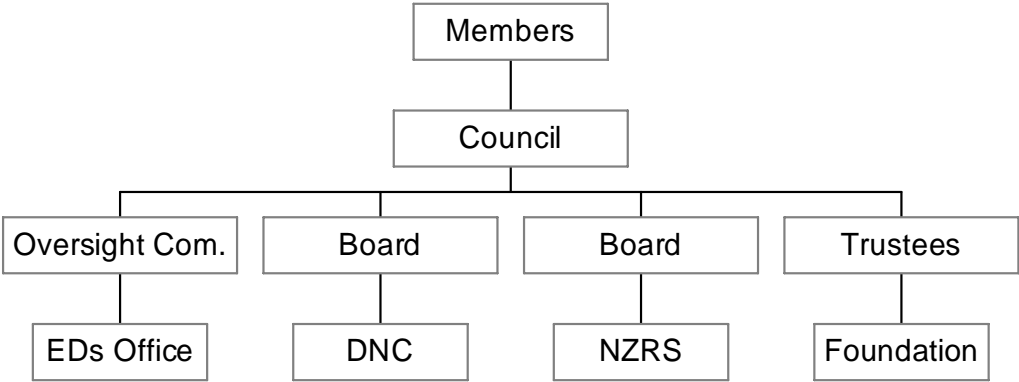
i. Introduction	
1. Terms of Reference	<ul style="list-style-type: none"> ▪ The agreed Terms of Reference for this Review are attached (refer Appendix 1).
2. Structure and Format of Report	<ul style="list-style-type: none"> ▪ In line with requirements of our Terms of Reference, this Report is designed to be an 'actionable' document. ▪ Accordingly, it is structured largely as a series of related recommendations, under key Section headings, with commentary and rationale attached in the right hand column of each page.
3. Limitations	<ul style="list-style-type: none"> ▪ This Report has been prepared by Westlake Consulting Limited expressly for the Structural Review Task Force ('SRTF') and Council of InternetNZ. ▪ The Report is based on extensive research, written material supplied to us, interviews and extended discussions with various parties in and connected with InternetNZ, and access to other material, including the InternetNZ website and related articles. However, we do not claim that our understanding of InternetNZ is exhaustive and we acknowledge the possibility of errors of fact or interpretation. ▪ We have taken reasonable professional care to ensure that our knowledge is sufficiently thorough for us to make our recommendations and to understand the likely consequences and outcomes arising from implementation of our recommendations. ▪ Westlake Consulting Limited understands that parties other than the SRTF and Council and management of InternetNZ are likely to have access to this Report at various stages. Westlake Consulting Limited will not be responsible for the content or recommendations of this Report to any party other than those for whom it has been expressly prepared. Nor will Westlake Consulting Limited be responsible for any changes made to this document after it has been sent electronically or in hard copy.
4. Acknowledgments	<ul style="list-style-type: none"> ▪ In preparing this Report we have had extensive contact with a wide range of people involved directly and indirectly with InternetNZ. We should like to acknowledge the high level of co-operation and assistance we have received, especially from members of the SRTF, Council and management of the Society. It has been a pleasure to work with all of them and much of the value in the Report has come from their input.



Section 1

Overarching Recommendation and Executive Summary of Recommendations



Section 1 Overarching Recommendation and Executive Summary of Recommendations		
Subject	Recommendation	Commentary
1. Overarching Recommendation	<p>Recommendation 1.1</p> <p>That Internet NZ adopt a structure of four 'parallel' operating units, each with its own governance body, which in turn is accountable to the Council.</p>	<ul style="list-style-type: none"> This Review recommends that InternetNZ separate its component functions into a structure of four 'parallel' operating units within the overall Society, each with its own governance body, which in turn is accountable to the Council. The proposal (see figure below) rationalises the current structure of the Society and builds on the successful precedent of New Zealand Domain Name Registry Ltd ('NZRS') and the Domain Name Commissioner ('DNC') being set up as separate operating units: <div style="text-align: center;">  <pre> graph TD Members[Members] --> Council[Council] Council --> Oversight[Oversight Com.] Council --> Board1[Board] Council --> Board2[Board] Council --> Trustees[Trustees] Oversight --> EDs[EDs Office] Board1 --> DNC[DNC] Board2 --> NZRS[NZRS] Trustees --> Foundation[Foundation] </pre> </div>



Section 1		
Overarching Recommendation and Executive Summary of Recommendations		
Subject	Recommendation	Commentary
2. Key Recommendations	The Report makes the following key recommendations:	<ul style="list-style-type: none"> ▪ To focus Council on high-level governance of the Society and delegate operational governance to the governing bodies of the operating units. This will effectively replicate the success of the current Council/NZRS/DNC governance and management structures. ▪ To de-commission the current Executive Committee. ▪ To introduce a new governing body (oversight committee) to provide operational governance for the office of the Executive Director. ▪ To incorporate as a not-for-profit company the office of the DNC and replace the current .nz Oversight Committee ('NZOC') with a board of directors that provides operational governance. ▪ To establish an "InternetNZ Foundation" as a charitable trust to carry out the philanthropic activities of the Society. ▪ As a separate work stream, to seek charitable status and income tax exemption for InternetNZ.
3. Other Recommendations	The Report makes a number of other recommendations, relating to:	<ul style="list-style-type: none"> ▪ The size of Council; ▪ Appointment terms for Councillors / Board members; ▪ Composition of Boards / Oversight Committees; ▪ Remuneration of Councillors / Board members; ▪ Business unit management efficiency and effectiveness.
4. Approach	A pragmatic and structural, rather than legal, perspective has driven the	<ul style="list-style-type: none"> ▪ To date, legal advice has been sought on the overall structure and possible tax implications, and the possibility of gaining charitable status for the entire



Section 1		
Overarching Recommendation and Executive Summary of Recommendations		
Subject	Recommendation	Commentary
	recommendations	<p>Society.</p> <ul style="list-style-type: none"> No further legal advice has yet been taken, for example in regard to required constitutional changes. Other than in a few areas, we have not highlighted the recommendations which will require constitutional change: this will be the next step once the Council has agreed the future organisational, governance and management structures for the Society.



Section 2

Background and Methodology



Section 2 Background and Methodology	
Subject	Commentary
2.1 Introduction	<ul style="list-style-type: none"> ▪ The InternetNZ Council decided in early 2006 to undertake a full structural review of the InternetNZ Group. It established a taskforce of former and current Officers and Councillors to guide the review (the Structural Review Task Force – ‘SRTF’). ▪ Following a competitive tender process the SRTF appointed Westlake Consulting Limited (“WCL”) as the lead reviewer for the project, operating under the Terms of Reference document dated 8th September 2006 (Attached as Appendix 1). ▪ The key drivers for the review were¹: <ul style="list-style-type: none"> ▪ A prior agreement to review the structure of the .nz domain name space after three-four years of operation (the timeframe for this agreement aligns with the structural review); ▪ A natural tension between the rights of membership and the responsibility for maintaining critical national infrastructure – this needs to be reviewed in the context of ten years of operation by InternetNZ; ▪ InternetNZ’s continued evolution from a volunteer based organisation to an increasingly professional one; ▪ A desire to operate the most tax-efficient structure for InternetNZ.
2.2 Review Purpose	<ul style="list-style-type: none"> ▪ “To determine and recommend an organisational structure which will be most effective in allowing InternetNZ to meet its mission, vision and goals.²”
2.3 Project Objectives	<ul style="list-style-type: none"> ▪ The structural review has five key objectives:

¹ Refer briefing document provided to WCL

² Ibid.



Section 2 Background and Methodology	
Subject	Commentary
	<ol style="list-style-type: none"> 1. To present a recommended organisational structure that supports and promotes InternetNZ's mission, vision and purpose – “protecting and promoting the Internet in New Zealand and fostering a coordinated, cooperative approach to its ongoing development”³; 2. To create an organisation which operates at the optimum ‘tax efficient structure;’ 3. To assist in relieving the tension between rights of membership and the responsibility of maintaining critical national infrastructure; 4. To continue the development of a professional organisation; 5. To ‘future-proof’ InternetNZ.
2.4 Methodology	<ul style="list-style-type: none"> ▪ The project was completed in four distinct stages.
2.4.1 Stage 1: Project Brief and Set-up	<ul style="list-style-type: none"> ▪ The key purpose of Stage 1 was to obtain agreement on the project brief with the project Sponsor and Manager, including the agreement of specific reporting outputs, the project timeline and budget: <ol style="list-style-type: none"> 1. Confirm Terms of Reference; 2. Confirm format and frequency of taskforce meetings; 3. Confirm action plan and responsibilities; 4. Finalise timeline and budget; 5. InternetNZ history briefing.

³ Refer InternetNZ website page: “Who is InternetNZ?” (www.internetnz.net.nz/about/)



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<p>2.4.2 Stage 2: Information Gathering and Review</p>	<ul style="list-style-type: none"> ▪ The key tasks in Stage 2 were: <ol style="list-style-type: none"> 1. To review written information; 2. To interview key InternetNZ stakeholders; 3. To conduct a self-evaluation of the InternetNZ Council (Leblanc Diagnostic); ▪ The first of these involved assimilating and reviewing written reports and various other information, including sections of the InternetNZ website. ▪ Secondly, the WCL Review Team met with and interviewed ten key InternetNZ stakeholders (selected after consultation with the SRTF), to develop a deeper understanding of InternetNZ (including its mission, culture and success to date), and the most appropriate structural options to achieve the mission. ▪ Finally in Stage 2, each InternetNZ Council Member completed an online self-evaluation questionnaire, with the results presented to the October Council meeting. The results were also used by WCL to further refine structural alternatives.
<p>2.4.3 Stage 3: Gap Analysis – Preliminary Report</p>	<ul style="list-style-type: none"> ▪ The focus of Stage 3 was the preparation and subsequent debate of the ‘Strawman’ report. ▪ The initial ‘Strawman’ report included five structural options and formed the basis of some challenging and extended discussions with the SRTF. The options provided a range of possible structures, from retention of the ‘status quo’ (since WCL agreed that the current organisation was not ‘broken’), through to more radical, commercially-based, structural options. ▪ This stage of the project provided the greatest level of intellectual engagement between WCL and the SRTF and Council, as the merits of the various options were explored and the cultural boundaries of InternetNZ were challenged.



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	<ul style="list-style-type: none"> ▪ The result of this lengthy debate was that the five options were finally refined to just two, broadly speaking the one presented in this Report and retention of the 'status quo'. ▪ This Report does not explore the other options that were discussed during this phase, since our intention is to provide recommendations that are actionable, as required in our Terms of Reference, rather than to re-litigate options that were discarded, for various reasons, after serious in-depth consideration. ▪ Both options were presented to the SRTF and Council prior to consultation with the wider InternetNZ membership. ▪ We do not discuss the 'status quo' option further: we hope that this Report will be accepted and the recommendations implemented. Although the 'status quo' remains a viable option, this would be the outcome only if the Council and/or the Society's membership was unable to agree to implement the changes proposed. It is our strong view, after several months' analysis, deliberation and consultation, that the recommendations in this Report represent the best outcomes for InternetNZ both now and into the foreseeable future.
<p>2.4.4 Stage 4: Option Review and Final Report</p>	<ul style="list-style-type: none"> ▪ The fourth Stage involved discussion and evaluation of the structural alternatives with membership of InternetNZ, leading to development of the final Report. ▪ Consultation with members occurred at three meetings (Christchurch, Auckland and Wellington) during February 2007, in conjunction with the regular member updates regarding InternetNZ strategy and business plans. ▪ Following consultation and further debate with the SRTF, this final Report has been produced and provided to the SRTF, who will forward it to Council for consideration at a special meeting in May 2007.



Section 3

Governance Structures



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1. Overview	<p>Recommendation 3.1</p> <p>That the Council should be focused on the high-level Governance of the Society, and delegate the governance of operational matters to four separately constituted 'boards'⁴ (two of them, NZRS and NZOC, largely as at present, and two new 'boards').</p>	<ul style="list-style-type: none"> ▪ The purpose of splitting the Society's governance into two levels is to recognise the different, and sometimes conflicting needs of: <ol style="list-style-type: none"> 1. The members of the Society, who elect the Council. The members may have some expectation that the Council will represent their interests; and, 2. The operational arms of the Society, which require professional management skills to ensure they function effectively and efficiently in achieving the overall aims of the Society. ▪ From a broader perspective, the needs of both are complementary; but our interview results indicate that some members elected to Council come into this position in order to influence the activities of the Society and to take an active involvement in areas of direct interest to them, but with neither the expectation nor the desire (nor possibly the required 'business-like management' skill-set) to be involved as members of a governance body, overseeing operational matters. ▪ The governance of InternetNZ is already split into separate levels in the .nz management entities (NZRS and NZOC). This recommendation rationalises the structure by replicating what is widely regarded as a highly successful model, and by installing clear functions and accountabilities for each of the respective governing bodies. ▪ While the members may believe the Council should represent their interests,

⁴ The term 'Board' is used here in a generic sense to refer to the governing body of each of the four operating units. The legal form of the boards will differ: two boards of directors (NZRS and NZOC), one board of trustees (InternetNZ Foundation) and one oversight committee (EDOC).



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		the Society’s policy, at least implicitly, is to regard the membership as a proxy for the whole Local Internet Community ⁵ (“LIC”), and to act in what it perceives to be the overall interests of this broader community.
2. Executive Committee	<p>Recommendation 3.2</p> <p>That the Executive Committee of Internet NZ be ‘de-commissioned’; and the operational structure of InternetNZ be rationalised into four operating arms, each reporting to its own governing body, which will in turn be accountable to the InternetNZ Council.</p>	<ul style="list-style-type: none"> ▪ Under the current governance arrangements of the Society, the Executive Committee carries out much of the formal governance of the Society. While four of its five members are elected by the membership, and there are defined term limits for office holders, in practice there is a perception that the Executive Committee has been somewhat self-perpetuating, with roles being swapped among the current members, in order for the existing membership to continue, rather than new candidates being encouraged and a genuine selection process taking place. There may well be significant benefits from ensuring continuity in this way (since two-year terms will constrain the ability to provide effective strategic leadership); but the perception of undemocratic processes in election to these positions means the current structure falls short of accepted best practice governance. ▪ In addition, since all but one of the members of the Executive Committee are elected directly by the membership, there is limited opportunity for the Council to hold the Committee to account: Council does not have the ultimate sanction of being able to dismiss the Committee. ▪ The intention of the proposed change is to replicate the 2003 decision to establish NZRS and NZOC as distinct focused operating units by creating a further two discreet operating units within the overall structure of the Society, to encompass all the activities of the Society in parallel structures. Each unit will be accountable to its governance body (appointed by the

⁵ As defined in “Best Practice Guidelines for ccTLD Managers, Version 4.1 – 1 June 2001” – refer Domain Name Commissioner’s website.



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		<p>InternetNZ Council’s Appointments Committee); in turn each of the four governance bodies will be accountable to the InternetNZ Council.</p> <ul style="list-style-type: none"> ▪ The result of this change is that there will be a layer of separation between the Council and its four operating units. Under the present structure, the lines of accountability are not totally transparent, since the Executive Director has a direct line to the Council, but is accountable to the members of the Executive Committee who thereby act as the operational governance body for all the Society’s activities other than those contained in NZRS and NZOC. ▪ If the Constitution is silent on the need for the Executive Committee to be active (hence our recommendation for ‘de-commissioning’ instead of ‘abolishing’), there may be no need to amend the Society’s Constitution as a result of this recommendation. From our understanding of the Incorporated Societies Act 1908, there may be a requirement for a ‘Secretary’. We do not consider that this should alter the substance of our recommendations. ▪ In the future the role of Secretary might be filled by an executive of the Society, rather than a member of the governing body. It may be possible for the Executive Director to assume this role, since the role of the Secretary envisaged by the Act would seem consistent with the functions of the Executive Director (refer Recommendation 3.6 below).
3. NZRS	<p>Recommendation 3.3</p> <p>That .nz Registry Services Limited remain a limited liability company, with a general manager reporting to a board of directors.</p>	<ul style="list-style-type: none"> ▪ We recommend no change from the current governance, management or legal form of NZRS. We are advised that the current arrangements are widely regarded as aligned with ‘world best practice’. From our interviews and analysis, there was strong support for the current structures to continue. ▪ For a commercial entity, generating significant revenues and doing business with other commercial entities, the limited liability company structure



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		remains the most appropriate.
4. NZOC	<p>Recommendation 3.4</p> <p>That the NZOC/DNC be incorporated into a not-for-profit company under the Companies Act 1993: the NZOC will then become a board of directors, replacing its current status as a Committee within the Society.</p>	<ul style="list-style-type: none"> ▪ Besides a change in legal structure, we do not recommend any change to the substantive role or activities of the NZOC or the DNC who reports to NZOC. ▪ We have heard extensive argument both for and against incorporating the NZOC/DNC. ▪ Principal arguments against incorporation: <ol style="list-style-type: none"> 1. It is not a commercial body, so the company structure is inappropriate; 2. Setting up another legal entity within InternetNZ imposes an unnecessary additional overhead that outweighs the potential benefits. 3. NZOC provides recommendations, but the Council determines policy; some concern was expressed that incorporation might be disempowering to the Council, if NZOC was to take over the policy-making role. ▪ Principal arguments in favour of incorporation: <ol style="list-style-type: none"> 1. NZOC (and the DNC) is the part of InternetNZ most susceptible to legal action, since it is a quasi-judicial body and commercial entities may suffer significant loss of revenue as a result of a decision by the DNC; 2. The incorporation of NZOC/DNC will provide a level of legal separation between NZOC and InternetNZ, thus providing some buffer of protection for the (growing) assets of the Society in the event of



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		<p>successful legal action against NZOC.</p> <ul style="list-style-type: none"> ▪ Our perception is that the overall risk described is currently moderate to low, since the DNC’s powers are quite broad and its actions have proved robust to date. This also is the position that has been expressed to us. However, it is important not to assume that future risk is necessarily of the same order as historic risk. It is likely that the net assets of the Society will continue to increase in the medium term. This in turn may increase the incentive for an aggrieved party to pursue NZOC in any legal action (perception of ‘deep pockets’), perhaps even as an indirect respondent. ▪ Our assessment of the future risk is that: <ul style="list-style-type: none"> ▪ The likelihood of such an event(s) is low, but ▪ The potential impact ranges from moderate to critical. ▪ Both the likelihood and the potential impact will, arguably, increase if the net assets of the Society, or its role as guardian of core national infrastructure, continue to grow. We consider it would be prudent for InternetNZ to take this mitigating action in order to reduce the aggregate risk. We also believe that the relatively small overhead involved in establishing and maintaining a corporate structure for NZOC/DNC is minimal in relation to the potentially critical result of not doing so. ▪ As noted above, in Section 1, this assessment (in common with our other recommendations in this document) is based on a pragmatic and commercial, rather than strictly legal, assessment. ▪ Beyond this ‘first order’ effect, if one organisation was able to win an action against NZOC/DNC, it might set a precedent for further cases. We believe that incorporation may be regarded as relatively cheap ‘insurance’ since it



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		<p>should provide at least some 'first line' protection against such a process.</p> <ul style="list-style-type: none"> ▪ As a secondary point, external parties, such as second level domain name registrars, are familiar with the requirements for contracting with other companies; some of them may be less familiar with the technicalities of contracting with Incorporated Societies, or with sub-sets of such Societies. Therefore we believe incorporation as a company will add a degree of administrative simplicity and comfort in dealings with external parties. ▪ If NZOC/DNC is incorporated, the Council can still retain the policy-making role, by means of the formal delegations it issues to NZOC, which would specify that NZOC was required to make recommendations, but not to set policy. (A relevant analogy would be the New Zealand subsidiary of an overseas-based trans-national company: the board of the local operation normally has no authority to determine group policy, and is expected to adhere fully to the global policies of the group.) Incorporation does not change this relationship: indeed, such a process and the issuing of formal delegations to the NZOC board would, in one opinion provided to us, be a further reason for incorporation. ▪ During the consultation phase, the suggestion was also made that incorporation might make it easier to attract quality board members to join the NZOC. While this matter does not appear to have been a constraint to date, we understand that some candidates have found it difficult to understand the exact nature of the NZOC. ▪ Part of our brief was to develop a structure that would, as far as possible, 'future proof' InternetNZ. While we are not aware of any intention to do so, we cannot foresee whether the activities of the DNC may be expanded at some time in the future. If they were, then an incorporated company, with the protections it offers, will probably provide the most appropriate vehicle



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		<p>for any additional activities.</p> <ul style="list-style-type: none"> It is relatively simple, and not unusual, to develop a Constitution for a Company that requires it to operate 'not-for-profit' or, usually more accurately, 'not-for-personal-gain'. This has increasingly been the case since the introduction of the Companies Act 1993, which no longer provides the option of incorporating a 'Company limited by Guarantee' (a vehicle used quite commonly under the previous Companies Act for not-for-profit entities). As with the Constitution of NZRS, we would also anticipate that the Constitution of "NZ Domain Name Commission Ltd" (working name only) would require the directors to put the interest of the shareholder (ie the Society) above the interest of the company, should there be a conflict.
5. InternetNZ Foundation	<p>Recommendation 3.5</p> <p>That the Society establish an "InternetNZ Foundation", as a charitable trust, to carry out the philanthropic activities of the Society, in a separate vehicle largely independent from the other activities of InternetNZ.</p>	<ul style="list-style-type: none"> This recommendation to establish a charitable Foundation mirrors a 2006 decision of the InternetNZ membership, to establish a charitable foundation. We support this step, since it will follow the successful experience with NZRS and NZOC, in which each entity can focus on its core activity, with a governing body specifically appointed to oversee its activities. The philanthropic activities and nature of a charitable Foundation are fundamentally different from the other activities of the Society, so a separate entity set up to manage this, with a dedicated Trust Board to provide oversight and governance, should lead to increased focus and effectiveness, without compromising the other activities of the Society. A Foundation with a degree of independence from InternetNZ will be able both to assess submissions from various parties independently of the direct interests of the Society, and also to solicit and manage funds from a range of



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		<p>potential sources. For example, there has been discussion of the possibility of a grant under the Government’s digital strategy.</p> <p>The independence of InternetNZ itself should also be strengthened through the establishment of a relatively independent Foundation: it should be clear to any potential benefactor that a grant to the Foundation cannot ‘buy’ influence over the direction or activities of the Society. This should assist in achieving the vision of an ‘uncaptureable’ Internet, through assisting the Society itself to be ‘uncaptureable’.</p>



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6. Executive Director's Office	<p>Recommendation 3.6</p> <p>That the Executive Director's office report to its own governing Oversight Committee ('EDOC')</p>	<ul style="list-style-type: none"> ▪ The Executive Director will report to a new committee (working title: Executive Director's Oversight Committee – "EDOC"), which will be composed of a majority of independent members and will provide the operational governance for these functions of the Society. ▪ The EDOC will be constituted and appointed in the same way as the existing NZOC and will be accountable direct to the Council. The skills and experience required for the EDOC will be those commercial and business attributes that a board of directors of a similar business would normally require. ▪ We do not consider that this business unit needs to be separately incorporated, since it carries out, in effect, the functions of the Incorporated Society – all those that have not been identified as separate specialist functions within NZRS, NZOC or the InternetNZ Foundation. ▪ The Executive Director's office should remain responsible for managing the activities of the Society that are not held by any of the three separate entities described above. (For Management Recommendations, see Recommendation 4.1 below)
7. Functions of the InternetNZ Council	<p>Recommendation 3.7</p> <p>That the core functions of the InternetNZ Council should be:</p> <ul style="list-style-type: none"> ▪ Developing the vision, mission and high-level strategy for the Society; 	<ul style="list-style-type: none"> ▪ One intention of the changes proposed for the governance of InternetNZ is to ensure the Council can operate effectively as the peak governance body of an Incorporated Society with related but diverse operations, but avoid direct involvement in the detailed operational affairs of the four operating units. ▪ We consider that the key functions proposed as the responsibility of Council are consistent with this body providing high-level leadership to the Society; and we believe that they should also be consistent with the expectations of



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	<ul style="list-style-type: none"> ▪ Agreeing the top-level policies of the Society; ▪ Appointing and monitoring the Boards of the operating units; ▪ Approving formal delegations to the Boards of the operating units; ▪ Approving the strategic plans, business plans and annual budgets of the operating units, ensuring these are consistent with those of the Society as a whole; ▪ Monitoring progress against these plans; ▪ Representing members' interests and being responsive to members' issues. 	<p>Society members who are elected to the Council for the first time. We have been advised that the current structure, under which Council members are required to act as a governance 'board of directors', may conflict with the expectations and skills of newly-elected members. This in turn can lead to frustration and a sense of disengagement for Council members.</p> <ul style="list-style-type: none"> ▪ Under the proposed model, the Council will not be directly involved in governing the four operating units. Instead, it will be able to devote its attention to the broader strategic issues facing the Society, while monitoring the performance of the four governance 'boards' and progress against agreed strategic and business plans and budgets. Council members will also be expected to represent the interests and concerns of the Society's membership as a proxy for the broader interests and concerns of the entire LIC. ▪ We would recommend, as a secondary matter, that the Council should increase its direct communication and connection with the Society's broader membership. ▪ We believe that a core challenge for the Council will be to engage with the 'boards' of the operating units, to ensure they are closely aligned with one other and working towards achieving the purposes of the Society, and to identify synergies between the operating units, so that 'the whole is greater than the sum of its parts.'
8. Size of the InternetNZ Council	<p>Recommendation 3.8</p> <p>That the Constitution be amended so that the size of the InternetNZ Council will</p>	<ul style="list-style-type: none"> ▪ The InternetNZ Council currently has fourteen elected members (this number having been reduced from twenty a few years ago). ▪ As a body set up to represent the diverse interests of the Society's



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	<p>reduce over the coming two years (one in each of the next two years) to twelve elected members.</p> <ul style="list-style-type: none"> ▪ Council members will be elected for a three-year term (four members due for election per year); ▪ Council members may be elected as often as the membership decides, ie there will be no constitutionally-imposed limit on how long a Council member may serve. 	<p>membership, it is appropriate for Council to have a larger number of members than it might if its functions were essentially those of a board of directors.</p> <ul style="list-style-type: none"> ▪ Against this is the need to ensure the size is manageable in terms of ensuring full and free discussion, with all Council members having the ability to contribute and to be heard. ▪ Our view is that an elected Council membership of twelve is an appropriate balance between these requirements. ▪ We believe that a three-year term is valuable, to allow Council members to gain a full understanding of their role and have sufficient time to contribute. Two-year terms can be quite disruptive, especially if the Society has a strong democratic process with real competition for Council membership, since the potential lack of continuity will hinder the development of high-level strategy, and may increase the potential for 'capture' by the operating unit 'boards' if the oversight role of the Council becomes ineffective. ▪ Three-year terms have a further benefit, since they allow control of Council to change – if members felt this was desirable – but this would usually need to occur over a two-year period (since only one third of Council positions will be up for election in any single year), thus reducing the risk of 'ambush' (while recognising the members' right to convene an EGM at any time). ▪ We had previously proposed a nine-year term limit for Council members, but we agree on further reflection that the democratic nature of the Society is served better if this decision is left to the members.
9. Co-option to the InternetNZ Council	<p>Recommendation 3.9 That the Constitution be</p>	<ul style="list-style-type: none"> ▪ This proposal received some strong opposition when we first raised it.



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	<p>amended so that up to two additional members of the Society could be co-opted onto the Council, subject to a two-thirds majority of Council members.</p> <ul style="list-style-type: none"> Co-opted members will be appointed for a single term of up to three years, subject to annual ratification by a two-thirds majority of Council; This provision will not come into effect until one year after the AGM at which the size of Council is reduced to twelve elected members. 	<ul style="list-style-type: none"> Since that time, we have changed our position on term limits for elected Council members, so believe this power to co-opt is perhaps of rather less significance than it might have been (if, for example, it was used to re-appoint a term-expired Council member). Under this revised position, we would envisage that such co-options should be rare, but might be useful where Council recognised that it lacked a particularly relevant skill set. We consider there would be some incentive against using this provision as a tool to 'call back' a Council member who had been rejected by the Society's membership, since the elected members of the Council, who might consider such a course, would be subject to member approval when their own terms expired. As a practical matter for implementation, we believe that this provision should not be put into effect until one year after the AGM at which the Council reduces to the recommended twelve elected members. Such a deferral will remove any incentive for 'salvaging' a Council member who loses their position as a result of the reduction in the number of positions.
10. Leadership of the InternetNZ Council	<p>Recommendation 3.10</p> <p>That at the first Council meeting following the Annual General Meeting in each year, the Council choose from among the elected Councillors a President and</p>	<ul style="list-style-type: none"> This recommendation marks a significant break from the current process under which the membership elects Officers onto the Executive Committee. We believe that the broader membership should have the unfettered right to elect the twelve members who will represent them on the Council. However, it is important that the person appointed to lead the Council as its President should have the support of a majority of the Council members



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	<p>Vice-President, to serve for the following year;</p> <ul style="list-style-type: none"> Provided that no person may hold either the Presidency or Vice-Presidency for more than three one-year terms, whether consecutive or not. 	<p>themselves. If this is not the case, there is the possibility of a 'lame duck' presidency of Council under which the Council would be likely to become dysfunctional with the real possibility that it would be unable to reach consensus on any major issue.</p> <ul style="list-style-type: none"> The key functions of the President will be to chair the Council and to act as the face of the InternetNZ Council (not the day-to-day spokesperson for the Society, who should normally be the Executive Director), when this is required in matters of accountability to members and other key stakeholders. The role of the Vice-President will be to act in the absence or incapacity of the President, but this position will have no formal duties other than to chair the session of Council at which the President is appointed. We believe that both roles should be considered as non-executive roles: they are not full-time executive positions, although the role of President will from time to time require considerable commitment. We consider it is good practice for the two positions to be filled, or re-confirmed, every year: this should ensure that the holders have a firm mandate to provide leadership to the Council and the Society. The titles have been kept deliberately as President and Vice-President (of the Society), in order to distinguish them from the roles of Chair of the governance bodies of the four operating units. As President of the Society, it is also clear that the role will from time to time be to represent the full membership, and not only the Council itself. Similarly, the 'Council' will remain as such, to distinguish it from the 'Boards' of the operating units, and to highlight its focus as different from operational governance.



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11. 'Boards' of Operating Units	<p>Recommendation 3.11</p> <p>That the governing bodies of the four operating units should replicate the successful model of NZRS and NZOC, with 'boards' composed largely of independent members, appointed by Council through a robust selection process, and bringing the appropriate range of skills and experience to each unit. Each 'board' will have one Council member appointed as one of the members.</p> <ul style="list-style-type: none"> We recommend that members of all four 'boards' should be appointed for three year terms, with a maximum of three three-year terms, whether continuous or not. (In the event that a Council member appointed to a 'board' finishes his/her term on the Council, the Council 	<ul style="list-style-type: none"> Each of the operating units requires professional governance to ensure effective performance of its functions and an appropriate check and balance for strategies and initiatives generated by management. We consider that experience with NZRS and NZOC over the last three years has demonstrated the success of this model, so we recommend replicating this in the governance of the InternetNZ Foundation and EDOC. We recommend that members of the 'boards' should serve for a total of no more than three three-year terms, whether or not these terms ran consecutively. We also recommend that this term limit should replace the current terms and re-appointment arrangements for NZRS and the NZOC. As a transitional arrangement, we propose that current members of these two 'boards' be eligible for appointment for one further term of between 1 and 3 years, <ul style="list-style-type: none"> if several current members would otherwise be caught at the same time by this provision; and if the Council deemed the consequent loss of governance continuity, imposed by these changes, was not desirable. Our recommendation, to ensure good governance practice in the operating units, is that each of the four 'boards' should consist of four to six members (but normally five) appointed by the InternetNZ Council on the recommendation of the Nominations Committee of the Council. Each 'board' will include one member of Council and the others will be



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	<p>may agree to that person completing their current three-year term as a 'board' member.) An extension would be available in order not to prevent a person appointed as Chair of the 'board' from serving in this role for two three-year terms – see below, Recommendation 3.14.</p> <ul style="list-style-type: none"> We recommend that a reasonable 'grandfathering' provision be allowed for the current members of the NZRS and NZOC 'boards', to avoid the loss of continuity that these provisions might impose. 	<p>independent members appointed for their skills and experience and their ability to contribute as a 'board' member at a governance level.</p> <ul style="list-style-type: none"> We have heard some debate about the level of Council representation on these 'boards', especially on the EDOC: <ul style="list-style-type: none"> The argument in favour of greater Council representation on the EDOC is that this is a special case since the Executive Director's Office encompasses the 'core' activities of the Society, and so needs more direct Council involvement. We disagree: we believe that an identical case could have been made three years ago when the .nz functions (no less 'core' to the Society) were placed under separate 'boards'; and we suggest that experience to date indicates that the decision taken then has been well vindicated. It is also perhaps important to note that directors on boards – even if appointed as a member of the shareholder's governing body (eg Council members appointed to operating unit 'boards') – are not 'representatives' of their nominating organisation. They are expected to provide a connection with and convey the views and position of the nominating organisation, but are required generally to act in the best interest of the entity itself (while recognising the provision in the constitution in the event of a conflict). We believe also that it is important to distinguish between the high-level role of the Council and the direct governance role of each 'board'. Management of each unit must have direct and unambiguous accountability to its 'board'. In turn each 'board' will be accountable to the Council. This principle would be compromised by having a larger Council representation on the EDOC (or other operating unit),



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		<p>since it could become unclear whether the EDOC or the Council, through its members on the EDOC, was in fact directing the Executive Director's office.</p> <ul style="list-style-type: none"> ▪ In practice, we believe the perception of greater input, control or monitoring ability, through having more than one Council member on the EDOC, is largely a myth (assuming the independents still comprised the majority): all members of the EDOC would be bound by their responsibility to support the majority/consensus direction and decisions of EDOC. If this was compromised, then the effective governance of EDOC would be put severely at risk and it would be unlikely that the independent members would tolerate the position for very long. ▪ We consider that the more effective (and appropriate) method for the Council to fulfil its high-level governance function is through the mechanism of an annual Statement of Expectations to each 'board', which would set out Council's strategic direction, goals and expectations of the 'board', with a view to these matters forming the basis for the strategic and annual planning of each unit. ▪ In return, we recommend that each 'board' should prepare and negotiate with Council a Statement of Direction and Goals for the coming planning period (usually between one and three years). This would contain the broad strategy for each entity and would set out the key performance targets for which the 'board' would be held accountable. As a result, this document will become the key accountability document between the Council and each of its operating units, in much the same way that central and local government hold crown-owned or council-owned companies accountable to their shareholder.



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		<ul style="list-style-type: none"> ▪ In addition, each 'board' or at least its Chair would have regular meetings with Council, to ensure alignment within the overall Society. (We understand NZRS has an established protocol in this regard: to prevent unnecessary duplication of effort, it may be appropriate to adapt this protocol to the needs of each of operating units.) ▪ One additional requirement would be for a regular (quarterly) forum of the Chairs of the 'boards' to meet – together with the President and Vice-President of the Society – to discuss areas of common interest, to avoid duplication, and to ensure each unit was aligned with each other and with the strategic direction of the Society. This forum, together with the proposed forum of business unit managers should help to avoid the development of separate 'silos' and should reinforce the sense that each unit is a component of the whole Society; it would not be expected that Chairs would breach confidentiality in relation to each 'board's' detailed deliberations. This type of mechanism is used quite commonly to assist alignment between separate units of a conglomerate. ▪ As a point of detail, we believe it is appropriate that members of all the governance bodies should be required to be members of the Society. In joining the Society, they are agreeing to be bound by its Rules and it will be clear that, while they may act with independence of thought (as any board member should), they are not 'independent' in the sense of 'isolated' or 'disconnected' from the Society itself. ▪ We consider that this package of recommendations for the governance of the various entities will facilitate a high quality of governance oversight and a high degree of accountability, from operating unit managers to their 'board', and from there to the Council. ▪ The members would in turn be able to hold Council members accountable at



Section 3 Governance Structures		
Issue	Recommendation	Commentary
		AGM and election time (and through their power to convene an Extraordinary General Meeting), thus providing a clear and unambiguous link from each operating unit through to the membership of the Society.
12. Appointment Process for 'Boards' of Operating Units	<p>Recommendation 3.12</p> <p>That the members of each operating unit 'board' be appointed by Council following a rigorous selection process conducted by a standing 'Nominations Committee' of Council.</p>	<ul style="list-style-type: none"> ▪ We understand that the Council currently conducts an effective process for seeking, selecting and appointing members of its operating unit 'boards'. ▪ We recommend that, for the avoidance of doubt, this process be codified through the formation of a standing committee of Council, to be called the 'Nominations Committee'. This name is suggested on purpose, since it indicates that the ultimate appointment decision rests with Council: the committee will make recommendations. ▪ We recommend that the standing members of the Committee should be the President and one other Councillor, and that, for any selection or re-appointment process, two additional members should be co-opted: <ul style="list-style-type: none"> ▪ The Chair of the relevant business unit 'board' (except when the Chair him/herself is the subject of the process, when the Chair of one of the other business unit 'boards' would be co-opted); and ▪ An independent ad hoc member of the committee, for which we recommend an experienced governance practitioner nominated by the Institute of Directors (and remunerated on a consultancy basis). ▪ We have considered whether the Nominations Committee should have five members, with an additional member of Council, in order to ensure that the Council members constituted a majority on the committee. However, we have concluded this is not necessary, for two reasons: <ul style="list-style-type: none"> ▪ The final appointment decision rests with the full Council, so there is



Section 3 Governance Structures		
Issue	Recommendation	Commentary
		<p>no loss of Council authority in the process;</p> <ul style="list-style-type: none"> ▪ It would not normally be appropriate for any recommendation to come from the Nominations Committee unless the committee was unanimous – or in the worst case had just one dissenting opinion – so again the question of a majority does not arise. ▪ We recommend that the appointment process consist of four stages: <ul style="list-style-type: none"> ▪ The relevant ‘board’, in conjunction with the Nominations Committee, recommends to Council the skills, experience and other attributes it believes are desirable in the appointee (in the event of re-appointment, the Chair also provides confidential advice to the Council); ▪ The Council agrees/decides the skills, experience and other attributes it is seeking for the position; ▪ The Nominations Committee conducts a search, short-listing, interview and due diligence process and makes its recommendation to Council; ▪ The Council accepts or rejects the nomination(s). In the event that it rejects a nomination, the Council instructs the Nominations Committee to conduct the process again (ie, the Council does not short-cut the process by making its own selection).
13. General Rules affecting Council Members	<p>Recommendation 3.13</p> <p>That the good practice principle of ‘separation of powers’ be adopted to minimise the possibility of</p>	<ul style="list-style-type: none"> ▪ As noted above, we have recommended that only one member of Council should serve on each of the four operating unit ‘boards’. ▪ In addition, we recommend the following further Rules for Councillors:



Section 3 Governance Structures		
Issue	Recommendation	Commentary
	undue concentration of influence in any one Councillor, or small group of Councillors.	<ol style="list-style-type: none"> 1. A member of Council may serve on only one business unit 'board' at any one time; 2. A Council member may not be the Chair of a business unit 'board'; 3. The President and Vice-President are not eligible for any business unit 'board'; 4. A Councillor who is a member of a business unit 'board' may stand for the position of President or Vice-President, but must resign from the business unit 'board' immediately on appointment to one of these roles. 5. A member of Council may not engage in other remunerated work in any unit or task force of the Society, although they may be co-opted, without remuneration, at the discretion of the Executive Director, if the ED believes they have specific skills that cannot practicably be sourced elsewhere. 6. A member of Council who is a member of a business unit 'board' may serve on any of the Council's Standing Committees – recognising that these form a normal part of the role of Council members – with the exception that no Council member may participate in proceedings of the Nominations Committee at which he/she is being considered for appointment or re-appointment to a business unit 'board'. <ul style="list-style-type: none"> ▪ We recognise that these proposals represent a relatively radical tightening of the conditions under which Councillors may become directly involved in the activities and functions of the Society. This is a conscious step forward which we believe will contribute to improved governance and management practice that are required as the Society moves towards more effective professional management of its operating units. We consider that these changes will mark a quantum step away from the 'Club' culture that still pervades some



Section 3 Governance Structures		
Issue	Recommendation	Commentary
		<p>elements of the Council’s activities.</p> <ul style="list-style-type: none"> It is also worth noting that an accepted principle of good governance is that board members – even board chairs – do not generally act or make decisions as individuals, but as members of the collective board, ie as ‘we’, rather than ‘I’. This is one of the key distinctions between the individual responsibility implicit in executive management and the collective responsibility of governance. Conversely, all board members may be held accountable for a board’s decision, potentially regardless of the personal views of any individual board member. We acknowledge that these recommended changes may reduce the relative attractiveness of a position on the InternetNZ Council. We do not consider that all Council members will feel the same way, but we recognise that some may choose to put themselves forward for the ‘board’ of one of the business units, in preference to a seat on Council, if they are forced to choose.
14. General Rules affecting ‘Board’ members	<p>Recommendation 3.14</p> <p>That term limits for ‘board’ members be specific to the operating unit;</p> <p>That ‘board’ members may generally become members of Task Forces convened under the authority of the Executive Director;</p> <p>That the Council appoint the Chair of each of the operating</p>	<ul style="list-style-type: none"> While we believe that term limits for each ‘board’ are appropriate, we believe that Council should retain the right to appoint a ‘board’ member to another of its operating unit ‘boards’, and that the term limits should be specific to each ‘board’. In practice, we would not expect this to be a common occurrence, but we see no compelling reason for restricting Council’s authority in this way. Similarly, we believe it is reasonable that the Executive Director could appoint a member of one of the operating unit ‘boards’ to serve on a Task Force, with one exception: a member of the EDOC should not be eligible to serve on a Task Force, because this would confuse the lines of accountability and authority (since a member of the governing body would be on a



Section 3 Governance Structures		
Issue	Recommendation	Commentary
	<p>unit 'boards';</p> <p>That the term limit on 'board' members be amended if necessary to ensure that a newly-appointed Chair would not be prevented by the term limit from serving in the role for two full three-year periods (subject to retaining the confidence of Council).</p>	<p>committee that was accountable to the Executive Director, who in turn was accountable to the governing body).</p> <ul style="list-style-type: none"> While we believe it is normally good governance practice for governing bodies to appoint their own Chair (and we have recommended this for the Council itself), we consider the situation for 'subsidiaries' can be rather different. In these cases, each operating unit of InternetNZ is acting as an 'instrument' of the greater Society and is charged with contributing towards the overall goals of the Society. In this case, we believe it is appropriate that Council should appoint the Chair of each of the operating unit 'boards' (but not the Council member appointee), in much the same way that central and local government bodies typically appoint the board chairs of their business units or subsidiary companies. We would recommend that such appointments would usually be for a three-year period (renewable) and that, for purposes of succession planning, the normal term limit would if necessary be extended, so that a Chair would not be prevented solely by the term limit from serving for two full three-year periods from the time he/she was first appointed as Chair. The Council would always retain the right to remove or dismiss the Chair if he/she lost the confidence of Council at any time; so again this extension in no way constrains the power or authority of the Council.
15. Remuneration of Governance Board members	<p>Recommendation 3.15</p> <p>That all members of the Society's governing bodies be remunerated at rates reflecting the level of skill and commitment required, within the framework of a</p>	<ul style="list-style-type: none"> We consider that a further necessary development, in moving from 'Club' to professionalism and true accountability, is for the members of all the governing bodies – Council and the four 'boards' – to receive remuneration that recognises the required level of skill and contribution, within the general expectation that the rates in a non-profit Society will also reflect an element of service to the common good: ie the rates will be somewhat lower than



Section 3 Governance Structures		
Issue	Recommendation	Commentary
	non-profit Society.	<p>they would in a fully commercial entity.</p> <ul style="list-style-type: none"> ▪ We have made our recommendations below on appropriate fee levels. We understand that the Society has previously adopted the fees scale set by the Department of Prime Minister and Cabinet ('DPMC') for members of Crown Entity boards, and we acknowledge the pragmatic benefits of this approach. We would support a continuation of this methodology (one significant benefit being the 'automatic' adjustment of fees when the DPMC scale is amended, in preference to a laborious and typically contentious process of gaining internal or member approvals. However, we would still recommend that fees for each governing body should be approved by their 'shareholder' or membership.) ▪ If the DPMC scale is the preferred option, then the fees recommended below can be taken as a guide to where we consider each entity fits onto the DPMC scale, and, more importantly, to the approximate relativities that we consider should apply between each entity. ▪ For simplicity we believe it is possible to divide the fees into two tiers: <ul style="list-style-type: none"> ▪ A 'standard' fee of about \$10,000 per annum would be paid to each member of <ul style="list-style-type: none"> ▪ The InternetNZ Council; and ▪ The InternetNZ Foundation. ▪ Both of these are established for non-profit/charitable purposes and convention in New Zealand is that board fees are set to reflect this. While it may be argued that Council members carry a higher level of responsibility (being ultimately accountable to the membership) and should therefore receive a higher fee, this may be countered by the fact that their role is spread more widely among twelve members, whereas all the other 'boards' usually have only five members



Section 3 Governance Structures		
Issue	Recommendation	Commentary
		<p>(constitutionally four to six).</p> <ul style="list-style-type: none"> ▪ A 25% higher fee, about \$12,500 per annum, would be paid to members of <ul style="list-style-type: none"> ▪ The Board of NZRS, to reflect the more commercial nature of its activity; ▪ The Board of NZOC, to reflect the public significance of DNC decisions together with the perceived potential for legal action and/or reputation risk; ▪ The EDOC, to recognise the range and complexity of activities within this office. It is important that the members of the EDOC should be experienced commercial directors who, in addition to their well developed governance skills, understand a rapidly changing environment, can stimulate innovation and can identify and drive synergies between the various operating units. ▪ It will probably be necessary, and would certainly be good practice, to obtain the approval of the Society's membership to the fees payable to the Council members, and possibly also to the EDOC, since that will not be a separate legal entity. ▪ In accordance with accepted New Zealand convention, the Chair or President should receive a 100% loading (ie twice the fee payable to other members of the 'board'); and the Vice-President (and Deputy Chair of any of the 'boards', if such positions are created) should receive a 25% loading. In line with the DPMC guidelines, we would also recommend that the Chair of a committee of any of the governance bodies (eg Audit & Risk, Nominations Committee, etc)



Section 3 Governance Structures		
Issue	Recommendation	Commentary
		<p>should receive a 10% loading (unless the individual was also Chair or Deputy Chair, in which case the relevant loading for that role would prevail and the loadings would not be cumulative).</p> <ul style="list-style-type: none"> ▪ For individuals appointed to more than one governing body (eg a Council member appointee on an operating unit 'board'), fees would be cumulative, since the duties and responsibilities are also cumulative.



Section 4

Management



Section 4 Management		
Issue	Recommendation	Commentary
1. Executive Director's Office	<p>Recommendation 4.1</p> <p>That the Executive Director's office manage the key advocacy and support functions of the Internet Society of New Zealand.</p>	<ul style="list-style-type: none"> ▪ The key functions of the Executive Director's Office will encompass: <ol style="list-style-type: none"> 1. Advocacy and Public Policy Development; 2. Providing administrative and other support to the InternetNZ Council and its members; 3. Managing the Society's communication with, and provision of services/benefits to, the members of the Society. (If the range of membership services grows significantly, one option for the future will be to create a separate 'operating unit' to focus on member services, replicating again the 'modular' structure now proposed); 4. International representation; and 5. Establishing, project managing and overseeing the activities of specially-formed project committees (currently called Task Forces or 'Tiger Teams'), within the agreed strategy and business plan of the Society; ▪ The Executive Director will require a high level of leadership, management and advocacy skills and will report direct to an Oversight Committee (as noted above – recommendation 3.6)
2. NZRS	<p>Recommendation 4.2</p> <p>No change in management structures recommended</p>	<ul style="list-style-type: none"> ▪ The NZRS model appears to work effectively. We see no reason for any change to the management / governance arrangements. ▪ There will be a need to ensure that the Board appointment process remains robust, in order to continue as effectively as at present. We understand the board



Section 4 Management		
Issue	Recommendation	Commentary
		succession process works differently from what we have proposed in 3.12 and would not see the current arrangement as presenting major problems, provided the Council can balance the competing aims of regular Board refreshment, combined with a level of continuity and 'institutional memory'. However, for consistency across the Society, we recommend that the Council move in the medium term to a common appointment process for all its operating unit 'boards'.
3. DNC	Recommendation 4.3 No change in management structures recommended	<ul style="list-style-type: none"> ▪ Comments as for NZRS above. ▪ No perceived reason for change to the management / governance arrangements other than those noted in recommendation 3.4
4. InternetNZ Foundation	Recommendation 4.4 That a part time General Manager (title INZ Foundation Secretary) be employed to manage the activities of the Foundation.	<ul style="list-style-type: none"> ▪ The primary responsibilities for this role are: <ul style="list-style-type: none"> ▪ The presentation of applications to the Foundation Board; ▪ Monitoring and reporting progress of projects (once approved) to the Foundation Board; ▪ Seek funding from external sources (if desirable) ▪ The person employed should: <ul style="list-style-type: none"> ▪ Understand the purpose of the Society; ▪ Have the credibility to be able to raise funds from external entities.
5. Group CEO	Recommendation 4.5 That the four operating group general managers report directly to	<ul style="list-style-type: none"> ▪ A commercially focused organisation would usually employ a group CEO to be



Section 4 Management		
Issue	Recommendation	Commentary
	their respective boards (or oversight committee) and not to a Group CEO.	<p>responsible to the group’s governing body for the organisation as a whole.</p> <ul style="list-style-type: none"> ▪ The primary benefits for the Society in employing a person as Group CEO are: <ul style="list-style-type: none"> ▪ Managing co-ordination between the operating divisions; ▪ Reducing the number of boards / oversight committees. ▪ We do not consider that the Society will operate at its best if the Council tries to impose a more traditional ‘corporate’ management structure. We believe the governance structure recommended in Section 3 above is more suitable for the Society (ie general managers reporting direct to respective ‘boards’). ▪ The recommended structure maintains a clear separation of functions and duties. This is particularly important for the NZRS and DNC operating units.
6. ‘Silo Effect’	<p>Recommendation 4.6</p> <p>That the business unit general managers form a committee which meets regularly to investigate, identify and exploit operational efficiencies (to be chaired on a rotational basis by each general manager).</p>	<ul style="list-style-type: none"> ▪ A potential ‘un-intended consequence’ of implementing the proposed structure is that each of the business units operate as if they were stand-alone units, or ‘silos’, rather than components of a larger organisation. To assist the way the units work together, we recommend the formation of a formal management committee. ▪ This committee would provide a regular formal forum for the management of each of the units of the Society to liaise, in order to ensure they are; <ul style="list-style-type: none"> ▪ Working in alignment towards achieving the Society’s strategic goals, recognising that they are all components of the whole InternetNZ and minimising the risk of individual ‘silos’ developing; ▪ Looking for synergies between the four operating units that will enable the whole to achieve more than the sum of its component parts (whether through unanticipated gains in effectiveness or increased operating



Section 4 Management		
Issue	Recommendation	Commentary
		efficiencies). For example, refer Recommendation 4.7, below.
7. Administrative Responsibilities	<p>Recommendation 4.7</p> <p>Once the proposed structure has been operational for a period, we recommend the 'boards' and their respective senior managers investigate the potential for implementing a 'shared services' model to manage administrative functions within the Society.</p>	<ul style="list-style-type: none"> ▪ Organisations typically provide administrative support functions (for example, finance, HR, ICT and procurement) in one of three ways: centralised, de-centralised or shared services. ▪ In the de-centralised model, administration functions are performed independently in each of the operating units. The centralised model performs the same activities but consolidated under one business unit. The shared services model also centralises functions, but they are consolidated into a stand-alone entity with a mission to provide these services as efficiently and effectively as possible. ▪ When implemented correctly the shared services model is attractive in that it improves efficiency and effectiveness of administration functions and typically provides these services at a lower cost than the alternatives. ▪ The successful establishment of a shared services model has a number of key success factors: <ul style="list-style-type: none"> ▪ Establishing a separate entity. The separation assists in overcoming any concerns or lack of trust associated with an existing business unit taking over the administrative services. It also avoids any potential conflicts of interest by providing clarity between purchaser and provider. ▪ Maintaining a service level agreement (SLA) between the parties. SLAs are a vital part of the process because they remove any ambiguity over service expectations, quality standards, performance measures and costs. A separate SLA is needed with each business unit – recognising that the requirements of the business units vary. ▪ Services are contestable. A business unit should not be 'forced' to use the



Section 4 Management		
Issue	Recommendation	Commentary
		<p>services supplied if specialist service is required or where the provider is not meeting agreed performance targets specified in the SLA.</p> <ul style="list-style-type: none"> It is vital that both management and governance bodies remain accountable/responsible for the functions which the shared service entity provides. Thus, while an operating unit may contract with the shared services provider, managers and governors cannot abrogate their ultimate responsibility for performance.



Section 5

Structure of Sub-Groups



Section 5 Structure of Sub-Groups		
Issue	Recommendation	Commentary
1. Sub-Groups	<p>Recommendation 5.1</p> <p>The majority of sub-groups/task forces should be constituted by and report to the office of the Executive Director (exceptions are noted in the commentary)</p>	<ul style="list-style-type: none"> ▪ While the Society has an objective to increase professionalism it should not lose sight of the benefit of volunteer input. In addition many members join the Society because they wish to be involved in the work of the Society. ▪ Much of the past success of the Society has been gained through the considerable voluntary input of members. ▪ We consider that the best way to maintain this momentum is by allowing volunteers to contribute to the objectives of the Society by way of on-going active participation in sub-groups. ▪ Whilst we see most members of sub-groups as volunteers, there may be times when it is appropriate to employ contractors to fill particular roles (or fill skill gaps). However as noted above no sitting Councillor will be able to receive additional remuneration through working on a sub-group. ▪ Another advantage of using volunteers on sub-groups is that staff resources of the Society are never likely to be of a sufficient quantity to be able to complete all the projects Council requests. ▪ In order to maintain strategic focus the number of sub-groups reporting to Council should be restricted to the 4 'boards' (NZRS, NZOC, EDOC, Foundation) and the following (as required), Nominations Committee, Remuneration Committee and Constitution & Governance Committee. ▪ We are aware that the Council has previously resisted the establishment of an Audit Committee of Council. While this may be appropriate for various reasons, we believe there is merit in revisiting this decision in the near future, since the ultimate prudential responsibility for the entire Society rests with Council and an



Section 5 Structure of Sub-Groups		
Issue	Recommendation	Commentary
		<p>Audit Committee (or preferably an Audit & Risk Committee) will be able to provide a level of comfort about the financial and other risk exposures the Council oversees, once it is in the position recommended at Section 3, ie separated from direct involvement with the operational units of the Society.</p> <ul style="list-style-type: none"> ▪ All other sub-groups should be managed on an as required basis by the office of the Executive Director. ▪ The size and composition should be determined by the office of the Executive Director based on the role of the group. ▪ The office of the Executive Director should provide secretarial and project management skills and also the communication link from the committee to Council (and vice versa).



Section 6

Tax Issues



Section 6 Tax Issues		
Issue	Recommendation	Commentary
1. Tax	<p>Recommendation 6.1</p> <p>That the Internet Society of New Zealand remain an Incorporated Society and seek Charitable status and exemption from Income Tax.</p>	<ul style="list-style-type: none"> ▪ Under our Terms of Reference, it was agreed that the primary drivers of this Review would be structural and operational issues. However, we were also required to consider the tax status of the Society, and, in particular, whether there were practical ways to gain more efficient use of the current tax imputation credits that are currently ‘wasted’. ▪ Our Review led to discussions with tax advisers and the possibility of developing recommendations along the following lines: <ul style="list-style-type: none"> ▪ The current income generating unit of the Society (NZRS) pays tax on income earned. The Society is then funded by way of an imputed dividend from NZRS. Many of the activities of the Society are therefore funded from ‘tax paid’ income. ▪ If charitable status is obtained, the Society and its subsidiaries will no longer pay tax on income generated. ▪ The current aims of the Society (its objects) are broadly in line with those of organisations that are deemed to be charitable. ▪ In order to achieve charitable status the Society will need to show (to both the Charities Commission and ultimately the Inland Revenue Department) that its primary purpose is indeed charitable and that its activities (past and future) are aligned to its purpose. ▪ There may be a requirement to modify the current constitution in two areas: <ul style="list-style-type: none"> ○ Ensuring that no member of the Society can receive a personal pecuniary gain;



Section 6 Tax Issues		
Issue	Recommendation	Commentary
		<ul style="list-style-type: none">○ Windup provisions.▪ As of 22nd March 2007 this issue has been handed to Treasurer of the Society (Michael Wallmannsberger) to be pursued separately from the other recommendations made in this Report▪ If charitable status is not attainable, other options (including a licensing arrangement with NZRS) could be explored as a separate implementation issue.



Section 7

Conclusion



Section 7 Conclusion	
Subject	Commentary
Overview	<ul style="list-style-type: none"> ▪ The recommendations presented and discussed in this Report represent the result of many months' analysis and consideration, and extensive consultation with and feedback from the SRTF, InternetNZ Council and a selection of members of the Society. We have also attempted to understand and avoid the Society's 'no go' areas. ▪ We believe therefore that there should be few surprises in this Report and nothing that is inconsistent with the Society's mission, purpose or values. ▪ For ease of reading and to assist in making this an actionable 'working' document, each recommendation is presented separately in a series of Sections that address different aspects. As a result, there may be a temptation on the part of some to select the recommendations that appeal or that may be deemed less contentious. ▪ We would strongly recommend against this course of action: we have developed this Report as an integrated whole and believe its core value is in the package that it offers for the future structure and operation of InternetNZ: <ul style="list-style-type: none"> ▪ Many of the recommendations are inter-connected and/or interdependent; ▪ We believe we have designed a reasonably sophisticated and logical organisational structure that creates a system of internal checks and balances to provide appropriate incentives and accountabilities, and to minimise the risk of inappropriate conflicts of interest or undue concentration of powers. ▪ We have noted a few areas where we do not consider that adoption of our recommendations is crucial to the whole package (eg the fees basis selected for members of governance bodies). However, we would be concerned if the Council decided to 'cherry pick' among the rest of the recommendations and rejected others, since the risk of destabilising the model should not be under-estimated. ▪ We would not go so far as to assert that acceptance of this Report is 'all or nothing',



Section 7	
Conclusion	
Subject	Commentary
	<p>but would advise strongly that, if partial acceptance seemed the likely outcome, the Council or SRTF discussed the likely result with WCL before final decisions were reached.</p> <ul style="list-style-type: none"> ▪ That said, not surprisingly, we recommend that the InternetNZ Council adopt in full this Report and its comprehensive set of recommendations.
Implementation	<ul style="list-style-type: none"> ▪ We have indicated in Appendix 2 a possible Implementation path⁶ for the main structural changes which we have recommended. ▪ If the InternetNZ Council and membership approve the changes, full implementation will be a complex and time-consuming task. Again we would counsel against underestimating the challenges in achieving successful organisational change of this magnitude: in such situations it is always necessary to juggle several different aspects. Among such issues for InternetNZ will be: <ul style="list-style-type: none"> ▪ The legal and constitutional requirements; ▪ Employment and board appointment issues; ▪ Modifying internal policies and processes and developing new ones where necessary; ▪ Internal and external communications to a wide range of stakeholders; ▪ Physical, human and financial resource constraints while continuing to manage the business, without any interruption to the critical infrastructure aspects, at the same time as driving the change process to a defined timetable; ▪ Dealing with the unexpected ‘roadblocks’ and the inevitable critics (or change-

⁶ We acknowledge the significant effort of Mr David Farrar, Vice-President of InternetNZ, in identifying the key Constitutional requirements and from there developing the key steps in this implementation timetable.



Section 7	
Conclusion	
Subject	Commentary
	resistors), who are certain to emerge in an environment as transparent as that in which InternetNZ traditionally operates.
Final Recommendation	<ul style="list-style-type: none"> ▪ We strongly recommend that InternetNZ engage experienced external advice and assistance for the implementation phase of this Project.
Closing Remarks	<ul style="list-style-type: none"> ▪ We believe our Report addresses the requirements of the Terms of Reference, as amended at times during the project, and we are delighted to submit it for consideration of the SRTF and Council. ▪ The members of the Review Team from Westlake Consulting Limited wish to convey our thanks to the SRTF, employees and Council of InternetNZ for engaging us to conduct this challenging and stimulating exercise; we should also like to add that it has been a real pleasure to work with this group of thoughtful, intelligent and articulate people, all committed to a common purpose. ▪ Our Review has taken significantly longer, and has occupied considerably more of our resources, than any of us would have hoped, budgeted or anticipated at the outset. Largely, we believe, this has been to the ultimate benefit of the final outcome, since we believe there has been an unusually large amount of intellectual input and valuable debate around a wide range of options, in arriving at the final model recommended. ▪ We look forward to following, and, if appropriate being involved in, the implementation of our recommendations; we believe the end result will be a stronger and greatly 'future proofed' InternetNZ that is stronger and better equipped than today to achieve its goal of ensuring 'an open and uncaptureable Internet.'



Appendix 1

Terms of Reference

[Note that some of the target dates referred to in these Terms of Reference were subsequently amended after reference to the SRTF and InternetNZ Council]



Structural Review of
Internet Society of New Zealand Inc

Terms of Reference

Agreement between

Internet Society of New Zealand Inc

and

Westlake Consulting Limited

8th September 2006



Introduction

The InternetNZ Council wishes to undertake a full structural review of the InternetNZ Group. The Council has established a taskforce of former and current Officers and Councillors to guide the Review (SRTF).

The SRTF has resolved to engage Westlake Consulting Limited (“WCL”) as the contractor to conduct this Review. This document records the agreed Terms of Reference for the Review and becomes the master document for future reference. Any material changes to the Terms of Reference contained herein are to be agreed in writing between the SRTF (on behalf of InternetNZ) and WCL.

Background

The key drivers of the review are:

- It is ten years since InternetNZ was formed
- InternetNZ wishes to operate the most tax-efficient structure for InternetNZ (tax paid dividends from NZRS being used to undertake public good activities)
- There is in existence a prior agreement to review the structure of the .nz domain name space after three-four years of operation (the timeframe for this agreement aligns with the structural review)
- There is a natural tension between the rights of membership and the responsibility for maintaining critical national infrastructure – this needs to be reviewed in the context of ten years of operation by InternetNZ
- InternetNZ continues to evolve from a volunteer based organisation to an increasingly professional one

Reference should be made to the following documents:

- Internet New Zealand Structural Review briefing papers and covering letter dated 7 July 2006
- Westlake Consulting Limited proposal dated 15th August 2006
- Project timeline (Revision 2 – attached)
- Draft background report ‘Research Networks and the Internet in New Zealand’



Project Objectives

The following are the key objectives of the structural review:

- To present a recommended organisational structure that supports and promotes InternetNZ's mission, vision and goals – “to protect and promote the Internet in New Zealand.”
- To create an organisation which operates at the optimum “tax efficient structure.”
- To assist in the relief of tension between rights of membership and the responsibility in maintaining critical national infrastructure.
- To continue the development of a professional organisation.
- To future proof InternetNZ

Stakeholders/Project Team

- Roger Hicks; Project Sponsor, Internet Society of New Zealand Inc
- Keith Davidson; Executive Director, Internet Society of New Zealand Inc
- Internet New Zealand Project Structural Review Task Force (SRTF)
- Westlake Consulting Limited (WCL)
 - Richard Westlake; Lead Reviewer
 - Vaughan Renner; Reviewer
 - Peter Harris; Project Manager / Reviewer
 - Penny Taylor; Project Administrator
- Phillips Fox; Legal and Tax advisors

Project Team Values

The project team will honour InternetNZ's core values in all activities during the project.



Openness, Transparency, Leadership, Ethical Behaviour, Neutrality, Supportive & Commitment

Project Outline

The diagram below shows the 'big picture' questions that provide the framework for this project.



In addition WCL team members will be asking key stakeholders the following:

1. How did InternetNZ 'get to its present form and function'?
2. What aspects of the organisation are working well?
3. What areas are open for improvement and why? What has to change?
4. Where is InternetNZ going? What does it want to achieve?
5. How will InternetNZ know that it has arrived there?
6. How will this be measured?



7. What are the risks / constraints (current and potential) to achieving this?
8. What is the optimum structure for achieving the desired outcomes, having regard to the respective benefits and risks?

The project will be completed in four distinct stages.

Stage 1: Project Brief and Set Up

This involves sign off on the project brief with the project Sponsor and Manager. This will include the agreement of specific reporting outputs, the project timeline and budget.

- Confirm Terms of Reference
- Confirm format and frequency of taskforce meetings
- Confirm action plan and responsibilities
- Finalise timeline and budget
- InternetNZ history briefing

Stage 2: Information gathering and review

The key tasks in stage two are:

- Written information review
- Interview 6-10 key InternetNZ stakeholders
- InternetNZ Council evaluation (Leblanc Diagnostic)

The first task involves assimilating and reviewing written reports and information, some of which has already been received. We will also obtain information as required, from external sources / service providers where relevant to achieving project objectives.



Secondly, the WCL review team will meet and interview between 6 and 10 key InternetNZ stakeholders (agreed between WCL and the Chair of the SRTF) to develop a deeper understanding of the mission of InternetNZ and most appropriate structural options to achieve the mission.

Finally in stage 2, each InternetNZ Council member will be asked to complete an online board effectiveness questionnaire. The results (to be discussed at the October Council meeting) will show Council effectiveness benchmarked against international best practice. The results will also be used by WCL to further refine structural alternatives.

Stage 3: Gap Analysis - Preliminary Report

The focus of stage 3 is the preparation of the “Strawman Report”. The purpose of this preliminary report is to present a range of structural options for the future (probably 3-4 including status quo), as a basis for generating comment and obtaining feedback. It will therefore be important that the Review Team (and InternetNZ) do **not** indicate which if any is its/their preferred option at this early stage.

This “Strawman Report” will be presented to Council at the October Council meeting. Assuming Councillors are agreeable, this Report will form the basis for the next round of discussions with the wider InternetNZ membership, in a series of one-on-one and (ideally) small focus group consultation discussions.

Stage 4: Option Review & Report

This stage involves discussion/evaluation of structural alternatives with InternetNZ membership and development of the final report.

The nature and format of the final written and verbal reports will be developed in conjunction with the SRTF during Stages 2 & 3.

The final report will be presented by the WCL team at the December Council meeting.

Final Report

The final report will show:



1. The range of structural options considered;
2. The pros and cons and the implementation issues arising from each of these;
3. Legal and tax implications will also be presented; along with
4. The Review Team's recommendation for the preferred option (including rationale).

The report will be actionable, containing a draft implementation plan that highlights required work-streams.

Project Timescale & Key Milestones

1. Project Terms of Reference sign off	5 September 2006
2. Information Gathering & Review	6 October 2006
3. Gap Analysis – Preliminary Report	13 October 2006
4. Option Review & Report	15 December 2006

Refer to Timeline Revision 2 (attached) for further detail

Proposed Project Deliverables

- Terms of Reference
- Communication plan (to be agreed between SRTF and WCL)
- Task Force meetings - agenda/minutes
- Written/oral progress reports
- Leblanc Benchmarked Board Effectiveness report
- "Strawman" preliminary report
- Final Report



Roles & Responsibilities

These will be agreed between the SRTF and WCL and will be contained in a separate schedule.

Project Budget (excluding GST)

InternetNZ has indicated a preference for a fixed/capped price contract. Subject to the Project Scope remaining broadly as described above:

1. **The total Project Fee will be \$95,000** (excluding disbursements).
2. The Project Fee **includes**:
 - A built-in **contingency** of up to \$5,000, and
 - The anticipated cost of **Professional Services** in relation to this review of \$10,000 (Legal, Tax [\$5k] and Leblanc Diagnostics [\$5k]).

Professional Service costs in excess of this will be discussed with SRTF before being incurred (as far as reasonably practicable), but will be for the account of InternetNZ.
3. **Disbursements**, including travel outside Wellington (if any), toll calls etc, will be charged at cost and discussed with Keith Davidson at an appropriate time.

In order to minimize project costs, it is assumed that the bulk of the work involved will be undertaken at InternetNZ and WCL offices in Wellington.

Payment Terms

1. Progress invoices for \$25,000 (exc GST), in relation to the Project Fee, will be raised by WCL at the end of September, October and November. A final 'wash-up' invoice will be raised at the end of December.



2. Payment is due by 20th of the month following invoice.
3. Invoices relating to Professional Services and Disbursements will be passed through at cost and will be payable by InternetNZ under the terms of supply stipulated by the supplier of these services.

Conclusion

We should like to acknowledge the SRTF's confidence in appointing WCL as its Reviewer in this significant and challenging assignment. We look forward to working with you and your stakeholders, and to assisting in generating successful, robust and enduring outcomes from this project.

Richard Westlake
Director
Westlake Consulting Limited

Keith Davidson
Executive Director
Internet Society of New
Zealand Incorporated

8th September 2006



Appendix 2

Proposed Implementation Timeline

[With acknowledgments to Mr David Farrar, Vice-President of InternetNZ]



Date (all 2007)	Activity
25 April	WCL submits Final Report to SRTF
26/27 April	SRTF forwards WCL Report to Council.
30 April	<p>SRTF provides its commentary and recommendations on WCL Report to Council, following a meeting or conference call discussion.</p> <p>Comment</p> <p>The timetable developed in March envisaged a further meeting of the SRTF after receipt of the WCL Report. If the timeline is to be met, the only purpose of this meeting can be to discuss and agree the SRTF's comments and recommendations.</p> <p>Any other outcome would involve further editing of the WCL Report; in turn this would require submission of the 'Revised Final' Report to the SRTF, before forwarding to Council. We understand that our Terms of Reference require WCL to submit a Final Report; whether the SRTF agrees with every aspect or recommendation of the Final Report is a separate issue – and does not require an iterative loop of edited Final Versions.</p>
7 May	Special Council Meeting to consider – but not decide on – Final Report.
9 May	<p>Final Report circulated to Members for electronic consultation;</p> <p>Notice to Members requesting delay of AGM by one month.</p>



Date (all 2007)	Activity
23 May	Close of discussion regarding AGM delay.
25 May	Close of Member consultation for Final Report.
28 May	Close of Voting in e-GM regarding AGM delay.
1 June	Final Report resubmitted to Council
16 June	Council Meeting to consider and approve (in full or part) Final Report
19 June	Final Report, Proposed Constitutional Amendments and Council's Recommendations sent to Members.
2 July	Voting on Final Report and Constitutional Amendments opens.
5 July	Voting closes.
6 July	Constitutional Changes filed with Registrar of Incorporated Societies; Nominations open for six Council positions.
10 August	Nominations close.
17 August	Voting for Council opens.
31 August	Voting closes; InternetNZ AGM.



25 May 2007

The Audit & Risk Committee
The Internet Society
PO Box 11 881
WELLINGTON

Hello Committee Members

STRUCTURAL REVIEW

1.0 SCOPE

You have requested that we consider the potential audit impact of the proposed structural changes outlined in the Westlake Consulting Ltd report dated April 2007.

Our comments are based on a peruse of this Westlake report. We have not been involved in any other consultations. Our comments and opinion expressed in this letter are for discussion purposes at this stage. Further clarification of the facts may alter the advice given in this report.

2.0 ASSUMPTIONS

From reading the Westlake report we have determined the following matters as being relevant to advice given in this letter. We have treated these matters as assumptions. Should any of these assumptions be incorrect then it is likely the advice in this report will require amendment.

- The Council will assume the role of overall Governance of the entire new structure. The boards of operating units have delegated governance from the Council. The Council assumes control over the appointment process of members to the boards of the operating units. The InternetNZ Foundation (trust) new entity will be governed by Trustees. The council will assume control of the appointment process of Trustees.
- InternetNZ Foundation is formed as a charitable trust with the intention of successful registration as a charity with tax-exempt status. Its purpose is to operate independently and pursue specific philanthropic purposes.
- NZRS remains a company with InternetNZ Incorporated Society being the wholly owned shareholder. (No changes)
- DNC becomes NZ Domain Name Commission Ltd with InternetNZ Incorporated Society being the wholly owned shareholder.
- The Executive Directors Office is not a separate legal entity. This office will operate as a cost centre within the general ledger of the InternetNZ Incorporated Society.
- It is possible that financial benefits e.g. grants, dividends etc will flow from the society, NZRS and DNC to the Foundation. The Foundation will operate independently of Internet NZ and pursue its own funding avenues.

3.0 AUDIT IMPLICATIONS

3.1 Audit Issue

The key audit implication to consider when reviewing a structural change of this magnitude is to determine which entities will likely require an independent audit and what level of reporting is required. The level of financial reporting relates to the necessity to produce Consolidated Financial Statements for all groups of entities in accordance with NZ Generally Accepted Accounting Practice (NZGAAP).

The Internet Society of NZ and NZ Registry Service (NZ Domain Name Registry Ltd) have as at 31 March 2007 adopted NZ equivalents to International Financial Reporting Standards (NZIFRS). Therefore NZIFRS is the NZGAAP upon which the consideration of appropriateness of financial reporting is determined.

3.2 The Need for an Audit

We believe that each legal entity will have a need for an audit, as it will be prescribed within their constitution. In addition if funding is sought by third parties, most public funders require audited finalisation to be provided by the recipients. We do not believe it is the purpose of the restructure to change this audit requirement.

3.3 Consolidation

The issue of consolidated financial statements is covered by International Reporting Standard NZ IAS 27 Consolidated and Separate Financial Statements. The key elements of this standard require an entity to produce consolidated financial statements for a group of entities where it meets the requirements under the standard of 'control' over another entity.

Control is presumed to exist when the parent entity owns, directly or indirectly through subsidiaries, more than half of the voting power of an entity. Exceptions are rare. Control also exists when the parent owns half or less of the voting power of an entity when that parent has a power to govern the financial and operating policies of the entity via some other means or has a power to appoint or remove the majority of the members of the board of that entity. For entities that meet the definition of a Public Benefit Entity there are other standards that must also be considered however the essential elements are the same.

In the instance of a company it is typically triggered by the parent entity owning more than 50% of the shares of the subsidiary.

3.4 NZRS

We do not anticipate there being any change to the requirement for NZRS to present audited financial statements and also have its figures consolidated as a wholly owned subsidiary of InternetNZ Incorporated Society's consolidated reporting.

In addition to ownership InternetNZ Incorporated Society will receive dividends on profits made by NZRS.

3.5 DNC

As listed within our assumptions, it appears this entity will become a company similar to NZRS in structure.

The key issue is that the shareholder will be InternetNZ Incorporated Society and therefore the test of 'control' will be met. Similar to NZRS, DNC will be required to consolidate as part of the financial reporting of InternetNZ Incorporated Society. We would anticipate that DNC will also produce its own audited financial statements that are approved by its Board.

We are unsure of the nature of any transactions that might arise between DNC and any of the other entities in the restructure. This will not change the need for a consolidation but may impact upon the extent of reporting of related party transactions.

3.6 ED Office

It would appear from the structural review that this office is not a legal entity. Although not specified it would seem logical that the operational costs of running this office would derive from The InternetNZ Incorporated Society.

We would therefore expect the ED Office to be presented as a cost centre within the financial statements of the Society, or if the costs met by another entity then presented within that entity.

3.7 InternetNZ Foundation

It appears this Trust is being established as an independent entity governed by Trustees to pursue specific philanthropic purposes, no doubt focusing on internet related issues.

This entity should include within its Deed the need for an independent audit as it is likely to receive funding from sources who will expect audited financial statements to be prepared.

The Foundation will likely meet the definition of a Public Benefit Entity, as prescribed within the NZIFRS framework. This PBE distinction is for entities that primarily exist with a purpose of benefit of the public at large, rather than a primary focus of profitability.

This is important, as the requirements of consolidation of financial reporting are different for PBEs. The scope is increased to include direction from Financial Reporting Standard 37 Consolidating Investments (NZGAAP prior to introduction of NZIFRS).

Essentially the definition of control by an entity over another entity (for PBE's) requires establishment of two elements.

- a) First entity has the capacity to determine the financing and operating policies of the second, and
- b) First entity has an entitlement to a significant level of ownership benefits.

Because the Council ultimately have the power of appointment and removal of the Trustees, it is likely that part (a) of control is established.

Therefore whether the Foundation is required to consolidate its financial reporting into InternetNZ appears to depend upon whether InternetNZ is a listed beneficiary of the Trust.

If InternetNZ is not able to benefit financially from the activities of the Trust, there appears not to be a necessity to consolidate the Trust's financial statements with the InternetNZ Group.


Irrespective of whether the Foundation is required to consolidate, the Foundation is able to produce its own audited Financial Statements for general reporting and distribution.

4.0 CONCLUSION

Based on the assumptions made we would expect The InternetNZ Incorporated Society to be the parent entity for all other entities and offices established, except for the Foundation who can operate independently provided InternetNZ is not a financial beneficiary of the Trust. Separate financial reporting will likely also occur for NZRS and DNC.

This report may need to be reassessed once further details surrounding the entities' constitutions, and Trust Deeds are determined. Please do not hesitate to contact myself for further discussion.

Kind regards
Grant Thornton



Kerry Price
Partner