



Office of Hon Louise Upston

Minister for Land Information
Minister for Women

Associate Minister of Local Government
Associate Minister for Tertiary Education,
Skills and Employment

26 MAY 2016

Joel MacManus
'fyi-request-3937-da2bad7a@requests.fyi.org.nz'

Dear Joel MacManus

Thank you for your email of 28 April 2016 requesting under the Official Information Act 1982 (the Act):

"Any correspondence or advice which was provided to the Minister as part of the decision making process regarding cancelling the proposed online voting trial in the 2016 local body elections."

I received the attached briefing paper "*Advice on councils' compliance with online voting trial requirements*", dated 11 March 2016, as part of the decision making process. This is the only document held by me that falls within the scope of your request.

Please note that paragraphs 19 and 20 of the briefing and Appendix A (pages 8 to 10, inclusive) are withheld under section 9(2)(f)(iv) of the Act to protect the confidentiality of some of the advice tendered by officials.

I am satisfied in terms of section 9(1) of the Act that the withholding of this information is not outweighed by other considerations which render it desirable in the public interest to make the information available.

You may be interested to know that the associated Cabinet papers are publicly available on the Department of Internal Affairs website at:
www.dia.govt.nz/online-voting.

You have the right by way of complaint under section 28(3) of the Act to an Ombudsman, to seek an investigation and review of my decision. The contact address is: Office of the Ombudsman, PO Box 10152, Wellington.

Sincerely

Hon Louise Upston
Associate Minister of Local Government

Local Government briefing

Hon Louise Upston

Associate Minister of Local Government

Copy to: Hon Peseta Sam Lotu-liga
Minister of Local Government

Title: **Policy briefing: Advice on councils' compliance with online voting trial requirements**

Date: 11 March 2016

Key issues

Although councils have made significant progress towards a trial of online voting, we consider they have not yet been able to demonstrate they can meet the Government's trial requirements. Councils have well-developed plans for achieving some of the remaining milestones. However, there is no further opportunity for councils to demonstrate their ability to meet the trial requirements, in time for regulations to be passed authorising a trial in the 2016 local elections.

A Cabinet decision on whether a trial will be enabled in the 2016 local elections is needed as early as possible to provide certainty to the sector as it has begun gearing up for the elections.

Our recommended option is that you advise Cabinet you are *not* satisfied that requirements can be met in time for a trial in 2016, but that you would like DIA officials to engage with councils, election service providers, LGNZ, and SOLGM on the future of local electoral systems and processes, including the future possibility of a trial of online voting.

Action sought

Discuss with officials the options for progressing a report-back to Cabinet on the online voting project

Timeframe

16 March 2016

Contact for telephone discussions (if required)

Name	Position	Direct phone line	After hours phone	Suggested 1 st contact
Pallavi Chhibber	Senior Policy Analyst	04 494 5743		✓
Jo Gascoigne	Policy Manager	04 494 0526		

Return to	Pallavi Chhibber, Level 7, 46 Waring Taylor St		
DMS references	869619DB	PLG-1696-01	
Ministerial database reference	LG201600119		

Purpose

1. This briefing is to advise you on whether councils interested in trialling online voting in the 2016 local elections have demonstrated they can meet the Government's requirements for a trial. The advice is to assist you in deciding whether to seek Cabinet agreement to enable a trial.

Background

2. In December 2014, Cabinet agreed that for a trial of online voting to be enabled, the local government sector must demonstrate that any voting technology solution(s) developed can operate securely and the requirements of the Local Electoral Act 2001 can be met. The Government's requirements for a trial of online voting in the 2016 local elections were published in May 2015, as a way for councils to demonstrate they can meet Cabinet's expectation.
3. In November 2015, you informed Cabinet that eight territorial authorities had confirmed their interest in participating in a trial of online voting in the 2016 local elections and sought agreement to publish a set of revised trial requirements for them to meet. Cabinet agreed that those territorial authorities would provide sufficient scale and representativeness to ensure a trial will produce evidence of the practicality and value of online voting in local elections. Cabinet noted your intention to:
 - 3.1 invite those territorial authorities to demonstrate they can meet the revised trial requirements; and
 - 3.2 report back to Cabinet once the territorial authorities have demonstrated to your satisfaction, that online voting can be trialled in a manner that meets the trial requirements and the Local Electoral Act 2001.¹
4. Your press release of 16 November 2015 issued that invitation to the eight councils. Since then we have worked with those councils and their election service providers to try to reach a shared understanding of how councils could demonstrate that they can meet the trial requirements and to ensure appropriate evidence would be available to the Department by 5 February 2016.

All eight councils submitted reports by the February deadline, however further information was needed

5. We received documentation separately from each council by the due date. However, the reports contained insufficient commentary about *how* requirements were met, and supporting evidence was not provided for many of the requirements. Teleconferences were held with each of the service providers, with a view to eliciting further information. More information was provided, but there still remains insufficient evidence for us to be able to assess compliance with certain requirements. However, this information gap is not indicative of the degree of effort expended in preparing for a trial, which has been significant. Rather, we consider the evidence shortfall in the reports is a direct consequence of the time constraints involved in enabling a trial in 2016, coupled with the difficulty of judging, in advance, what and how much evidence is required to 'demonstrate compliance' with requirements. More time would have allowed us to provide more comprehensive and iterative feedback, which would have assisted councils to provide fit-for-purpose information.

¹ CAB-15-MIN-0227 refers.

We are not confident the trial requirements can be met in time for a trial in 2016

6. Appendix A provides a summary table of councils' progress in demonstrating compliance with the Government's trial requirements. The analysis is based on the reports submitted by councils, and further information ascertained from the service providers (and from Deloitte, on behalf of Electionz.com).
7. We acknowledge that very significant progress has been made by councils since the release of the revised trial requirements in November 2015. However, councils and their service providers have not yet been able to achieve key milestones that would enable us to have confidence that they can meet all of the trial requirements, and therefore the requirements of the Local Electoral Act 2001, in time for a trial this year. Key milestones not yet achieved include:
 - Independent review of the source code for voting systems
 - Whole-of-system penetration testing
 - Independent assurance of key aspects of the trial requirements
 - Development of a detailed coordinated national communications strategy
8. Councils have well-developed plans for achieving some of these remaining milestones. However, there is no further opportunity to allow time for councils to demonstrate that they meet those requirements before authorising regulations need to be made to enable a trial in the 2016 local elections. To have regulations in place by mid-June at the latest, EGI and Cabinet agreement to a trial is needed by early April 2016.
9. There are significant issues and timeframe pressures in preparing for a trial in this year's local elections. This has been expressed to us by the sector, most recently at the quarterly meeting of the SOLGM Electoral Working Party on 4 March 2016.² These issues and pressures exacerbate the risks inherent in a trial, and would limit opportunities for assessing future and ongoing compliance with trial requirements.

If compliance with the trial requirements cannot be ascertained, compliance with the principles of the Local Electoral Act 2001 cannot be assured

10. We have previously advised that before recommending regulations be made, you, as the responsible Minister, must be satisfied that the voting method to be authorised *will be able to operate in a manner consistent with the principles of the Local Electoral Act 2001*. The trial requirements were developed as a way of assessing whether that legislative prerequisite is met, although you can also consider other matters in making that assessment.
11. Of the principles outlined in section 4 of Local Electoral Act 2001, the relevant matters are ensuring public confidence in and understanding of local electoral processes by:
 - 11.1 protecting freedom of choice of voters and the secrecy of the vote; and
 - 11.2 providing transparent voting methods and the adoption of procedures that produce certainty in electoral outcomes.
12. On the basis of progress so far, we are unable to advise you that enabling a trial in this year's local elections would not risk loss of public confidence. This is because security and integrity requirements have not been *demonstrated* to have been met yet, therefore it cannot be guaranteed that either of the objectives in paragraph 13 will be met and be seen to be met.

² The Department has observer status on the Electoral Working Party and attends the quarterly meetings. This is a key forum for engagement with the sector on local electoral matters.

13. A further consequence of the compressed timeframe is that there have been, and will continue to be, limited opportunities to socialise the prospect of online voting with the public or the IT community. In the absence of public information and transparency, the suspicion and alarmism that characterises initiatives of this type is likely also to erode public confidence in online voting and local elections more generally, and poses a reputational risk to Government.
14. Progress with meeting security and technical performance requirements is likely to be made by councils and their service providers over the coming months but even if this progress does meet the trial requirements, assurance (to Government and to the public) will not be possible in time for regulations to be made to authorise a trial in the 2016 local elections.

Options and analysis

15. Options for your advice to Cabinet revolve around whether a trial should proceed. You could:
 - a. advise Cabinet you are satisfied the trial requirements *can* be met in time for a trial in 2016 and seek Cabinet agreement to enable a trial
 - b. advise Cabinet you are satisfied the trial requirements *can* be met in time for a trial in 2016 *provided* certain conditions are met, and seek Cabinet agreement to enable a trial, subject to those conditions. Conditions could include matters such as certain security exercises yielding positive results. Possible security exercises include 'red teaming'³ and a public bug bounty⁴.
 - c. advise Cabinet you are *not* satisfied that requirements can be met in time for a trial in 2016 and that the trial should not proceed.
16. As discussed above, we do not believe there is sufficient evidence to justify a high level of confidence that the trial requirements, and the requirements of the Local Electoral Act 2001 in terms of maintaining public confidence in the integrity of the local election system, would be met if a trial at the October 2016 elections is enabled. While further evidence would be possible under option (b), the limited time before authorising regulations would need to be promulgated and the importance of early certainty about this issue, lead us to conclude that option (b) is not a practicable option at this late stage. Our recommendation is therefore that you do not seek Cabinet agreement to authorise a trial of online voting at the 2016 elections.
17. If online voting is not to be trialled at the 2016 elections, there are a number of options concerning further work and consideration of online voting issues. Not all would necessarily require Cabinet decisions at this time. You could:
 - (i) invite councils to continue to work with DIA to demonstrate compliance with trial requirements for a trial in 2019 and/or in by-elections in 2017 or 2018; or
 - (ii) direct DIA officials to engage with councils, election service providers, LGNZ, and SOLGM on the future of local electoral systems and processes, including the future possibility of a trial of online voting; or

³ Red Teaming is a process designed to detect network and system vulnerabilities and test security by taking an attacker-like approach and modelling the actions of an adversary.

⁴ A bug bounty is a testing process that involves offering a reward for finding and reporting a bug in a particular software product. Many IT companies (including Google, Microsoft and Facebook) offer bug bounties to drive product improvement and get more practical feedback (particularly in relation to exploits and vulnerabilities) from end users and clients do the nature of the incentives involved.

- (iii) leave the local government sector to determine how it wishes to proceed in light of the decision that a trial of online voting at the 2016 local elections will not be authorised.

Moving forward, key considerations are the need to promote market certainty and the need to take into account the strategic landscape of local elections

Desirability of building on investment and experience to date and promote market certainty

- 18. Because the running of local elections is largely out-sourced to *Electionz.com* and *Election Services*⁵, the election service providers are important stakeholders in the local electoral system. An important consideration in terms of assessing the options for moving forward is to promote investment certainty for these companies.

- 19. **Withheld under section 9(2)(f)(iv) of the Act**

- 20.

The need to take into account the strategic landscape of local elections

- 21. The sector has been requesting the possibility of online voting for local elections because of increasing expectations from their communities for the digitization of services. This is a trend internationally.⁶ Accessibility will become an increasingly important area of upcoming work in the local elections space.
- 22. However, the reality of efforts to respond to the promulgated requirements and prepare for a trial is that this has been largely left to the eight candidate councils and their service providers. There has been little leadership, coordination or active support from the sector organisations or the sector as a whole. As noted above, this has left a gap in the socialisation of the concept of online voting, and it may have precluded opportunities for a more effective cooperative approach to other aspects of the preparation of the trial.
- 23. Option (i) in paragraph 17 would be likely to continue the current fragmented approach and would not provide an opportunity or incentive for the sector to consider online voting in the context of the future evolution of local electoral arrangements. Options (ii) and (iii) in paragraph 17 would both provide that opportunity, but are less preferable for achieving market certainty and building on effort and investment to date. The choice between (ii) and (iii) will be largely dependent on the extent that the Government wants to be seen as taking leadership in strategic work on local electoral issues.
- 24. The Department prefers option (ii), because we consider a degree of visible leadership will enable Government to influence the agenda, maintain momentum, and ensure coherence and consistency with the modernisation of public services generally.

Next steps

- 25. A Cabinet decision on whether a trial will be enabled in the 2016 local elections is needed as early as possible to provide the sector certainty of process as it has begun gearing up for

⁵ These two companies provide elections services to nearly 90 percent of local authorities.

⁶ For example, Ian Brightwell, the incumbent Chief Information officer at the New South Wales Electoral Commission and vocal advocate for e-voting has said that governments will be harshly judged if they don't do anything about digital transformation, worse than if they do something and have problems along the way.

the elections. A report-back to Cabinet will be expected regardless of whether you decide you are satisfied the trial requirements have been met. We have previously provided you a timeline for this work which would see Cabinet consideration on 11 April 2016. In accordance with that timeline, if you wish to seek Cabinet approval to enable a trial in 2016, we will provide you a draft Cabinet paper on 18 March 2016, which would mean a constrained agency consultation process but would allow time for ministerial consultation.

26. If you wish to report back that you are not satisfied the trial requirements have been met, we instead propose the timeline provided in the table below. This would see us providing you a draft Cabinet paper on 25 March 2016, enabling us to consult with other agencies. This timeline would still allow for a Cabinet decision before the two-week parliamentary recess at the end of April 2016.

Action	Timeline (2016)
Draft EGI paper provided to Minister	25 Mar
Ministerial and agency consultation	28 Mar – 1 Apr
Minister provides feedback, including final decision on whether to proceed to seek agreement to enable a trial	4 Apr
Final EGI paper provided to Minister	5 Apr
EGI paper lodged with Cabinet office	7 Apr
EGI Committee agrees not to enable a trial in the 2016 local elections	13 Apr
Cabinet agrees to not enable a trial in the 2016 local elections	18 Apr

We will need to prepare a communications strategy to manage public reactions

27. The announcement of a decision not to allow a trial of online voting in 2016 is likely to evoke disappointment, criticism and possibly anger from the eight councils and service providers who have made significant efforts and investments to enable this to happen. A wide range of reactions is likely from other stakeholders and interest groups. A carefully crafted communications strategy will be necessary to manage these risks.
28. We will provide proposed draft communications for your consideration, along with a draft Cabinet paper, that reflect your decisions in response to this report.
29. We would welcome the opportunity to discuss the advice in this paper with you.

Recommendations

30. We recommend that you:
- a. note that although significant progress has been made towards a trial of online voting,
 - i. this progress is not enough to be able to confirm that the trial requirements can be met in time for a trial in 2016; and
 - ii. there is no further opportunity for councils to demonstrate they can meet the trial requirements in time for regulations to be made for a trial in the 2016 local elections;

- b) **note** that options for your advice to Cabinet include to:
- i. advise Cabinet you are satisfied the trial requirements *can* be met in time for a trial in 2016 and seek Cabinet agreement to enable a trial; OR
 - ii. advise Cabinet you are satisfied the trial requirements *can* be met in time for a trial in 2016 *provided* certain conditions are met, and seek Cabinet agreement to enable a trial, subject to those conditions. Conditions could include positive results from security exercises (e.g. 'red teaming' and a public bug bounty); OR
 - iii. advise Cabinet you are *not* satisfied that requirements can be met in time for a trial in 2016 and that the trial should not proceed.
- c) **agree** to proceed with option iii in recommendation b) above i.e. that the trial should not proceed; **Yes/No**
- d) **agree** to also advise Cabinet that you wish to: EITHER
- i. invite councils to continue to work with DIA to demonstrate compliance with trial requirements for a trial in 2019 and/or in by-elections in 2017 or 2018; OR **Yes/No**
 - ii. direct DIA officials to engage with councils, election service providers, LGNZ, and SOLGM on the future of local electoral systems and processes, including the future possibility of a trial of online voting (**preferred option**); OR **Yes/No**
 - iii. leave the local government sector to determine how it wishes to proceed in light of the decision that a trial of online voting at the 2016 local elections will not be authorised; **Yes/No**
- e) **agree** that a draft Cabinet paper be provided to you on 25 March 2015, in accordance with the revised timeline provided at paragraph 28 of this briefing. **Yes/No**

Jo Gascoigne
Policy Manager

Hon Louise Upston
Associate Minister of Local Government

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