
Response to Easter Sunday trading legislation

File No.: CP2017/03933

Purpose

1. To seek approval for community engagement to inform a decision on whether or not council should expand shop trading in Auckland on Easter Sunday from 2018.

Executive summary

2. The Shop Trading Amendment Act 2016 (the Act) came into force in August 2016.
3. Under the Act councils can now adopt a policy to allow shops in all or parts of their district to trade on Easter Sunday. Currently only some shops can legally trade on Easter Sunday.
4. Since August 2016, council has been approached by Foodstuffs, Progressive Enterprises and individuals asking about council's response to expand Easter Sunday trading.
5. Staff have identified three possible responses:
 - option one: undertake community engagement to help inform councils decision on whether to retain the status quo or allow shops in all or parts of Auckland to open on Easter Sunday
 - option two: decline to adopt a policy and retain the status quo where only shops currently able to trade on Easter Sunday will continue to be able to do so
 - option three: request the preparation of a statement of proposal containing a policy to allow all shops in Auckland to trade on Easter Sunday from 2018.
6. There are no options that allow for a decision for Easter 2017.
7. Staff recommend option one (community engagement). This option provides a fair process by allowing Aucklanders views to inform decision making. The trade-off between this option and options 2 and 3 is a longer decision making process and less certain outcome in the short term. Like options two and three a decision will be made in time for Easter 2018.
8. If option one is approved, staff will:
 - commence community engagement starting in April 2017
 - report the findings to the Governing Body by August 2017 for a decision on whether or not to retain the status quo or adopt a policy
 - if the Governing Body decides to pursue a policy a proposed policy would be adopted by October 2017 for public notification
 - special consultative procedure undertaken by December 2017
 - final decision by February 2018.

Recommendation/s

That the Governing Body:

Option one

- a) approve community engagement on whether to:
 - i) retain the status quo so that only shops currently able to trade on Easter Sunday will continue to be able to do so, or
 - ii) adopt a policy that will allow shops in all or parts of Auckland to trade on Easter Sunday from 2018.

OR

Option two

- a) decline to adopt a policy and retain the status quo where only shops currently able to trade on Easter Sunday will continue to be able to do so.
- b) review the decision in (a) no later than 5 years after the date of the decision (by 30 March 2022).

OR

Option three

- a) request the preparation of a statement of proposal containing a policy to allow all shops in Auckland to trade on Easter Sunday from 2018 for Governing Body approval no later than 30 June 2017 for the purposes of public consultation.

Comments

Certain shops are already allowed to trade on Easter Sunday

9. Under the Shop Trading Hours Act 1990 only certain shops or shops in certain areas have exemptions that allow them to trade on Easter Sunday¹. Shops legally allowed to trade on Easter Sunday include:
 - service stations
 - dairies
 - pharmacies
 - restaurants and cafes
 - take away food shops
 - duty free stores
 - garden centres
 - shops at public transport stations or at shows or exhibitions
 - certain services (e.g. hairdressers, video rental and real estate agencies).
10. A historic exemption issued in 1989 also allows shops in Parnell Road in Auckland to trade on Easter Sunday².
11. The occupier³ of a shop not allowed to trade could be liable for a fine of up to \$1000 for trading on Easter Sunday.
12. The labour inspectorate of the Ministry for Business and Employment (MBIE) is the enforcement agent.
13. Easter Sunday is not a public holiday. Employees are not entitled to be paid time and a half or to an alternate paid day off.

Legislation now allows councils to develop a policy to allow for Easter Sunday shop trading

14. The Shop Trading Amendment Act 2016 (the Act) came into force in August last year. It enables councils to adopt a policy to allow trading on Easter Sunday in all or parts of their district. It also sets out the following parameters:
 - all shop workers have the right to refuse to work on Easter Sunday, and can bring a personal grievance if they are compelled to work or treated adversely for refusing to work
 - councils cannot decide shop trading hours, liquor licensing parameters, and the types of shops that can open

¹ There are three and a half days a year when shops can't open: Good Friday, Easter Sunday, Christmas Day, and Anzac Day (till 1pm).

² Parnell Road holds a historic exemption granted under Section 18(2) the Shop Trading Hours Act (1977) which (as with other exemptions by area) while not included within the Act or regulations is deemed valid under the Act.

³ The occupier of a shop includes any agent, manager, supervisor, person acting or apparently acting in control of the shop.

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- councils cannot require shops to open, this is the choice of each business
 - councils must use the special consultative procedure under the Local Government Act 2002 to adopt, review or revoke a policy
 - a council's Easter Sunday trading policy must be reviewed five years after it was created
 - the full council must decide to adopt a policy.

The Act is about fairness and enabling community decisions on Easter Sunday trading

15. Government's key rationale for the Act was to:
- address an unfair advantage for some regions and businesses via exemptions that exist for some tourist areas but not others⁴
 - address Easter Sunday trading exemptions that were out of date
 - enable increased community choice and transparency about decisions on Easter Sunday trading
 - remove the prescriptive nature of existing Easter Sunday trading exemptions as to the types of trading that can occur
 - allow regions with a high demand for Easter Sunday trading to meet this demand.

Decisions on Easter Sunday trading could be controversial and draw a range of reactions

16. Decisions on whether or not to develop a policy are likely to be more controversial than the content of a policy. Previous proposals to change Easter Sunday trading rules at the national level have drawn opposing stakeholder views including from religious groups, trade unions and communities.
17. Submissions received by MBIE on the Act's amendment provide an indication of stakeholder views. Of the 107 submissions, 26 were in support the Bill 81 were opposed. Attachment A summarises the key views and MBIE's responses.
18. Since August 2016, Foodstuffs, Progressive Enterprises and three individuals have asked about council's approach to Easter Sunday trading. The response has been that council is still considering its response to the Act and it is unlikely that decisions will occur before Easter 2017.

Smaller councils are progressing policies with larger councils taking longer to decide

19. Data from a recent Christchurch City Council survey of 40 councils' on their responses to the Act show that:
- 33 per cent are developing a policy for Easter 2017
 - 18 per cent are planning to develop a policy in 2018
 - 38 per cent are undecided as to any response to the Act
 - 11 per cent do not intend to develop a policy.
20. Of the other two largest councils – Christchurch has not confirmed its intention to develop an Easter Sunday trading policy or otherwise. Wellington has indicated that it will consult with retailers later in 2017.
21. The policy where adopted by the councils has been a simple statement confirming that shops can trade on Easter Sunday.

⁴ Some tourist locations like Queenstown and Taupo hold exemptions to trade on restricted days, others e.g. Wanaka and Rotorua did not.

Decisions on Easter Sunday trading align with council's strategic objectives

22. Decisions on Easter Sunday trading may impact positively or negatively on council's strategic objectives. Attachment 2 shows the alignment and impact of any decision on council's strategic plans and objectives. For example, a decision not to expand shop trading could support councils' social, cultural and recreational priorities, but may prevent accrual of potential economic benefits through increased revenue and wages.

Staff have identified three options for responding to the Act

23. The three options staff have identified for responding to the Act are as follows:
- option one - undertake community engagement on whether to:
 - retain the status quo - so that only shops currently able to trade on Easter Sunday will continue to be able to do so
 - adopt a policy that will allow shops in all or parts of Auckland to trade on Easter Sunday from 2018.
 - option two - decline to adopt a policy and retain the status quo where shops currently able to trade on Easter Sunday will continue to be able to do so
 - option three - prepare a statement of proposal containing a policy to allow Easter all shops in Auckland to trade on Easter Sunday from 2018 for Governing Body approval no later than 30 June 2017 for the purposes of public consultation.
24. The sub-option for shops to open only in parts of Auckland is allowable under the Act. Following preliminary assessment staff do not recommend this option be considered if option 3 is approved. This is because:
- enabling shops in some parts of Auckland to trade on Easter Sunday would create unfair advantages for these shops / disadvantages for others
 - complicates the choices available to Aucklanders in relation decisions on Easter Sunday trading
 - reduces clarity for Aucklanders and visitors/tourists as to where shops can trade on Easter.
25. This preliminary assessment meets the legislative requirements under the Local Government Act 2002 and mitigates the risk of judicial review. Our analysis in relation to this sub-option will be covered in any statement of proposal.

Options analysis: pros, cons, risks, and implementation

26. An analysis of the pros, cons, risks and implementation of all three options has been undertaken and is contained in Attachment C.

Summary of options against key criteria

27. Staff have assessed the three options using four criteria. A comparative analysis is summarized in Table 1 and the paragraphs below.

Table 1: Easter Sunday shop trading - Decision making matrix

(Higher score indicates more positive ranking: 1-low, 2-medium, 3-high)

| Decision making matrix / criteria | Option one | Option two | Option three |
|-----------------------------------|------------|------------|--------------|
| Alignment to the Act | 3 | 1 | 2 |
| Community engagement | 3 | 1 | 2 |
| Alignment to strategic objectives | 3 | 1 | 2 |
| Cost impact (quantum) | 1 | 3 | 2 |
| Score | 10 | 6 | 8 |

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28. Option one - to undertake 'community engagement' will:
- enable greater engagement with Māori, Pacific, diverse and hard to reach communities – balancing these views with the views of businesses
 - demonstrate a proactive approach where council is acting in line with the intent of the Act and its strategic plans and objectives
 - ensure the strongest evidence base for decision making and help mitigate potential criticism with regards to any decision.
29. Option two - to 'retain the status quo' provides earlier clarity on council's response to Easter Sunday trading and is the lowest cost option. However, it also has the following disadvantages:
- is likely to expose council to criticism as it does not support the intent of the Act as it does not allow for community decision making and addressing perceived unfairness in regards to Easter Sunday trading in Auckland
 - is likely to be criticised by those who support Easter Sunday trading
 - is likely to be criticised for not enabling potential benefits associated with an additional day of shop trading in line with council's economic priorities
 - does not have strong evidence base behind decision being made.
30. Option three - to 'undertake the special consultative procedure on a policy:
- does not give Aucklanders the option to influence whether or not a policy should be considered
 - presents a risk that the views of Māori, Pacific, diverse and hard to reach communities may not adequately captured via the special consultative procedure. Therefore the views of businesses may appear more dominant, and the outcome predetermined
 - could be criticised as insufficient in terms of the length and breadth on consultation especially in light of the wide range of views on the matter and related impacts.

Option one ranks highest in the assessment and is the staff recommended option

31. Staff recommend Option one (community engagement) as the highest positive ranking option against the assessment criteria. This option provides a fair process by allowing Aucklanders views to inform decision making, particularly from hard to reach populations and precarious workers.
32. The trade-off between this option and options 2 and 3 is a longer decision making process and less certain outcome in the short term. Like options two and three a decision will be made in time for Easter 2018.
33. There are no options that allow for a decision for Easter 2017.

Consideration

Local board views and implications

34. If option one is approved this will provide the greatest opportunity for local board input as views can be sought on whether or not a policy should be adopted.
35. Option two does not enable Local boards to input to the decision.
36. Option three would limit the Local boards to providing formal feedback on the proposed policy during public consultation. Care will be needed to effectively communicate the rationale for decisions to Local boards.

Māori impact statement

37. Decisions on Easter Sunday trading are relevant to cultural, social and economic outcomes for Māori in Auckland. In particular:
- the Auckland Plan: creating a relationship where Māori are fully engaged in decisions concerning matters of significance to them
 - the Māori Plan:
 - Whakawhanaungatanga - Develop vibrant communities: “A city/region that caters for diverse Māori lifestyles and experiences.”
 - Rangatiratanga - Enhance leadership and participation “People engaged in their communities’ (Attachment B refers).
38. MBIE data from December 2016 show that a high proportion of Māori workers are employed in wholesale and retail (Attachment D refers). An Easter Sunday trading policy or otherwise could therefore impact a relatively significant number of Māori workers.
39. Staff will work with Ngā Waka Angamua to determine effective mechanisms for engaging with Mana Whenua and Mataawaka to seek their views on any policy.
40. The Citizen Value and Engagement Team will help determine a range of engagement channels acknowledging that some Māori stakeholders may be hard to reach.

Implementation

41. Next steps for implementation (Attachment C refers) will depend on the decision made by the Governing Body. Of the three options presented, staff will either:
- for option one: undertake community engagement, and report the findings to the Governing Body by August 2017 for a decision on whether or not to retain the status quo or adopt a policy. A proposed policy (if required) would be adopted by the Governing Body for the purposes of public consultation by October 2017. The public consultation period would be undertaken by December 2017 with a final decision by February 2018
 - for option two: launch a communications strategy advising the public of the decision to retain the status quo
 - for option three: develop a statement of proposal including a policy by June 2017 and undertake the special consultative procedure with a final decision by the Governing Body in October 2017.
42. All options for policy development can be implemented within current resourcing and budgets.
43. As enforcement of the Act sits with MBIE there are no operational impacts on council from this decision.

Attachments

| No. | Title | Page |
|-----|--|------|
| A | Summary of Stakeholder Views via MBIE consultation on the amendment to the Shop Trading Act 1990 | |
| B | Easter Sunday Trading - Alignment to Auckland Council Plan and Objectives | |
| C | Response to Easter Sunday trading - options analysis | |
| D | MBIE Māori and Pacific employment data by sector December 2016 | |

Signatories

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|-------------|--|
| Authors | Pania Elliot - Principal Policy Analyst |
| Authorisers | Kataraina Maki - GM - Community & Social Policy Jim Quinn - Chief of Strategy Stephen Town - Chief Executive |

Attachment A: Summary of stakeholder views via MBIE consultation on the amendment to the Shop Trading Act 1990

| Key submissions made | MBIEs response |
|--|---|
| Importance of Easter Sunday as time away from work | The Bill recognises the prerogative of shop employees to observe Easter Sunday and not work if they so choose by providing them the ability to refuse to work on Easter Sunday without providing a reason |
| Little economic advantage or significant impact on tourism | The Bill recognises the importance of tourism related trade and other trade to local economies on Easter Sunday, and enables territorial authorities to decide, taking into account their regional needs, whether to allow shops to trade in all or parts of their district |
| Concern about Bill extending shop trading to other restricted trading days | The Bill's scope is for Easter Sunday only, and no changes are proposed for the other restricted trading days. Easter Sunday is treated differently than other restricted trading days because, unlike those days, Easter Sunday is not a public holiday |
| Misconception that Easter Sunday is a public holiday | Easter Sunday is not a public holiday and not a guaranteed paid day off work |
| Need to maintain consistent approach with other countries | Countries take a variety of responses to trading on Easter Sunday, with some not taking a nationwide approach but rather a state-by-state approach. The international experience therefore offers no guidance to how New Zealand should deal with the matter. |

Attachment B: Easter Sunday Trading – Alignment to Auckland Council’s Strategic Objectives

| Plan | Objective | Alignment/Impact |
|--|--|--|
| Auckland Plan: Auckland’s people | <ul style="list-style-type: none"> • be a fair and inclusive city, and an accessible and well-connected city • Strengthen communities. | Decisions related to Easter Sunday trading will impact Auckland’s people as well as businesses. Decisions may be seen by Auckland’s diverse communities as producing economic benefit or impacting on opportunities for social, family leisure, cultural or religious activity. |
| Auckland’s Māori | <ul style="list-style-type: none"> • creating a relationship where Māori are fully engaged in decisions concerning matters of significance to them • making smarter decisions about how best to support Māori aspirations • forming sustainable partnerships with Māori that have mutually beneficial, Auckland-wide outcomes | A relatively high proportion of Māori work in retail. This may be seen as either a positive or a negative thing by Māori employees and business owners. Auckland council has a commitment and an obligation to meaningful engagement with Māori on such decisions. Māori may be concerned that any decision relating to Easter Sunday trading may impact on whānau, leisure and cultural activities. |
| Auckland’s Economy | <ul style="list-style-type: none"> • Grow a business-friendly and well-functioning city. • Develop a creative, vibrant international city. | Provides increased opportunities for retailers to trade and generate revenue. Provides employees with more opportunities to engage in paid work. Provides more opportunities for consumers including international visitors to engage in retail activity. |
| Auckland’s Recreation and Sport | <ul style="list-style-type: none"> • Promote individual and community wellbeing through participation and excellence in recreation and sport. | Retaining the status quo could maintain opportunities for Aucklanders’ participation in sport and recreation with continued benefits to wellbeing (e.g. retail workers will have an additional day off to engage in sport and recreation). Expanding Easter Sunday trading may reduce Aucklanders’ engagement in recreation and sport. |
| Auckland Council Performance Plan | <ul style="list-style-type: none"> • Focus area 1: Engaging and enabling communities. Data show Aucklanders have low levels of trust in council. | Engagement with Aucklanders on decision making in regards to a policy or retaining the status quo is important in contributing to Council’s performance in regarding to engaging and enabling communities and increasing trust in council. |

| Plan | Objective | Alignment/Impact |
|-----------------------|--|--|
| The Māori Plan | <ul style="list-style-type: none"> • Whakawhanaungatanga - Develop vibrant communities: “A city/region that caters for diverse Māori lifestyles and experiences.” • Rangatiratanga - Enhance leadership and participation “People engaged in their communities’ • Manaakitanga - Improve Quality of life “Satisfaction with our environments and standard of living.” • Kaitiakitanga - Ensure Sustainable Futures “Intergenerational reciprocity” | <p>Decisions on Easter Sunday trading may have social, cultural and economic impacts on Māori. As Treaty of Waitangi partners council has both an obligation and commitment to seek the views of Māori on Easter Sunday trading.</p> |

Attachment C: Response to Easter Sunday trading - options analysis

Criteria

The following criteria are used to analyse the options:

| Criterion | Description |
|-----------------------------------|---|
| Alignment to the Act | How well the option aligns with the statutory requirements and intent of the Shop Trading Amendment Act 2016. |
| Community engagement | How well the option provides for community engagement to inform decision making. |
| Alignment to strategic objectives | How well the option aligns with council's strategic objectives. |
| Cost impact (quantum) | Cost associated with option (e.g. engagement, consultation, communication) |

Scoring

A 1, 2 and 3 points system is used to for each of the assessment criteria. The points allocated for any one option is relative to the other two options. The points are totalled to identify the highest scoring (recommended) option.

Options and analysis

| Option one: 'approve community engagement on status quo or a policy' | Option two: 'retain the status quo' | Option three: request the preparation of a statement of proposal containing a policy for Easter trading from 2018' |
|--|---|---|
| Pros | Pros | Pros |
| <ul style="list-style-type: none"> • alignment with the Act - complies with intent of the Act to seek community views, more so than option 3 because helps decide whether or not to adopt a policy • community engagement – provides for community engagement on the whether or not to adopt a policy • alignment with strategic objectives - <ul style="list-style-type: none"> ○ aligns with building Aucklanders' trust in council. ○ enables capture of representative views e.g. Māori, Pacific , diverse, hard to reach groups ○ enables strengthened evidence base for decisions. | <ul style="list-style-type: none"> • alignment with the Act – complies with the Act because council is not required to have an Easter Sunday trading policy, but arguably not the Act's intent because it does not seek community views on the issue • alignment to strategic objectives - continued economic benefits for some businesses and workers <ul style="list-style-type: none"> ○ continued social and cultural benefits for some workers through retaining a day off work • cost - least cost option limited to communication of decision. Can be budgeted within existing baselines. • other - provides earlier clarity on Easter Sunday trading • no raised expectations. | <ul style="list-style-type: none"> • alignment to the Act <ul style="list-style-type: none"> ○ complies with the intent of Act to seek community views because it uses the special consultative procedure, but presumes a policy should be adopted ○ a policy (if any) would address the perceived problem of unfairness • council may be able to announce a decision sooner than for option one giving Aucklanders greater certainty earlier on • alignment to strategic objectives - there are likely to be positive economic impacts associated with Easter Sunday shop trading e.g. through revenue and wages • provides greater choice for Aucklanders, visitors/tourists. • cost – lower compared to option 1 as only for special consultative procedure. Can be budgeted within existing baselines. |
| Cons | Cons | Cons |
| <ul style="list-style-type: none"> • other - length of time to make a decision by using a two-step community engagement process • costs - additional cost of two-step community engagement process. | <ul style="list-style-type: none"> • other - uncertainty about when council may revisit its decision on Easter Sunday trading • alignment to strategic objectives - negative views from business and employees on missed opportunities for increased revenue and wages. | <ul style="list-style-type: none"> • other - negative views that Aucklanders are not given the option to influence whether or not a policy should be considered. |

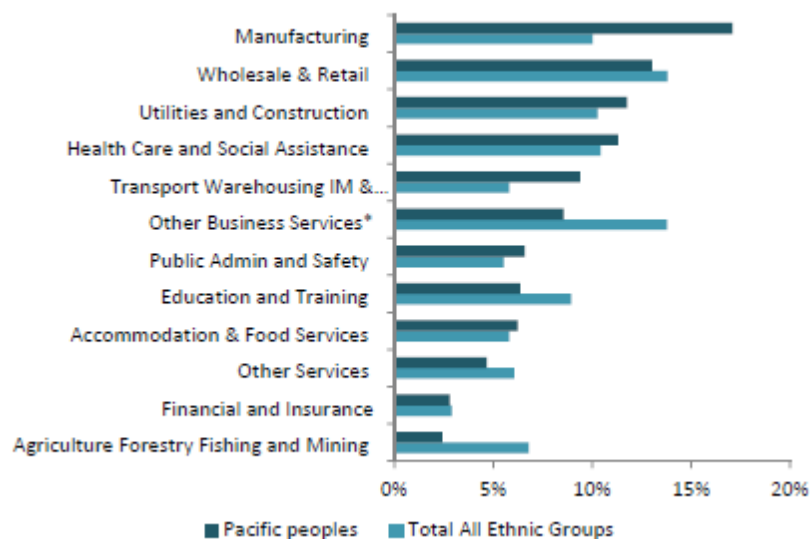
| Option one: 'approve community engagement on status quo or a policy' | Option two: 'retain the status quo' | Option three: request the preparation of a statement of proposal containing a policy for Easter trading from 2018' |
|---|---|---|
| Risks | Risks | Risks |
| <ul style="list-style-type: none"> • reputational risk <ul style="list-style-type: none"> ○ council could be criticised for taking too long to respond to the Act (applies to all options) | <ul style="list-style-type: none"> • reputational risk <ul style="list-style-type: none"> ○ council may be criticised for not seeking Aucklanders' views on Easter Sunday trading and making decisions without a sufficient evidence base ○ council may be criticised for not enabling a policy that aligns with strategic objectives e.g. via associated economic benefits of a policy ○ council may be criticised that the perceived problem of unfairness remains (e.g. only some businesses able to trade on Easter Sunday). | <ul style="list-style-type: none"> • reputational risk <ul style="list-style-type: none"> ○ council may be criticised for putting forward a policy without asking the views of Aucklanders on whether or not to have a policy and without a sufficient evidence base for a decision e.g. by not undertaking community engagement ○ less ability to gather representative views of Māori, Pacific, diverse, hard to reach groups via the special consultative procedure ○ the views of businesses may be overrepresented in comparison to the views of workers or other Aucklanders due to the less comprehensive nature of the special consultative procedure. |
| Risk Mitigation | Risk Mitigation | Risk Mitigation |
| <ul style="list-style-type: none"> • council can make practice key messages that: <ul style="list-style-type: none"> ○ use low cost, accessible, consultation channels including social media where possible ○ community engagement enables decisions to be informed by more Aucklanders including more Māori and Pacific people ○ other large cities - Wellington and Christchurch are not proposing policies for Easter 2017. This reflects the time needed by larger centres to properly respond to the legislative change. | <ul style="list-style-type: none"> • council can make a statement about when it intends to reconsider the issue (e.g. 5 years which is the same review date if it had adopted a policy) • statement released as to why the decision has been made highlighting that council has chosen to retain the social, cultural and recreational benefits of the status quo. | <ul style="list-style-type: none"> • use low cost, accessible, consultation channels including social media where possible • the special consultative procedure meets the minimum statutory requirement for consultation. |

Implementation – Process and timing

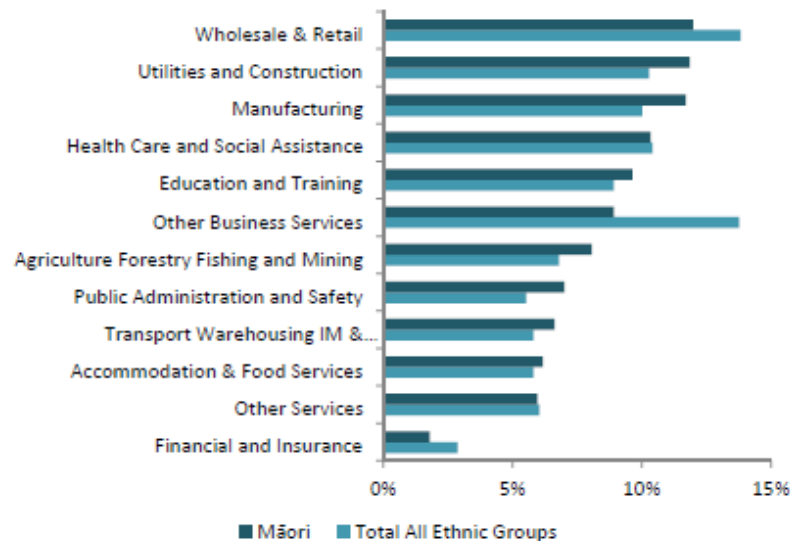
| Option one: Implementation | Option two: Implementation | Option three: Implementation |
|---|---|--|
| <ul style="list-style-type: none"> • April - July 2017 - Community engagement • August 2017 - Findings of engagement reported to Governing Body for a decision on whether to adopt a policy • If status quo – see option two • If policy: <ul style="list-style-type: none"> ○ October 2017 - Statement of proposal including a policy prepared and approved by Governing Body ○ November - December 2017 - Public consultation ○ February 2018 - Governing Body deliberation and decision. | <ul style="list-style-type: none"> • April 2017 - Roll out communications package that informs Aucklanders that the decision has been made to retain the status quo. | <ul style="list-style-type: none"> • April 2017 - Research and preparation of statement of proposal including a policy • June 2017 - Governing Body approves the statement of proposal including the policy • July - August 2017 Public submission period (4 weeks) • October 2017 - Governing Body deliberation and decision. |

Attachment D: MBIE Māori and Pacific employment data by sector December 2016

Pacific peoples employment share by industry, Dec 2016



Māori employment by industry, Dec-2016



Source: MBIE - Information and services > Employment and skills, Labour market reports, Māori labour market trends, Māori in the labour market - fact sheets, December 2016.