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PLANNING FOR MAORI LAND

IN THE BAY OF PLENTY

A Thesis Presented in
Fulfilment of the Requirements
for the Degree of
Master of Philosophy
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ABSTRACT

A recent publication by the New Zealand Maori Council expressed a "need" for separate planning controls for Maori land. This work sets out to determine whether legislative change to provide for separate controls is in fact justified.

The relationship of the Maori people and their culture and traditions with their ancestral land, means that firstly, marae and urupa are of paramount importance to the Maori people and that their establishment and further development is energetically pursued; and secondly, that there is a strong desire to establish housing in conjunction with the marae complex in order to fulfil the traditional concept of "ahi ka".

As working manifestations of the existing planning legislation, district scheme controls in the coastal Bay of Plenty are investigated and their adequacy in catering for the abovementioned relationship and its implications, determined.

Marae and urupa are the subject of different special or single purpose planning provisions in the Whakatane District and Tauranga County district schemes. These provisions operate to ultimately permit the establishment and further development of marae and urupa and to permit the development of housing around the marae complex to a level that has satisfied the local communities.

Maori land not associated with a marae or urupa is largely zoned for "rural" purposes, but there is no evidence to suggest that the land is used differently to general land, or that there is a desire to alter this situation.

It is concluded therefore that the existing planning legislation can satisfactorily provide for the needs and desires of the Maori people. Extensive legislative change is therefore unnecessary.

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CHAPTER I

INTRODUCTION

1.1

OBJECTIVE

A recent discussion paper circulated by the New Zealand Maori Council (titled "Kaupapa")¹ calls for separate planning controls for Maori land. This is not the first time such a plea has been made² but this most recent thrust has come at a time when Maori interests and grievances enjoy both a high media profile and considerable political interest, and during a resurgence of interest in Maori culture by the Maori people.

Under the existing planning legislation, a precedent has been set in that Section 3(1)(g) of the Town and Country Planning Act 1977 states that : "The relationship of the Maori people and their culture and traditions with their ancestral land" must be recognised and provided for in the preparation, implementation and administration of regional, district and maritime planning schemes. Thus, while acknowledging the existence of other cultural identities within New Zealand, the Act points out that a particular culture - the Maori culture - must be taken into consideration when assessing uses associated with Maori ancestral land.

This point is emphasised by the Planning Tribunal in *Knuckey v Taranaki County Council*³.

"Section 3(1)(g) has grouped a certain social and cultural tradition in a category of its own and has established an overriding matter of national importance"

Current planning legislation therefore provides for - to an unknown and unspecified degree - the recognition of the relationship of the Maori people and their culture and traditions with their ancestral land. Consequently, before the issue of separate planning controls is addressed, the limits of the current controls need to be assessed. This thesis is an attempt to determine these limits in terms of district scheme planning for rural land and to ultimately determine whether legislative change to provide for separate controls is justified.

1.2

SPECIFIC AIMS

It is apparent that the Maori people enjoy a "special relationship" with their ancestral lands. Essentially this relationship means that land is seen in terms other than its commercial worth - thus land provides social and cultural as well as economic nourishment. Maori land is also different from general land in that the bulk of it is multiply owned - a direct consequence of a European interpretation of a Maori tradition.

The implications of this relationship for landuse planning and the manner in which this relationship may be provided for by local authorities provides a test of the adequacy of the Town and Country Planning Act 1977. This thesis attempts to determine therefore :

- i The physical and social manifestations of the relationship; and

ii The manner in which these have been provided for in district scheme planning and the adequacy of such provision;

- in order to determine whether legislative change is required.

This is achieved by examining the effect of the relationship and district scheme provisions relating to :

- a Specific culturally and socially important rural locations -
Waahi Tapu; and
- b Rural Maori land in general - in the coastal Bay of Plenty area (ie, Whakatane District and Tauranga County).

1.3

OUTLINE

Chapter Two provides a background to the concept of planning for Maori land. It details the existing planning legislation as it relates to Maori land and the nature of the relationship between the Maori people and their ancestral lands. The landuse implications of this relationship are then determined.

Chapter Three sets out the physical, cultural and social nature of Tauranga County and Whakatane District. Both of these areas are examined in detail and the extent and significance of Maori land and the Maori population are determined.

Chapter Four examines current district scheme provisions for Waahi Tapu or sacred places, particularly marae and urupa. The operation and effect of these provisions is detailed and they are evaluated in terms of how they cater for the relationship between the Maori and their lands.

Chapter Five examines current district scheme provisions for "general" Maori ancestral land. In light of the Maori peoples' relationship with their lands, the adequacy of these provisions is investigated.

Chapter Six sets out the conclusions that are drawn from the evaluation of current planning practice in the preceding chapters and frames these conclusions in terms of the specific aims expressed herein.

CHAPTER I FOOTNOTES

- 1 New Zealand Maori Council. (1983) : Kaupapa Te Wahanga Tuataki.
- 2 The aspirations of the Matakite o Aotearoa movement in 1975 for example, suggested similar actions.
- 3 1978 : 6 NZTPA 609

CHAPTER II

CONCEPTUAL BASE

2.1 LEGISLATION

2.1.1 THE STATUTE

In the planning context legislative recognition of the relationship between the Maori people and their lands is relatively recent, only coming about with the revision of the Town and Country Planning Act 1953 and its replacement by the Town and Country Planning Act 1977.

While the 1953 Act did make reference to the social wellbeing of the population¹ it contained no specific reference to the aforementioned relationship with the result that this aspect was more often than not overlooked in district planning schemes. As a consequence, the 1953 Act was seen to offer little to the Maori landowner² and in fact, many Maori groups were dissatisfied with this statute. The New Zealand Maori Council expressed their dissatisfaction to the Select Committee on Town and Country Planning in 1977. They stated that :

"The existing statute has for far too long been a matter of grave concern and serious and continuing strife for the Maori race. Some of the effects of the existing statute have been very poor communications; lack of real participation, cumbersome machinery, incomprehensible district schemes, lack of clear objectives and policies lack of provision and protection for maraes (and) traditional and cultural usages of historic places"³.

A direct consequence of this and the 46 other substantive submissions⁴ made by the New Zealand Maori Council however, was the inclusion of new and improved provisions relating to Maori land and culture in the new Town and Country Planning Act 1977.⁵

The Town and Country Planning Act 1977 operates in three ways to recognise and provide for Maori interests and values.

In the first instance, it defines by statute an overriding national philosophy on landuse and Maori culture and traditions. Section 3(1) specifies seven matters deemed to be of national importance which must be recognised and provided for in the preparation implementation and administration of district schemes. Clause (1)(g) specified that

"The relationship of the Maori people and their culture and traditions with their ancestral lands" is one such matter of national importance.

Secondly it provides for Maori interests and values by listing specifically certain aspects which must be addressed in district schemes. The Second Schedule to the Act entitled "Matters To Be Dealt With in District Schemes" requires district schemes to make provision for :

- a Social and spiritual opportunities and amenities appropriate to the needs of the present and future inhabitant of the district including the interest of minority groups; and
- b Marae and ancillary uses, urupa reserves pa and other traditional and cultural Maori uses.

The third means by which the Act operates to cater for Maori values is communication. The regulations to the Act provide additional channels of communication recognising the District Maori Councils as units for the distribution of information to the Maori community at large. Regulations 24(g), 25(g), 32(i)(j) and 34(g), require local authorities to provide the District Maori Councils with copies of prereview statements, proposed reviews and operative district schemes as part of the notification procedures involved in planning.

Apart from the more specific references to the Maori people and minority groups, the Act contains general statements of philosophy that express similar sentiments in a wider sense. Section 4 of the Act for example, specified that the purpose of district planning shall be :

"The wise use and management of the resources and the direction and control of the development of a region, district or area in such a way as will most effectively promote and safeguard the health, safety convenience and the economic cultural, social and general welfare of the people of every part of the district".

These broad provisions are reinforced by the more specific references to Maori interests and values and operate to underscore the wideranging sphere of interest which district planning must encompass.

2.1.2 IMPLICATIONS

Although the Town and Country Planning Act 1977 addresses Maori interests and values in three specific ways, the most significant of these is section 3(1)(g). This represents a national philosophy which must be interpreted in the local context; the implications of which are highlighted in various decisions of the Planning Tribunal. Section 3(1)(g) places a legal obligation on local government to give consideration to the Maori culture when assessing uses associated with Maori land. The tribunal expressed it thus :

"This section in effect states that the cultural environment of the people of New Zealand as a whole is a matter of national importance but that in considering that particular aspect a certain subculture namely that of the Maori people must be placed in a special compartment of its own"⁶.

In *Bridgehouse, Tatere and Others v Dannevirke County Council*, the tribunal stated :

"We apprehend that by enacting Section 3(1)(g) Parliament intended that landuse planning should encourage the Maori people to use their land and that planning should as far as possible remove impediments to their use of land not only for the purposes of daily life, but also so that Maori culture and traditions may be strengthened"⁷.

Clause (1)(g) of Section 3 does not exist in isolation however, and there are six other matters listed in Section 3 which must also be recognised and provided for - with considerable potential for conflict between these matters when applied in a local context. The Planning Tribunal has referred to the requirement to balance these matters on numerous occasions. In *Paatahipa McCready v Marlborough County* :

"It is sufficient for us to decide having regard to this provision is whether or not it (S.3(1)(g)) should be allowed on the facts of this case to override the other provisions of Section 33 and the other matters declared to be of national importance in S.3?

Having given the matter the most earnest consideration we have reached the view that it should not"⁸.

And in *Bridgehouse Tatere and Others v Dannevirke County Council* :

"The effect of Section 3 and 72 is to require that a number of factors be balanced and an overall judgement made. Sometimes one or more factors may be so adverse that consent should be refused on those grounds"⁹.

Mirrelies v Cook County Council provides an example of direct conflict :

"We are accordingly directed to have regard to the relationship of the Maori people and their culture and traditions in respect of that marae. We are however, further directed under 3(1)(c) to prevent sporadic subdivision and urban development in rural areas"¹⁰.

Thus, while there is a legal obligation for the Maori culture and traditions to be recognised by local government, it is recognised only to the extent it is compatible with other national objectives and what is applicable in the local context. It is clear from the aforementioned tribunal decisions that the mere existence of Section 3(1)(g) does not guarantee that Maori interests will be provided for on all occasions.

In a similar manner, the Second Schedule to the Act - by virtue of Section 36(1) - places an onus on local government to provide for traditional and cultural Maori uses in district schemes only where it is appropriate to the circumstances of the district.

Nowhere in the Act is the term "ancestral land" defined - a fact which has tended to have "unfavourable" implications for the Maori people. As a consequence, numerous Maori groups have made submissions to planning bodies suggesting a definition based on the Maori interpretation. However, local authorities and other planning agencies, have followed the interpretation provided by the Planning Tribunal and its predecessor and in the absence of any other statutory guide, the tribunal's interpretation has become the recognised one.

In *Knuckey v Taranaki County Council*, the tribunal ruled :

"That as a matter of law ancestral land in this case is land which regardless of legal tenure, belongs to or is vested in or reserved to the Puketapu people and by operation of law and or custom is owned by or regarded as owned by or is capable of being owned by the present members of that tribe and their descendents as one entity and is associated historically with the burial of ancestors. This is opposed to land which any individual and/or group of individuals may legally dispose of to other specified individuals to the exclusion of tribal members as a whole"¹¹.

This view has been regarded as restrictive by many and there have been initiatives to widen this interpretation. The Auckland Regional Authority's Regional Planning Committee in 1980 stated that :

"Ancestral land should be confined to its ordinary meaning of "land of our ancestors"¹².

Ancestral land defined thus would include all that land which regardless of current tenure, was peopled by a particular tribe's ancestors.

Such a definition however, offers considerable potential for conflict and in *Quilter v Mangonui County Council*, when such an interpretation was mooted by counsel for the respondent, the tribunal stated :

"But the effect of counsel's submission is to say that the provision can and should be used negatively; that it can be used to prevent nonMaoris from using their land in a manner which would offend Maori sensibilities".

The tribunal concluded that :

".....the land in question not being Maori land or Maori freehold land is no longer ancestral to the Maori people"¹³.

This interpretation of "ancestral land" by the tribunal is seen as unduly restrictive and disappointingly so for those who lobbied to have Section 3(1)(g) incorporated as part of the Town and Country Planning Act 1977. They expected "ancestral land" to have the widest possible meaning.

According to Winder¹⁴, this interpretation fails to come to terms with the interpretation of ancestral land by the Maori people. Ancestral land incorporates ideas and attitudes to land which has nothing to do with tenure - the relationship transcends the concepts of legal boundaries and individual ownership, unlike the tribunal's interpretation which is based on legal ownership.

From the gulf between the legal and the Maori interpretations of ancestral land, it is apparent once again that the mere presence of Section 3(1)(g) does not ensure a Maori perspective on all occasions.

2.2

MAORI LAND

2.2.1 INTRODUCTION

The exact nature of the relationship between the Maori people and their ancestral lands and their peculiar characteristics are often not fully understood by planners and decisions makers who are unfamiliar with the Maori's cultural context. It is pertinent therefore that the nature of this relationship be spelt out.

This relationship is based on the attitude of the Maori to the land and their belief of mans' standing vis a vis the land in the universe. The relationship is therefore significant.

2.2.2 EMOTIONAL AND SPIRITUAL SIGNIFICANCE

For the Maori, land has spiritual significance over and above its physical capacity to provide food and shelter. According to Sinclair the spiritual significance given to land is derived from the traditional concept of mankind ascending from the loving union of the earth mother - papa-tu-a-nuku - with the sky father - rangi-nui-e-tu-nei¹⁵. From the bosom of papa-tu-anuku, Tane the procreator fashioned hineahuone the earth formed maiden and established the descent of man¹⁶.

Land consequently is viewed as the lifegiving force and is strongly equated with motherhood where the Maori people see no difference between the maternal nourishment they received and the nourishment they obtained from the land¹⁷.

Hence the saying :

"Land will provide mothers milk for future generations
....."18.

The celebrated Te puea speaking to Judge Acheson of the Land Court in 1939 said :

"The land is our mother it is the loving parent who nourishes us, sustains us when we die it will fold us in its arms"19.

Thus according to Thomsen²⁰, the bosom of mother earth projects both warmth and security. Without land a person is motherless and therefore an orphan without roots. Maintenance of links with the land is seen as essential for the complete physical emotional and spiritual development of the person.

The empathy with land conveys a sense of belonging - as a child "belongs" to its parents. This sense of belonging is never lost as long as the land is held or retained - and for some "even a spadeful of earth" is sufficient to maintain a sense of belong and identification with the earth mother²¹. The spiritually based "maternal" links with the land and the sense of belonging instilled by these links have been perpetuated by ritual land and myth and are still very much apparent today.

"Women alone gives birth to mankind
 Land gives man his substance
 No man will lightly accept the loss of
 his beloved wife, nor that of his sacred land.
 It is said truly that mans destroying passions
 are the love of his wife and the love of his land"²².

2.2.3 IDENTITY

Land provides corporate tribal identity and a sense of continuity and is held in high and emotional esteem for these reasons. Land was held in communal ownership by the tribe and the mana of any tribe was synonomous with its land holdings. Over time, the most prominent features of the landscape came to stand as enduring symbols of the tribe. According to Walker, these features were referred to in song and dance and in formal speeches. If a visitor to the territory of Tuwharetoa wished to compliment his hosts, he would cite the aphorism :

"Ko Tongairiro Te Maunga
 Ko Taupo Te Moana Ko Te Heuheu te Tangata"
 ("Tongairiro is the mountain, Taupo is the sea and Te Heuheu is the man")

Similarly on the east coast, another aphorism would be :

"Ko Hikurangi te Maunga Ko Waiapu te awa
 Ko Porourangi te Tangata"
 ("Hikurangi is the mountain, Waiapu is the river and Porourangi is the ancestor")²³.

The land has therefore become representative of the tribe as a whole and is revered as such. To derogate, or to lose ownership is to derogate or lose the very symbols of the tribe itself.

Closely related to the symbolism and identity land provides is the concept of land as an extension of man and therefore is sacred, or tapu. Man is seen as something unique, something special and his worth is to be put above all else. It is this sacred quality of man that is transferred over to "things" such as the land. These things are an extension of the unique quality people have and which is handed down from ancestors²⁴. Because man is sacred, the land held by man and from which man came and to which he will return, is sacred. It is a tangible link with the sacred persons of the past and the events in which those persons engaged. Particular locations become important as they hold the sacredness of forbears and the history of the tribe in their midst. The land is the link with the tribes living dead and the guidance provided by these spirits.

A recent submission contained in Andersons work summarised it thus. Tribal land and waters :

"embrace and immortalise our Tipuna (ancestors) whose Wairua (spirits) sustain us and guide us through our many crises and whose Wairua permeate our every being, our every doing. Our lands and our water regimes give us our Turangawaewae the place where we belong the place to stand tall, the place to be ourselves. They connect us in a long chain of being back to the beginning of time to our spiritual sky father Rangi-nui-e-tu-nei....."²⁵.

Although man is sacred, he has no permanence, while the land on the other hand never changes, nor is ever destroyed. A proverb that echoes this observation is :

"The treasures of the land will persist, human possessions will not"²⁶.

Land interests therefore are seen as "an inheritance from the past, entrusted to the future in which incumbents have no more than certain rights to enjoy the fruits of their land in their own lifetimes and a duty to convey those rights to succeeding generations"²⁷.

The retention of tribal land therefore, is an assurance of continuity for the Maori people. It is an assurance that the ancestors and the "living dead" are retained and that the legacy of the past is still there to be conveyed to future generations. The land represents the Maori as a separate cultural entity in New Zealand and to retain the land in Maori ownership has become paramount in order to ensure the continuity of the Maori as a people.

2.2.4 SOCIAL SIGNIFICANCE

Land has great social significance. The holding of land bequeaths rights to individuals and enables them to do certain things; namely to stand up and speak on the marae. This is because they have the status of being Tangata Whenua or "people of the land".

The Maori describes a marae on which they have inherited rights as their Turangawaewae (literally standing place for the feet). Hence, having even a small interest in land will save that person from being a "landless Maori". It is for this reason - to retain Turangawaewae - that families in rural areas often like to live on their own land even when they are not using it for farming purposes and even though it may not be in the most convenient location in relation to their employment.

2.2.5 WAAHI TAPU - THE MARAE

Some locations and areas of land are held in higher regard than others by Maori people. This land can be of special significance for a number of reasons, but generally they are significant because they relate to important events or personages of the past. These are the Waahi Tapu or sacred places.

There are various types of Waahi Tapu including burial grounds, areas in which sacred or spiritual objects or features are found and traditional food cultivation areas; but the most significant and numerically the most predominant, are the marae and urupa. In many instances these two Waahi Tapu occur together. In the modern context, the term marae refers to the whole complex of meeting house, dining hall and community buildings, as well as the open space in front of the meeting house (which is in fact the traditional marae area). Thus the marae (and often urupa) is of considerable area and constitutes an identifiable landuse in its own right.

The marae houses the Mauri or "life force" of the community²⁸ and by virtue of being traditionally defined by longterm occupation, it often provides a tangible link with the events and personages of the past. It can also provide social and psychological security for the individual and it provides identity for the tribal group²⁹.

Consequently the marae is the focus of Maori community life.

The bulletin of the Town and Country Planning Division of the Ministry of Works and Development outlined the function of a rural marae as "The focal point of community life, symbolising the close relationship between land and people"³⁰.

Stokes emphasises the importance of the marae in her work, which includes the following submissions of the Tuhoe to the Minister of Maori Affairs in 1973³¹ :

"Maraes are places of refuge for our people and provide facilities to enable us to continue with our own way of life and within the total structure of our own terms and values.

We need a marae for a host of reasons :

that we may rise tall in oratory
that we may weep for our dead
that we may pray to God
that we may house our guests
that we may have our meetings
that we may have our weddings
that we may have reunions
that we may sing
that we may dance
that we may learn our history
and then know
that richness of life
and the proud heritage which is truly ours".

The marae however, only flourishes when there is a core of people associated with it. The continued presence of people is necessary to "keep the marae warm" and to keep the fires of occupation burning. This concept is called ahi ka roa or "long burning fires"³² and under the traditional system of tenure, a lack of a core of people on the marae results in the "fires becoming cold" and the rights to the land would be lost.

To this day therefore, maintaining a continued presence of people around the marae is of considerable importance to the Maori people. In order to maintain a presence of people on the marae they must have somewhere to live and the often expressed need for housing around the marae is a consequence.

This then is the relationship between the Maori people and their ancestral lands. There are no doubt individuals from various other cultures who feel strongly in a "noncommercial" sense about their lands, but it is the Maori that collectively forms the greatest body of persons who value land in a noncommercial nonutilitarian sense. It is the Maori who has the loudest voice in putting across this message and it is the Maori who has sought political legislative recognition of their beliefs and ideals.

What is apparent in modern society is that this view of land is not held by all individuals of Maori descent. With the passage of time and the interaction with the European culture in New Zealand, there has inevitably been a cultural "ruboff" from one race onto the other. ³³There are persons of Maori descent who are Pakehas or Europeans in all but appearance and there are persons who are more European in appearance than Maori, but are Maori in a cultural sense.

However, it has been obvious of late that there is still a strong minority in society who subscribe to the traditional concepts of the Maori and the land; and who "refuse to be assimilated into some vague amorphous cultural amalgum called New Zealand culture". The Maori land march of 1975, the occupation of Bastion Point and the current Ngatiawa tribe's land claims in the Bay of Plenty are but a few examples of the peoples' increasing awareness of and the reassessment of traditional Maori values. The land protests and the associated calls to retain land in Maori ownership are evidence that a significant proportion of New Zealand's Maori population, subscribe to the traditional views of land use.

2.3

MULTIPLE OWNERSHIP

One other dimension which complicates the presentday relationship between the Maori people and their ancestral land is the unique tenure situation. Almost all Maori land is in multiple ownership³⁴. While this situation is not unique in the world, it is a considerable departure from the system under which nonMaori land is held in New Zealand.

History reveals that multiple ownership as it is today, is not a Maori inspired system, but rather a European invention imposed on them a little over one hundred years ago. The traditional system of Maori land tenure is different to that of today and the general principles of this system were summarised by Mr Alexander Mackay, a Judge of the Maori Land Court, in 1980. This summary appeared in a revised version of a collection of opinions by various authorities on Maori land tenure which had originally appeared in 1860³⁵. It was generally agreed that :

- a A Maori title was communal.
- b Tribal rights might be classed under two heads - first, the territory which had been in possession of the tribe for several generations and to which no other claimants had been previously known; second, the territory acquired by conquest, occupation or gift. Conquest without occupation did not confer title.
- c No fixed law existed in regard to Maori tenure except the law of right. Customs varied with locality.

- d The chief of the tribe must be regarded as holding his position by a double title; first from his undoubted descent through a long line of well known ancestors; second as the elected head of the tribe. In the latter case, he was the representative of the territorial rights of the tribe on account of his personal qualifications and influence and was recognised as the guardian, as well as the mouthpiece, of the rights of the tribe. He had the right of veto over the disposal of land, but had only an individual right to the land like the rest of the people.

- e The possession of land, even for a number of years did not confer a right unless the occupation was founded on some previous take (ie, roof or basis of title) of which the occupation could be regarded as a consequence and this take must be consistent with the ordinary rules governing and defining Maori customs.

- f Each Maori had a right in common with the whole tribe over the disposal of the land of the tribe and an individual right subject to the tribal rights to land used for cultivation or for bird, rat or pig hunting. But to obtain a specific title to land held in common there must be some additional circumstances to give an individual preference over such land.

- g Neither manorial or seignorial rights obtained among the Maoris and the chief of the tribe had no absolute right over the territory of the various hapus, nor could he dispose of any but his own land without the concurrence of those to whom it belonged.

Metge³⁶ further summarises the traditional form of tenure thus :

"Under the Maori system of land tenure rights of occupation and use of fruit were divided among sub groups and individuals but the right of alienation was reserved to the group. Each hapu of the tribe controlled a defined stretch of the tribal territory which is guarded jealously. Trespassers and poachers were punished severely and persistent border violations lead to fighting even between hapu of the same tribe. Within the hapu Whanau, nuclear families and individuals, held rights of occupation and use over specific resources..... The rights of individuals and lesser groups were always subject to the oversight of the greater group".

Thus at the beginning of the 19th century, the whole of New Zealand was held by Maori tribal or subtribal groups in this fashion and although some parts of the country were seldom visited, there were no unclaimed wastelands³⁷.

The arrival of the European settler however, signified the start of a chain of events culminating in a system of tenure resulting in multiple ownership of land by the Maori people.

Prior to 1840 the European was seen to pose no threat economically or politically to the Maori and the Maori actually encouraged him to settle³⁸ and sold him land. The sale of land in this period was carried out through direct negotiation between the settler and the local chief in the presence of tribal elders. The transaction would be discussed by the tribe and an agreement reached. The settlement, either money or goods, would be brought to the paramount chief who then distributed these to the lesser chief who in turn made a distributions to the hapus³⁹.

After 1840, the establishment of the British Government in New Zealand saw an increasing number of settlers arriving in the country and the adoption of the land purchasing function by the government. Initially the Maori entered a period of rapid and enthusiastic adaption of Pakeha goods and ways⁴⁰, but the closer contact brought problems as well as progress. Small disputes over land began to arise between Maori and Pakeha and in one incident, 23 Pakehas were killed trying to arrest Maoris for resisting the survey of land they denied having sold.⁴¹ Through the 1840s settlers continued to arrive and the demand for land sales grew steadily. By the 1850s, it was evident that the Maoris and the settlers had become rivals for the possession of land and the government came under constant pressure from settlers to speed up the land purchase procedure, while there was a growing reluctance on the part of many Maoris to sell.

Consequently as shortcuts in methods of acquiring land were used, conflict between Maori and European became inevitable⁴².

After five years of minor skirmishing between landsellers and landholders in Taranaki, war finally broke out there in 1860. Bitter and sporadic fighting was to last twelve years and it was followed by the confiscation of lands belonging to those tribes who took up arms against the Crown and some others⁴³.

The pressure for more land from the settlers and the government's desire to 'peacefully' acquire the land from the Maoris led to the establishment of the Native (later Maori) Land Court.

In 1865 legislation was passed establishing the first Native Land Court which had three main functions :

- 1 To ascertain the owners of Maori land according to Maori custom.
- 2 To transmute any title so recognised into one understood at english law.
- 3 To facilitate dealings in Maori land and the peaceful settlement of the colony⁴⁴.

This approach was based on the European concept of land as "an individually owned freely marketable entrepreneurial resource" and it devastated the tribal infrastructure when introduced⁴⁵.

The courts operated to issue individual Maoris with titles to land that was previously held by the tribe as a whole. The legislation allowed for the names of up to 10 people to be placed on titles and it was generally believed by the Maori people that the persons named there were trustees for the tribe. However, the certificates of title and Crown grants showed them as absolute owners, for the Land Transfer Act did not permit the notation of trusts on the register⁴⁶.

Through the operations of the court, land once held by the tribe became the legal property of a small number of individuals with the remainder being dispossessed. These few owners soon fell prey to the land hungry settlers and their shyster agents, who relieved them of their lands for a fraction of what they were worth, and in many cases, under some form of duress⁴⁷.

In an attempt to cater for the traditional Maori concept of tenure, the legislature provided for the division of a deceased owners interest amongst all those entitled by descent. This however, was only the court's view of Maori tradition and it ignored the actual tradition that rights to land were determined not only by descent, but also by occupation. The rights disappeared if any Maori let his "fire die out".

By law "If a Maori died intestate his land interests were vested in the persons beneficially entitled according to the court's view of Maori custom. The majority of Maoris died intestate and with each generation of children succeeding to the land interests of its parents, the number of owners in a block of land normally increased rapidly"⁴⁸. The devolution of an individual's shares upon death therefore, enhanced the process of fragmentation, begun with the individualisation of titles⁴⁹.

Thus most Maori land today has more than one, often many and sometimes hundreds of owners. It is this feature that differentiates it markedly from European land and it has given rise to the observation :

"Everybody's land is nobody's land. That in short is the story of Maori land today. Multiple ownership obstructs utilisation"⁵⁰.

2.4

MAORI LAND : THE LAND USE IMPLICATIONS

The Maori relationship therefore has two very apparent implications for land use. The first is that Waahi tapu, but especially marae and urupa assume paramount importance in Maori culture and these particular locations and activities require protection to ensure they can exist and operate as legitimate rural uses in their own right.

The second is that there is a desire to establish housing or accommodation in conjunction with the marae complex.

Apart from these two implications which relate to specially Waahi tapu, there may well be others relating to Maori ancestral land that is not a "sacred place" as such. At this stage however, none are apparent.

CHAPTER II

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CHAPTER III

THE BAY OF PLENTY : PHYSICAL CULTURAL AND SOCIAL SETTING

3.1

INTRODUCTION

The effectiveness of the planning legislation and particularly section 3(1)(g) may be determined by examining district scheme provisions that have been formulated under and/or operate within the Town and Country Planning Act 1977. For this reason, the provisions of the Whakatane District and Tauranga County District Schemes (in "Coastal Bay of Plenty") as they relate to Maori land will be examined in detail. This geographic area (Fig. 1) lends itself to study because it contains a significant proportion of New Zealand's Maori land and a disproportionately large Maori population. It is therefore assumed that any of the implications of the relationship will be present here. This chapter details the physical cultural and social nature of Whakatane District and Tauranga County. Figure 3.1 defines the study areas, page 37.

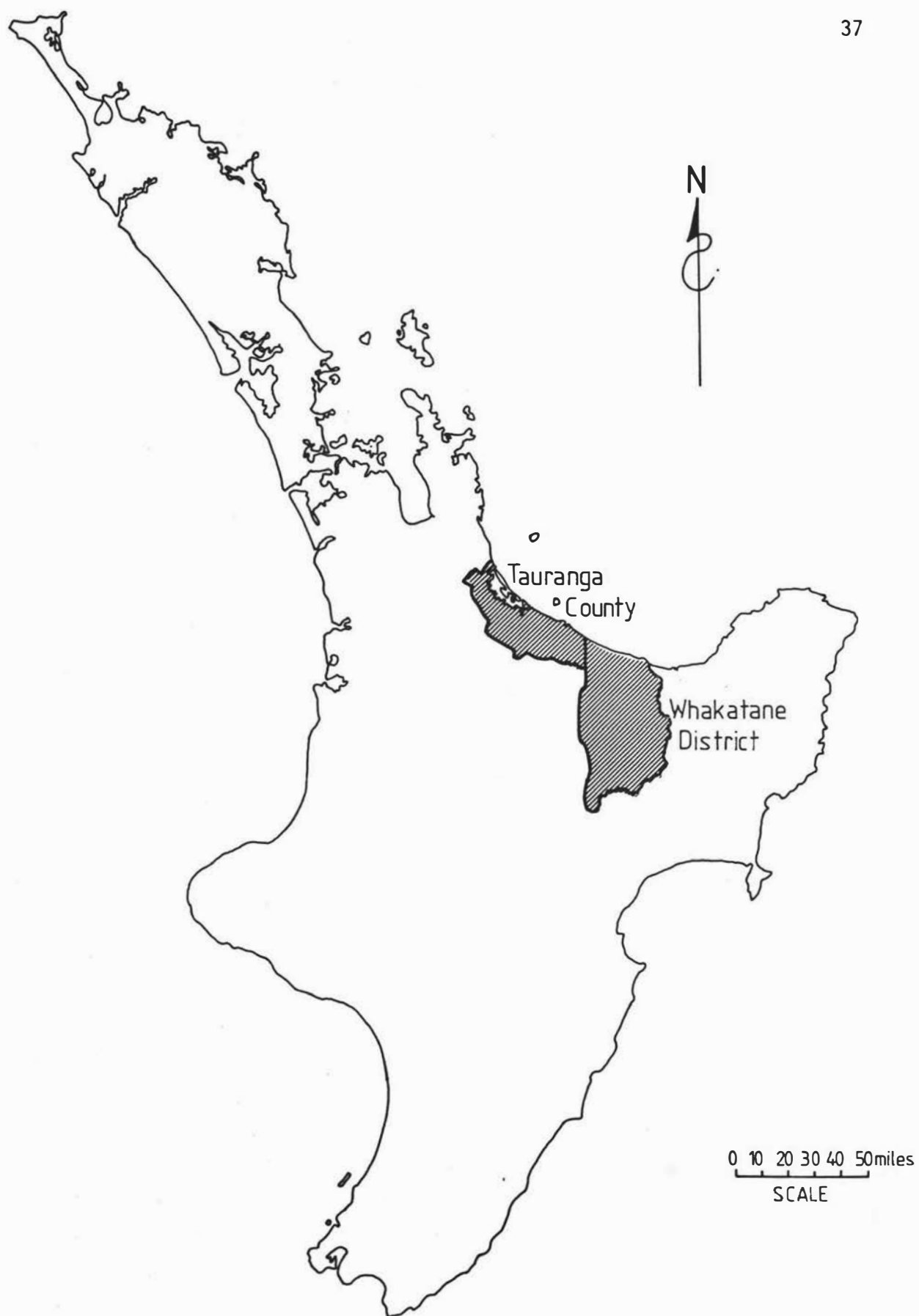


FIGURE 3.1 : Study Area Defined

3.2

WHAKATANE DISTRICT

3.2.1 POPULATION

The Whakatane District occupies a central location along the Bay of Plenty coast and extends approximately 90 kilometres inland from the coast to include areas of the central North Island volcanic plateau and the rugged Urewera uplands - Figure 3.2, page 39.

The total area of the district is 419 491 hectares, with approximately 417 864 hectares either zoned rural or in state forest or national park and the remaining 1 627 hectares of the district zoned for urban purposes or designated for public works¹.

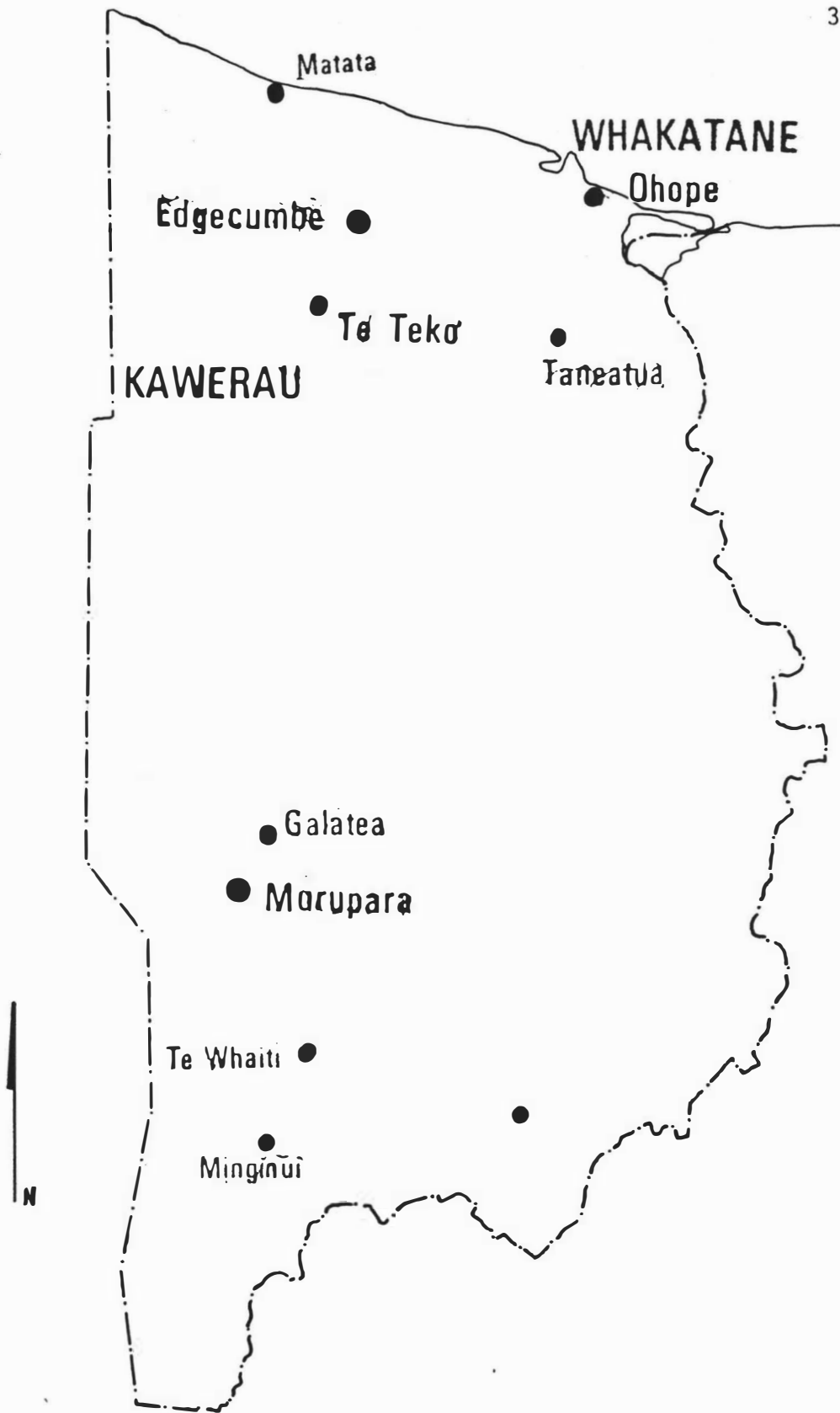


FIGURE 3.2 : Whakatane District

Settlement within the district is dominated by Whakatane - with a 1981 population in excess of 12 000 - with the remainder of the settlements ranging in size from just over 200 persons to about 1 200 persons (1981). The townships of Kawerau (1981 population 8 595) and Murupara (2 964) exist as separate boroughs within the district and although not formally part of the district, they do extend some influence over the district's inhabitants and vice versa. (Several of the marae serving Murupara's population for example, are located in the district, while timber for the forest industry in these towns comes from the district.)

The district's population is essentially a rural one and it is evident from examination of population distribution that Whakatane township dwellers aside, the majority of the population do not live in an urban situation. This is depicted clearly in Table I below.

Locality	1971	1976	Change	% Change	1981	Change	% Change
Whakatane Borough	9,748	11,542	+1,794	18.4	12,297	+755	6.54
Edgecumbe T	1,206	1,617	+ 411	34.1	1,929	+312	19.0
Ohope T	773	1,594	+ 821	106.2	1,713	+119	7.4
Matata T	456	522	+ 66	14.5	525	+ 3	.5
Taneatua	813	789	- 24	-3.0	891	+102	12.9
Te Teko T	570	618	+ 48	8.4	594	- 24	-3.8
Remainder County	10,888	10,351	- 537	-4.9	9,783	-568	-5.4
Total County	14,706	15,491	+ 785	5.3	15,435	- 56	-0.36
Total District	24,454	27,033	+2,579	10.5	27,732	+699	2.5

TABLE I : Whakatane District - Population Distribution 1971-1981

Source : NZ Census of Population and Dwellings 1971, 1976, 1981

These figures also reveal that there has been a general decline in the rural population. This decline however has not been uniform and some areas have gained population while others have experienced considerable loss. This fact is evident from examination of Table II and Figure 3.3 on page 42.

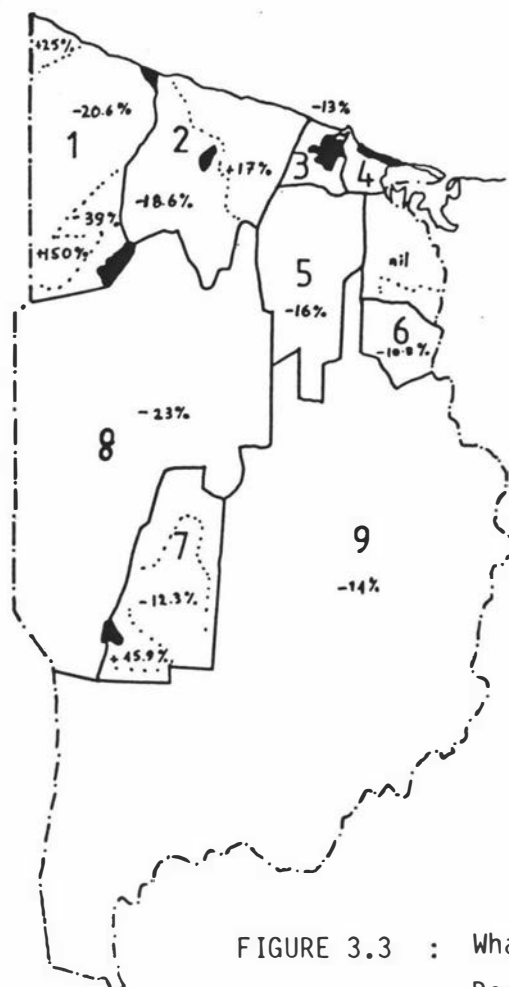


FIGURE 3.3 : Whakatane District Rural Areas Population Change 1971-1981

LOCALITIES	POPULATION			% CHANGE 1971-1981	OCCUPIED DWELLINGS		
	1971	1976	1981		1971	1976	1981
1. Manuabe	666	618	637	- 4.4	157	171	175
2. Rangitaiki Plains	1967	3708	3643	- 8.2	907	930	973
3. Whakatane West	1321	1399	1140	-13.7	264	252	257
4. Whakatane East	103	99	102	-	31	34	38
5. Tareatua Ruatoki	1296	1205	1079	-16.7	271	274	252
6. Waimana	662	618	590	-10.9	143	156	152
7. Galatea Basin	961	923	902	- 6.1	212	220	233
8. Paingarua Te Mahoe	766	747	589	-23.1	115	156	128
9. Hinjimi Urewera	1036	997	891	-14.0	201	213	190
10. Waingarara	282	303	284	-	67	78	76

Table II

WHAKATANE DISTRICT - DISTRIBUTION OF RURAL POPULATION 1971-81

Generally then there has been a drift of population from the rural to urban areas and on the whole the towns and communities have grown at the expense of the rural areas. This fact has some implications in terms of provision of services to rural areas (school bus routes etc) and has been noted by council's planning staff.

3.2.2 ETHNIC COMPOSITION

In terms of ethnic composition, the district's population differs quite markedly from the national population - this composition is detailed below in Table III.

Settle- ment	Popu- lation	Ethnic Groupings				Aged		
		Euro- pean	Maori desc.	Other	Under 5	5-14	15-64	65 & over
Whakatane Borough	12,297	76.0	20.8	3.2	9.2	21.0	61.3	9.1
Edgecumbe	1,929	75.1	23.3	1.6	11.3	24.2	60.5	4.0
Ohope	1,713	91.5	5.7	2.8	6.6	13.8	67.0	12.0
Matata	525	49.7	48.5	1.8	8.5	25.1	57.3	9.0
Taneatua	891	34.0	62.2	3.8	11.1	28.9	56.3	3.7
Te Teko	594	23.7	74.7	1.6	13.3	28.7	54.5	3.5
Remainder County	9,783	61.1	37.1	1.8	11.6	25.2	59.4	3.8
Total County	15,435	62.85	35.25	1.9	10.9	24.1	60.0	5.0
Total District	27,732	68.8	28.8	2.4	10.1	22.5	60.6	6.8
Kawerau*	8,595	60.9	35.0	3.1	12.4	25.2	60.5	1.9
Murupara*	2,964	30.6	66.8	2.6	12.8	28.3	57.9	1.1
New Zealand		5.6	8.9	5.5	8.0	18.8	60.2	11.0

*Within the geographical county but not within the administrative district

TABLE III : Whakatane District - Ethnic Composition of Population 1981

Source : Census of Population and Dwellings 1981

It is apparent from the above table that the district has a considerably higher proportion of persons of Maori descent and a lower proportion of Europeans than the national totals - 28.8% as opposed to 8.9% and 68.8% as opposed to 85.6% respectively. In addition, the district contains the separate boroughs of Murupara and Kawerau which have "Maori" populations of 66 and 35% respectively. The difference between these and national figures is emphasised in the comparison of histograms in Figure 3.4, page 46.

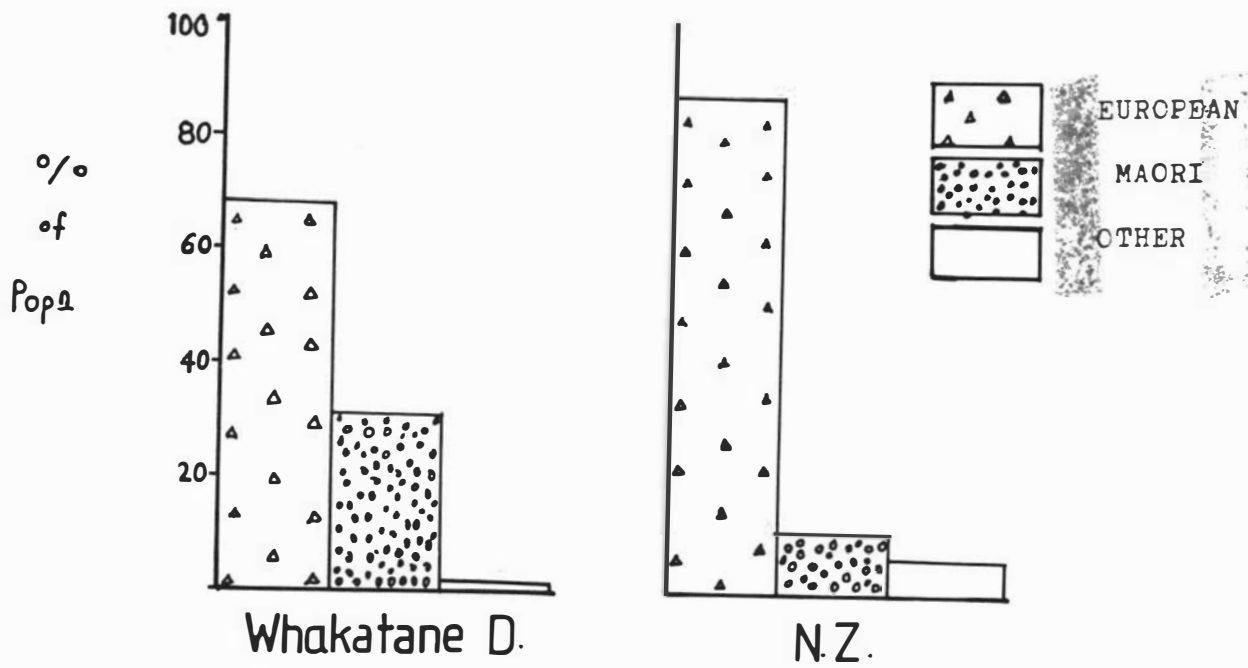


FIGURE 3.4 : Ethnic Composition Compared
Whakatane District and New Zealand

3.2.3 CULTURAL SIGNIFICANCE

Apart from being numerically more significant in the district's population than nationally, the Maori and Maori culture is more evident here than in other areas of New Zealand. There are several reasons for this, the most significant being the the greater number of Maoris in the population proportionally; the rural nature of the population and its relative isolation from larger urban areas and the fact that Whakatane is one of the original areas of Maori settlement in New Zealand.

Whakatane is the final landing place of the canoe Mataatua the captain of which - Toroa - and his family came to found the three principal tribes associated with this area. Toroa's descendants through his son Ruaihonga, became the Ngatiawa tribes; Wairaka, Toroa's daughter and her descendants are the Tuhoi tribes of the Ureweras and his sister Muriwai moved east of Whakatane and founded the Whakatohea tribe of Opotiki². Figure 3.5, page 48.



FIGURE 3.5 : Bay of Plenty Tribes

Historically, although all three tribes had early and continued contact with the European, they remained relatively isolated from mainstream European settlement. In fact some areas particularly in the Ureweras, saw only sparse European settlement, a situation that has remained strong - with numerous events bearing witness to this. The establishment of the Pae Mariri or Hau Hau cult here and the consequent killing of Carl Volkner at Opotiki in 1865 is one such instance recorded in history.

The continuance of the Ringatu faith - which began as a nativistic cult found by Te Kooti - based at Wainui is a current example³. Whatever the cause, this area of New Zealand remains a largely rural area heavily populated by Maoris, some of which have maintained a strong relationship with Maori customs and tradition. This is reflected in the number of traditional sites that are either used, occupied or held in high esteem by the Maori population. In 1973 a total of 83 such sites were identified within the boundaries of the former Whakatane County, including 42 marae and 36 urupa. This large number of "operative" maraes or urupas clearly indicated a high level of adherence to traditional Maori values⁴. The location of these marae and urupa is depicted in Figure 3.6 on page 50.

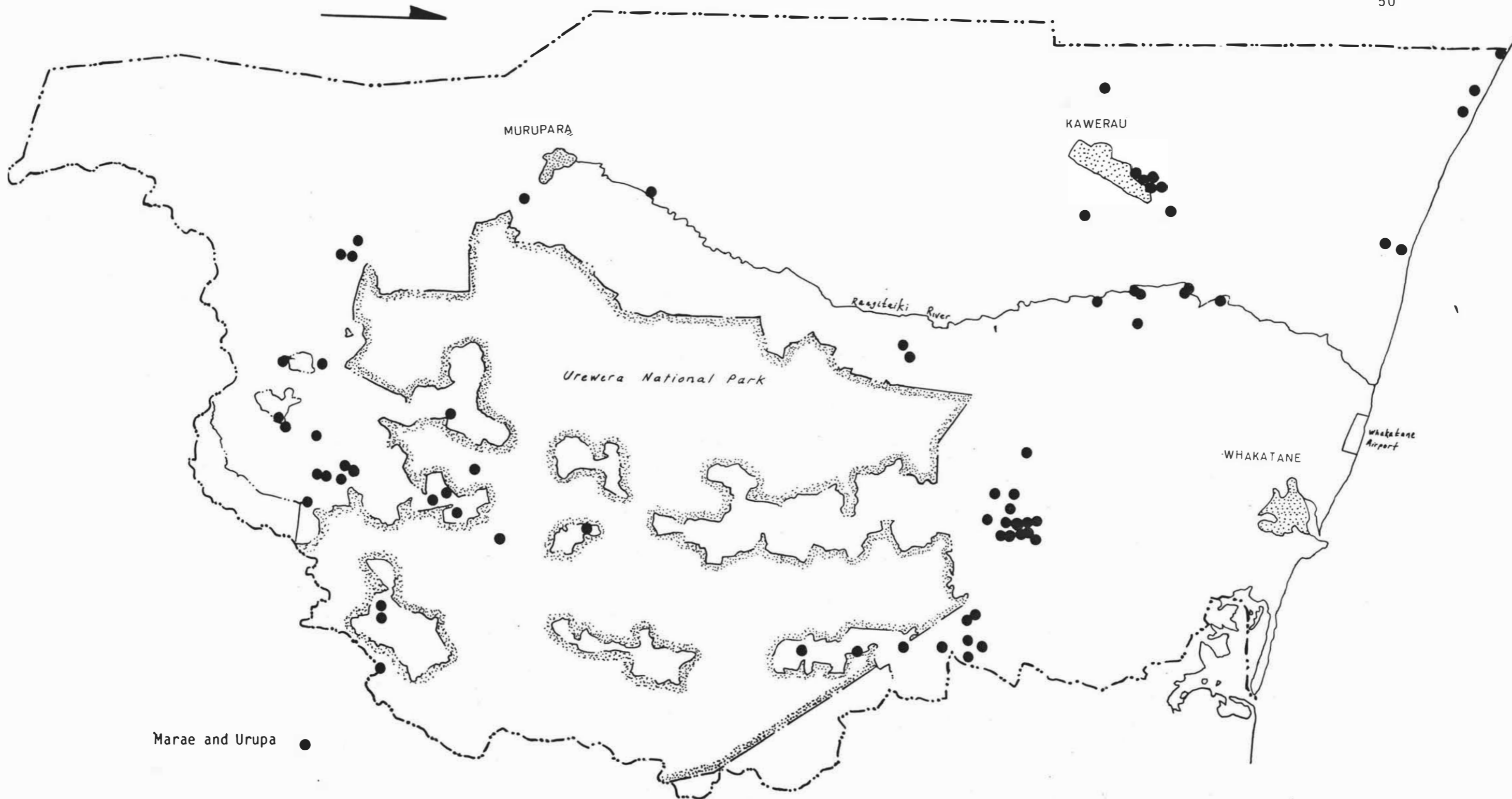


FIGURE 3.6 : Whakatane District
Marae and Urupa

3.2.4 MAORI LAND HOLDINGS

"Maori land" makes up a significant proportion of Whakatane district. the district falls entirely within the Waiariki Maori Land Court district which is centred on Rotorua and covers the greater Bay of Plenty area. The Waiariki district contains the largest area of Maori land in New Zealand and in March 1980 this totalled 295 209 hectares. This total represents 24% or nearly a quarter of Maori land in New Zealand.

Because this total is in part based on estimates for unsurveyed land, it has proved impossible to obtain an accurate breakdown on a local authority basis. However, based on available sources (Lands and Survey Tenure Map Series; Maori Land Court records), the likely distribution of Maori land within the district is depicted in figure 3.7, page 52.

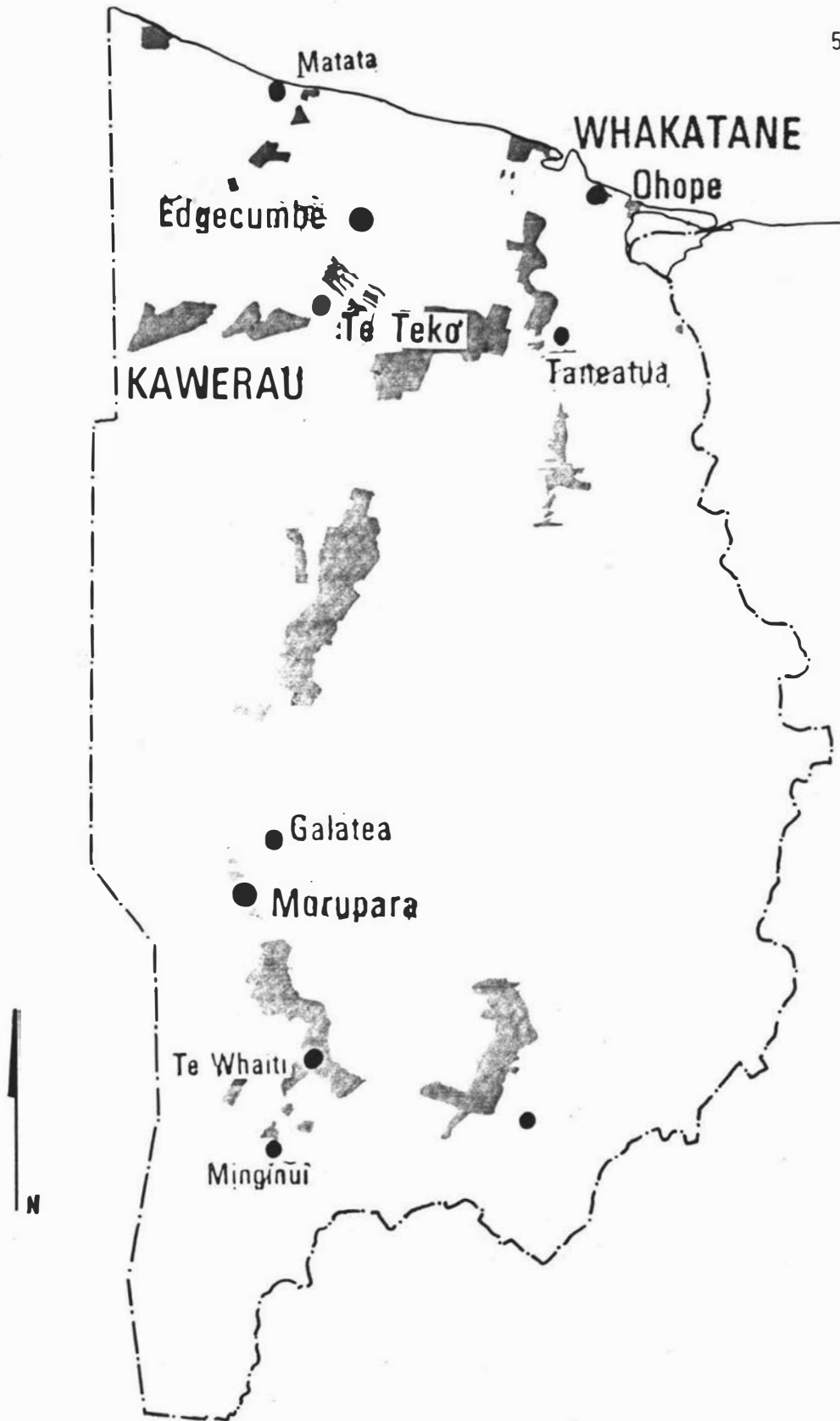


FIGURE 3.7 : Whakatane District
Maori Land Distribution

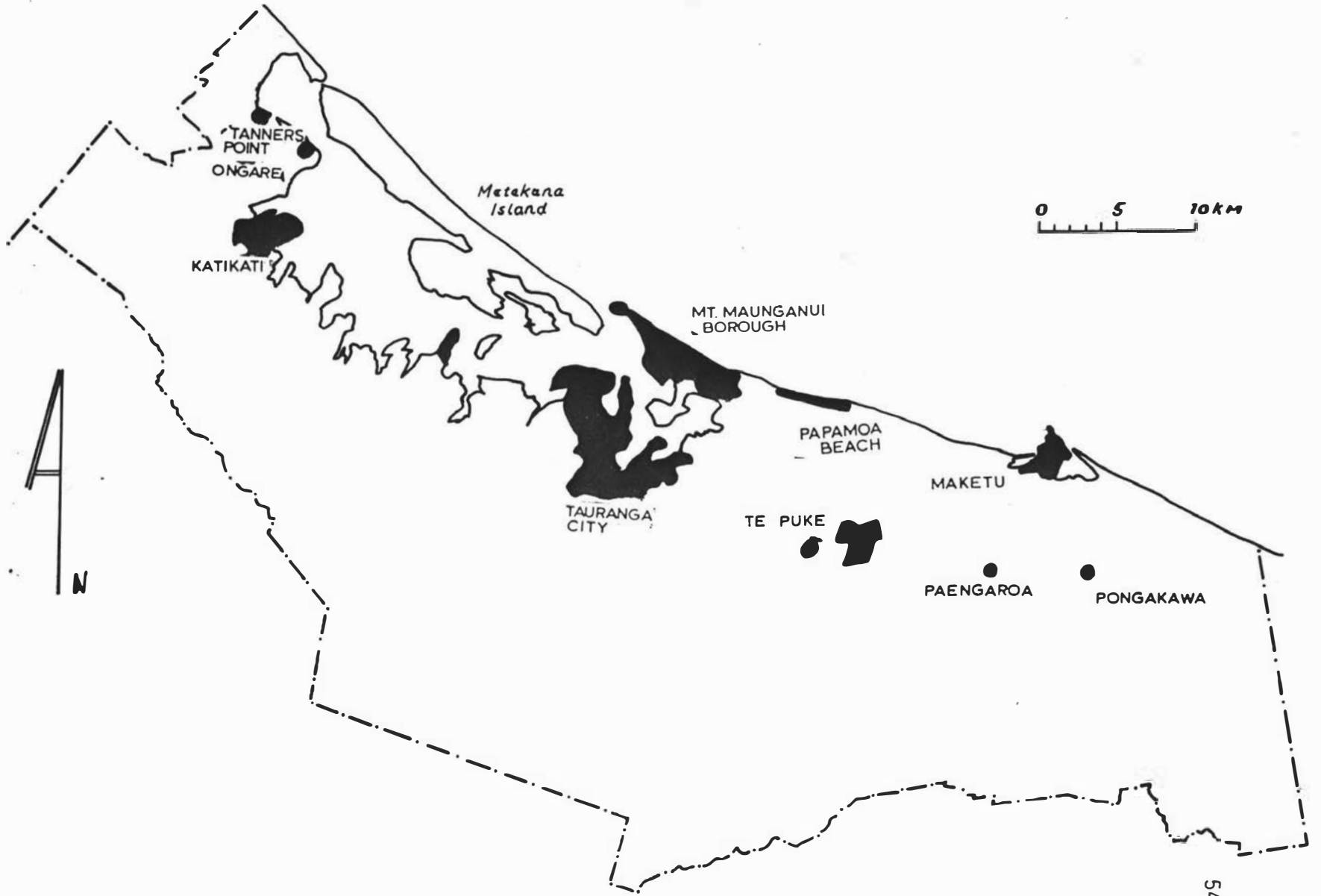
3.3

TAURANGA COUNTY

3.3.1 POPULATION

Tauranga County is located along the northern segment of the Bay of Plenty coastline and covers a total of 182 000 hectares approximately. The northern boundary of the county runs from the sea south of Waihi beach to Mount Te Aroha and follows the ridge line of the Kaimai range southeast to the northern edge of the volcanic plateau before turning north to the sea east of Maketu⁶. Figure 3.8, page 54.

FIGURE 3.8 : Tauranga County



A large proportion of the county is flat and this, combined with excellent soils and climate, give the county a strong horticultural and agricultural base.

Tauranga City, Te Puke Borough and Mount Maunganui Borough are physically within the county but administratively distinct. These aside settlements within the country are generally small and have tended to develop in a ribbon fashion along the coast. The largest settlements are Katikati community, 1981 population 1 683 and Maketu with a population of 756 (1981). Although there are other heavily populated areas - Te Puna area, Te Puke environs etc, about one third of the county area is almost uninhabited, the major areas being in the Kaimai range, the upland areas west of Te Puke and on the Kaharoa plateau.

The district's population is set out below in Table IV.

Area	Population Census			Increase or Decrease (-)			
				Number		Percent	
	1971	1976	1981	1971	1976	1971	1976
				-76	-81	-76	-81
TAURANGA CO -							
Athenree Cm	81	129	160	48	31	59.3	24.0
Katikati Cm	1,230	1,349	1,682	119	333	9.7	24.7
Maketu Cm	455	463	755	8	292	1.8	63.1
OmokoroaBeachCm	398	648	720	250	72	62.8	11.1
PAPAMOA BEACH CM-							
Part in	79	152	202	73	50	92.4	32.9
Tauranga IIA							
Part outside	439	1,023	1,654	584	631	133.0	61.7
Tauranga UA							
Total Papamo	518	1,175	1,856	657	681	126.8	58.0
Beach Cm							
Island View -	77	198	238	121	40	157.1	20.2
Pios Beach Cm							
REMAINDER							
ADMIN CO -							
Part outside							
Tauranga UA							
Katikati Area	1,680	1,934	2,199	254	265	15.1	13.7
Te Puna Area	1,081	1,248	1,470	167	222	15.4	17.8
Waimapu Area	2,017	2,041	2,645	384	244	19.0	10.2
Te Puke Area	1,830	2,023	2,099	193	76	10.5	3.8
Maketu Area	3,375	3,656	4,084	281	428	8.3	11.7
Part in	2,731	3,379	3,685	648	306	23.7	9.7
Tauranga UA							
Total Admin	15,473	18,603	21,593	3,130	2,990	20.2	16.1
Co							

TABLE IV : Tauranga County Population Distribution
Source : Census of Population and Dwellings 1971, 1976, 1981

Table IV reveals that the county has had steady population growth over the last decade with much of this growth attributed to the development of horticulture in the area⁷.

Both the urban and rural areas of the county have enjoyed population increases and this is evident from a breakdown of population into ridings and rural communities - Tables V and VI.

Community Areas	1971	1976	% Change	1981	% Change
Athenree	81	129	59.3	160	24.0
Island View Pois Beach	77	198	157.1	235	20.2
Katikati	1,230	1,349	9.7	1,682	24.7
Omokoroa Beach	398	648	62.8	722	11.1
Papamoa Beach	518	1,175	126.8	1,856	58.0
Maketu	455	463	1.8	755	63.1

TABLE V : Rural Communities

Source : Census of Population and Dwellings 1981

Riding	1971	1976	1981	% Increase 1971 - 81
Katikati	1,770	1,934	2,199	30.5
Te Puna	2,065	2,542	2,926	41.2
Waimapu	2,941	3,360	3,617	23.3
Te Puk	2,402	3,348	3,356	18.7
Maketu	3,375	3,656	4,085	20.9
	12,553	14,840	16,183	

TABLE VI : Ridings - Exclusive of Rural Communities

Source : Census of Population and Dwellings 1981

According to Stokes, the major change in the pattern of rural settlement has been the growth of pockets of urban development around the shores of the western harbour - Athenree, Island View, Pios Beach, Tanners Point, Ongare, Omokoroa Beach and the Plummers Point - Te Puna areas and on the ocean beach at Papamoa and Pukehina⁸. These areas aside however, it is important to note that nearly all areas of the county experienced population growth, when many other of the country's rural areas are experiencing depopulation of varying degrees.

ETHNIC BREAKDOWN

In terms of ethnic composition, the county's population is not significantly different from New Zealand as a whole, although a greater proportion of the population is of Maori origin, than nationally, (nearly 14% as opposed to 9% nationally). A full breakdown is presented in Table VII below.

	European	Maori	Other	Total
Athenree Com	153	6	3	159
Katikati Com	1,515	141	21	1,677
Maketu Com	429	288	35	750
Omokoroa Beach Com	699	12	6	717
Papamoa Beach Com Pt in U	189	9	6	201
Papamoa Beach Com Pt not in UA	1,551	60	30	1,644
Island View Pios Beach Com not in UA	213	24	-	237
Katikati Area	1,857	306	30	2,193
Te Puna Area	1,347	102	12	1,461
Waimapu Area	2,424	171	27	2,625
Te Puke Area	1,785	273	30	2,088
Maketu Area	3,243	747	90	4,077
Pt in Tauranga UA	2,733	840	63	3,633
Total	18,138	2,976	351	21,465
%	84.50	13.9	1.6	
NZ %	85.6	8.9	5.5	

TABLE VII : Tauranga County - Ethnic Breakdown

Source : Census of Population and Dwellings 1981

3.3.2 MAORI CULTURE AND TRADITIONS

Despite the fact that Maoris are not as numerically significant in the population as Europeans, the area remains one rich both in Maori history and in current day activity based on tradition and history.

Tauranga was among the first areas of New Zealand to be settled by Polynesian immigrants and, although the date of the first arrivals is unknown, the area has been continuously occupied and periodically fought over by many generations of Maori tribes⁹.

With Maori occupation dating back over seven centuries, a great body of legend and lore has accumulated and specific places and features have come to have symbolic meaning and sacredness. Many of the sacred places are based on the history of the tribes of the area and a considerable number of the locations and features remain sacred today.

The three main tribal groups of the county - the Ngaiterangi, Te Ngati Ranginui and the Arawa, all maintain a number of maraes and urupas dispersed throughout the Tauranga area. In 1980, the significant marae within the county totalled 36 - and their location is depicted below in Figure 3.9, page 61. These marae support a wide range of current day activities from sports to tangis and weddings and serve as the focus of rural community life.

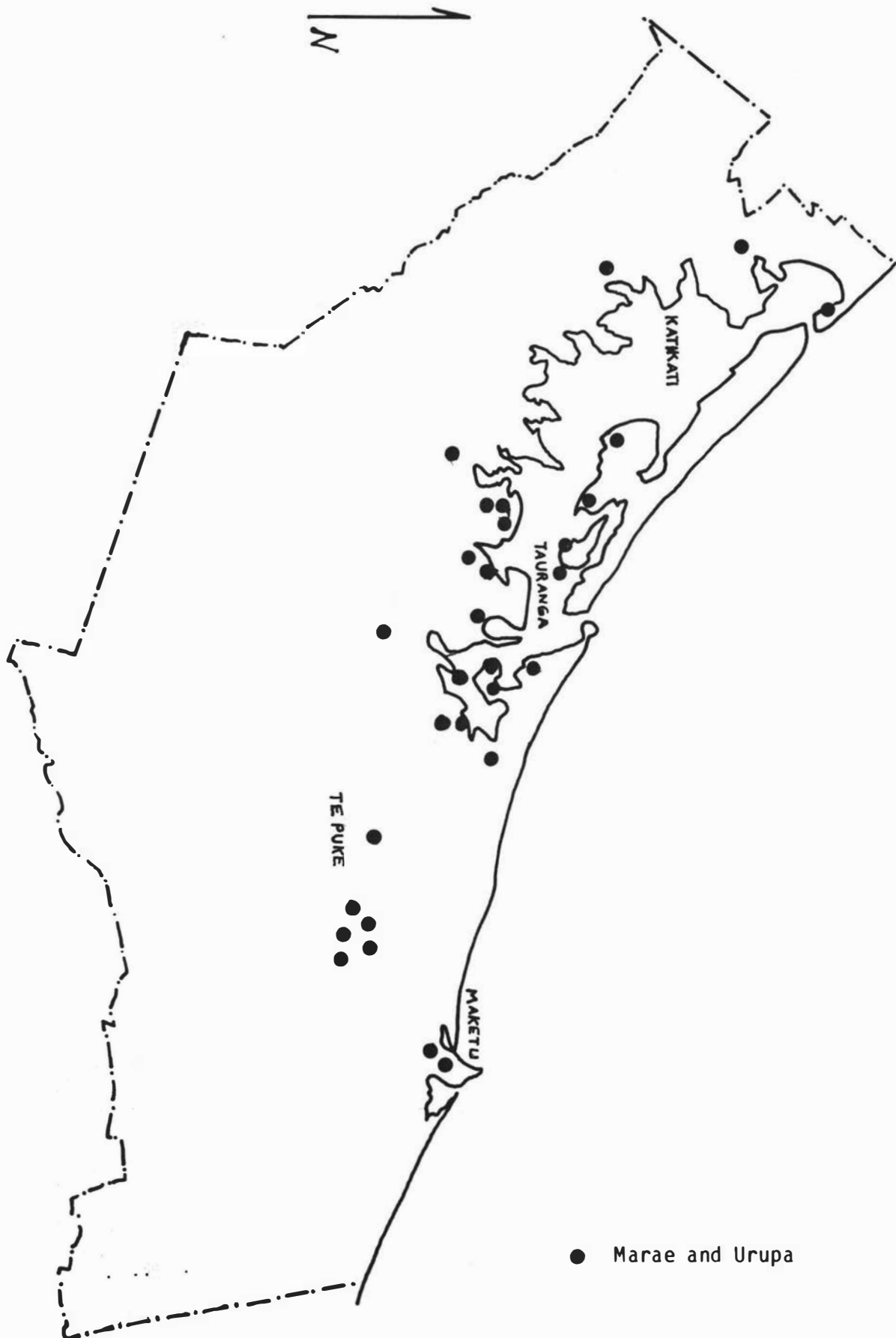


FIGURE 3.9 : Tauranga County
Marae and Urupa

3.3.3 MAORI LAND

Maori land constitutes a significant proportion of the area of Tauranga County. The location and extent is shown in Figure 3.10, page 63. While Maori landowners in other areas of New Zealand are relatively unpressured, the expansion of horticulture in the Bay of Plenty has put considerable pressure on Maori landowners in Tauranga County¹⁰.

Horticulture has increased land values and consequently rates and pressure from other landowners to sell. This and the fact that much Maori land is eminently suitable for horticulture, has resulted in a quandry for the many owners of Maori land¹¹. Maori tradition dictates that the land should be retained in Maori ownership, while in order to pay rates etc, the land must provide suitable income which in many cases, it is not currently doing. Transition to new management techniques such as trusts and incorporations, is occurring as a response and Maori land in the county is beginning to be run on a more commercial basis.

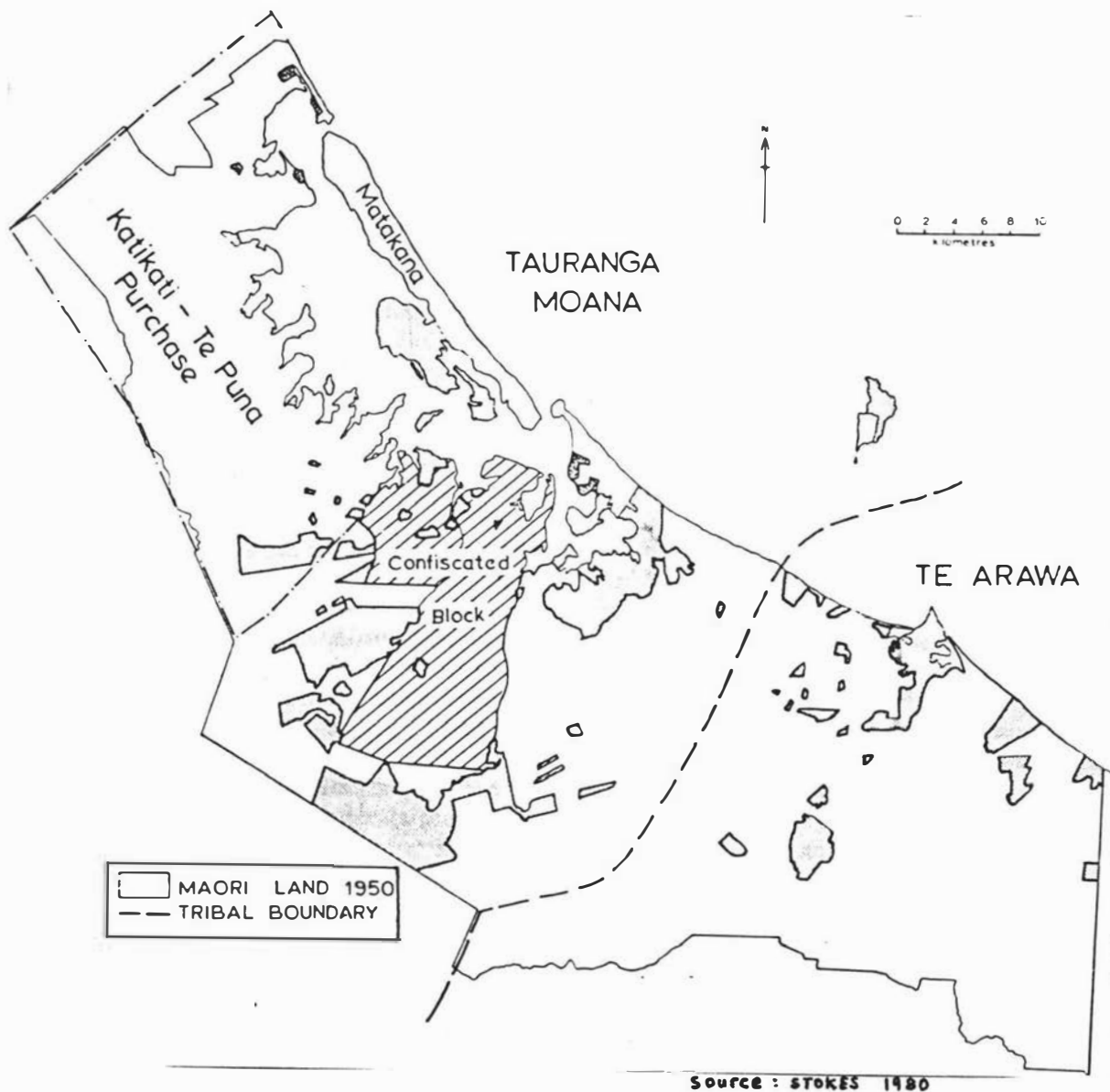


FIGURE 3.10 : Tauranga County
Maori Land Distribution

CHAPTER III

FOOTNOTES

- 1 Whakatane District Council. (1983)
Proposed District Scheme Review
p 471
- 2 Sinclair, K. (1959)
A History of New Zealand
London : Pelican, p 22
- 3 Metge, J. (1967)
The Maoris of New Zealand
London : Routledge and Kegan Paul, p 145
- 4 Whakatane County Council. (1973)
Whakatane County District Scheme
Appendix 1
- 5 Department of Maori Affairs. (1980)
Annual Report. Wellington. Govt Print, p 9
- 6 Stokes, E. (1983)
The Impact of Horticultural Expansion in the Tauranga District
Wellington. Town and Country Planning Division, Ministry of Works and Development. Technical Report No. 14, p 14
- 7 Tauranga County Council. (1982)
Tauranga County District Planning Scheme - Second Review
p 2

- 8 Stokes. 1983 : 29
- 9 Stokes, E. (1980)
A History of Tauranga County
Palmerston North. Dunmore, p 17
- 10 Stokes. 1983 : 142
- 11 Martin, J. (1982)
Labour and Kiwifruit : The Social and Economic Implications
of the Development of the Kiwifruit Industry in the Bay of
Plenty
Wellington. DSIR, p 47

CHAPTER IV

DISTRICT SCHEME PLANNING FOR WAAHI TAPU MARAE AND URUPA

4.1

INTRODUCTION

Planning specifically for marae based development is a feature of both the Tauranga County and Whakatane district schemes. However, the means by which this is achieved differ with the Tauranga scheme incorporating a fairly narrow and well established method largely pioneered by the county council a decade ago, while the Whakatane scheme employs a more recent innovation which has a stronger "cultural base" and consequently is wider in scope.

Specific district scheme planning for marae based rural communities in Tauranga county actually predates the introduction of the 1977 Town and Country Planning Act. In the early 1970s a number of marae being threatened with possible expansion of Tauranga city onto or near their lands, sought to preserve their lands and lifestyle by having areas of land around the marae set aside for residential purposes for tribal groups. Representations were made to the county council by marae representatives and these were picked up and amplified by the county council's Maori land officer, who indicated to council that many of the marae in the county would benefit immensely from an element of residential development. Council responded favourably and in 1973 proposed a new type of zoning for its district scheme to allow for the development of marae as cultural centres for community activity whilst permitting some residential development in rural areas for Maori people¹. This concept of the "marae community zone" received no objections and was subsequently incorporated into the Tauranga County district scheme first review which became operative on April 1, 1976.

When the 1977 Town and Country Planning Act came into force on June 1, 1978, the provisions of the Act and specifically Section 3(1)(g) had largely been preempted as the marae community zone was an attempt to meet exactly those matters specified in Section 3(1)(g). Consequently the introduction of the Act elicited no change in the Tauranga County approach and in fact, the concept has changed little since its inception. Apart from two scheme changes amending bulk and location requirements and the provisions of the excision of dwelling sites, the zone provisions have remained intact to be carried over into the second review of the district scheme which became operative on June 1, 1982.

The adoption of such an approach by the Tauranga County Council was innovative and a great deal more comprehensive than most other district scheme provisions of the mid 1970s. By way of comparison, the Whakatane County scheme (now part of the Whakatane District) contained no integral statement on rural based Maori communities or rural marae. The scheme permitted residential dwellings on papakainga as of right in the largest rural zone - but marae and urupa were made a conditional use provided they were gazetted in terms of the Maori Affairs Act 1953. As a consequence, quite a number of notified planning applications were received by the council seeking various marae based developments ranging from the erection of dining halls to the extension of burial grounds. Between 1975 and 1982, the council approved 11 such applications excluding those seeking development in the immediate vicinity of but not on, marae².

The revised approach by the Whakatane District Council however, is just as, if not more comprehensive, than that of Tauranga County and it addresses fully the matters of national importance and those matters contained in Section 3 and the Second Schedule to the Act respectively. The scheme which at the time of writing is still only a proposed review (objections currently being heard), permits the establishment of "special villages" in the rural zones, with marae based Maori villages being permitted if specified criteria can be met.

4.2 TAURANGA COUNTY : MARAE COMMUNITY ZONES

4.2.1 THE CONCEPT

The current Tauranga County district scheme explains the marae community zones as follows :

"For some time prior to the first review council had been concerned about the present and future functions of existing maraes within the district. A number of such maraes had deep historical and cultural connections with the Maori people of the area and their existence and use are significant. Other maraes, including some graveyards, are used less frequently and have tended to become neglected.

Council is concerned that certain maraes should continue as the cultural and social centre for the area in which they are situated. Council is also concerned that the development and maintenance of such areas should continue in a manner that would provide an acceptable standard of land use and fulfil the proper functions of a marae. For this reason marae community zones were created in the first review to protect selected maraes and allow them to develop in an orderly and attractive manner. This policy will be continue in this review.

It is not council's policy to include within a marae community zone disused or infrequently used maraes or graveyards. These maraes will still have the protection of an "existing use" under the Act.

The marae community zone has been developed to protect the main Maori cultural and social centres within the county. It will be the policy of the council to keep a close watch on future development within the zones and if necessary, amend the scheme to correct any deficiency"³.

Thus, the zoning is designed to permit the establishment of "community buildings sports grounds and recreation facilities associated with marae" in rural areas where the general rural ordinances would otherwise apply.

The only predominant uses in the zone are agriculture and horticulture, while all other uses are listed as either "controlled uses" or "conditional uses". Currently the controlled uses are :

- 1 Community halls, churches, recreational buildings and residential accommodation associated with them and forming part of the marae.
- 2 Sports grounds and recreation grounds associated with and forming part of that marae.
- 3 Dwellinghouses, household units and pensioner housing provided that these uses form only a minor or ancillary landuse associated with that marae.
- 4 Vehicle parks associated with the marae.
- 5 Temporary buildings and uses.
- 6 Cottage industry.

Prior to any of these uses being permitted, it is necessary to firstly establish who are the trustees, advisors or management committee responsible for the ownership, operation and maintenance of the marae and secondly, to prepare a development plan for the area showing the overall development and where applicable, stages of development, provision of services, access, parking, amenity planting, landscaping and the location and layout of the housing area if any⁴.

Subdivision in the zone is permitted, subject to a general "land suitability ordinance and the minimum dimensions for lots are the same as those in the residential zone.

Minimum dimensions for all other lots is 1 hectare.

Marae community zones based on these (or very similar) ordinances came into being in April 1976. However, the management committee and development plan requirement meant that none of the areas so zoned were able to function immediately. By May of 1978 though, five marae had met the criteria and been approved by council⁵. The number of areas zoned was increased at the time of the second review and there are now a total of 14 marae with this zoning. However, not all of these have had development plans prepared or approved by council. Three of the 14 have not had development plans prepared or submitted to council, whilst of the remainder all but one has been approved by council. A decision on this outstanding plan has been deferred⁶.

The location of the various marae community zones is shown in Figure 4.1, page 72 and the development within each zone is shown in Table VIII over.

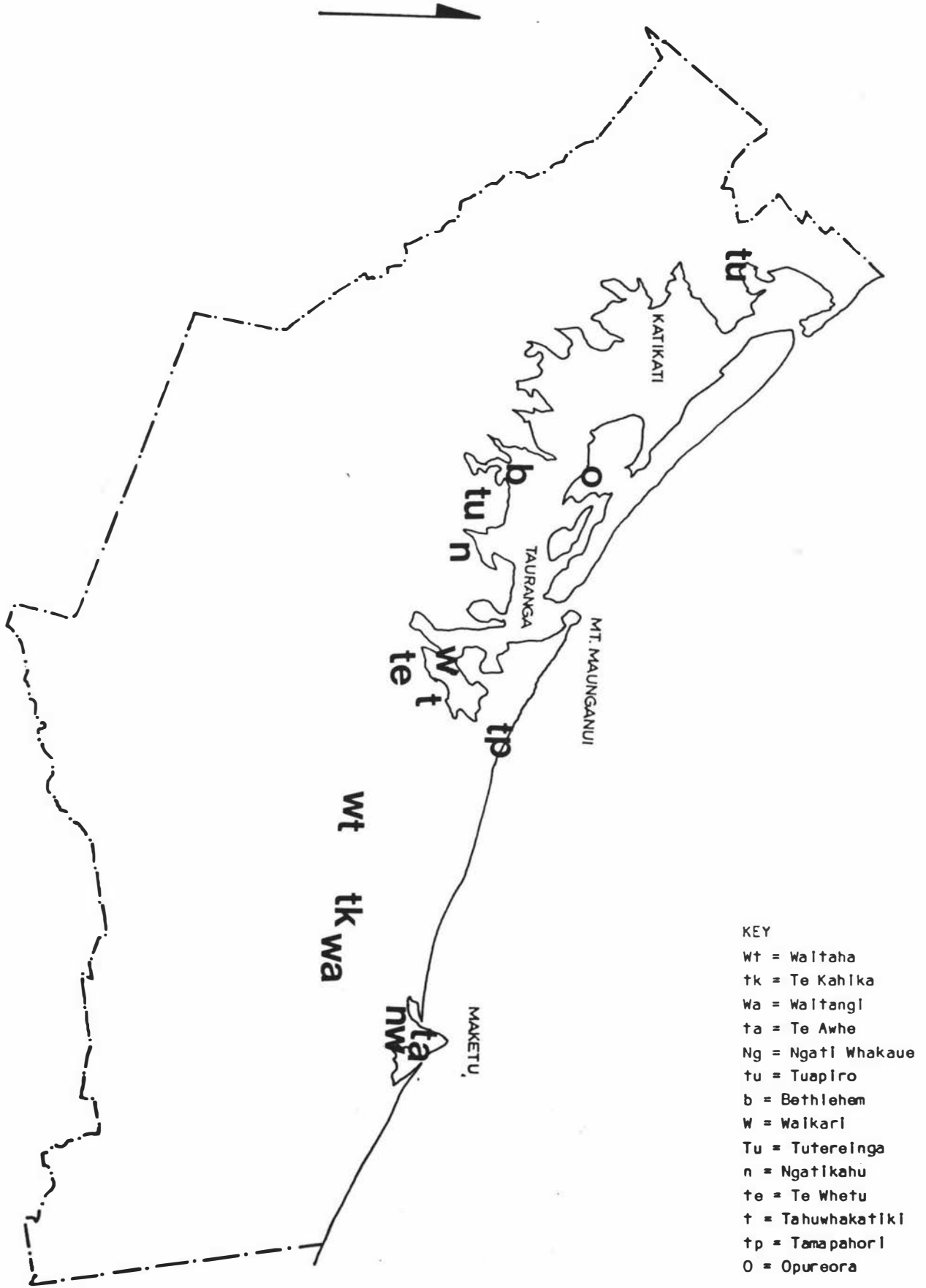


FIGURE 4.1 : Tauranga County Marae Community Zones Location

	NAME AND LOCATION	PLAN APPROVAL			MARAЕ CONSISTS OF		
		Date Submitted to Council	Approved by Council	Approved Maori Land Court	Established	To be Developed	Residential Sites
1	Tuapiro Marae : Surtees Road, Katikati	21. 3.77	21 .3.77	12.11.81	Burial ground Dining room Parking	Childrens playground	7
2	Bethlehem Pa Marae : Bethlehem Pa Road, Bethlehem, Tauranga	9.73	22.12.77		Roman Catholic Church Dining hall Meeting house Burial ground Parking area	Reserve for sports field Ablution block	Existing 16 Proposed 21 Total 37
3	Opureora Marae, Matakana Island	2. 7.75	2. 7.75 Subdivision approved 6.11.78	15. 9.78	Meeting house Dining hall Church Burial ground Tennis courts Ablution block	-	14
4	Waikari Marae, Waikari Road, Matapihi	22.12.77	22.12.77	-	Meeting house Dining hall Tennis courts Burial ground	-	Existing 5 Proposed 22 Possibly Future 9 Total 36
5	Tamapahori Marae, Maungatawa Lane, Papamoa	4. 2.76	Feb 1978	-	Meeting house Dining hall Ablution block Tennis courts Parking area	-	Existing 5 Proposed 7 Total 12
6	Makahae Marae, Te Matai Road, Te Puke	2.11.81	Deferred		Dining hall Tennis courts Parking area Meeting house	Sports field	Existing 21 Proposed 6 Total 27
7	Waitangi Pa Marae, SH 2, Te Puke	-	4. 9.67	4.10.66	Meeting house Dining hall Ablution block	-	Existing 16 Proposed 16 Total 32
8	Tahuwhakatiki Marae, Welcome Bay Road, Welcome Bay	6.10.80	17.11.80		Tennis courts Meeting house Dining hall Residential units Cemetery	Sports ground	Proposed 7
9	Hungahungatoroa Marae Reserve, Matapihi Station Road, Matapihi	Reserve only at present					
10	Ngati-Whakaue Marae, Maketu Road, Maketu	No plan has been submitted			Meeting house Dining hall		
11	Waitaha Marae, Manoeka Road, Te Puke	25. 7.80	19. 5.80		Tennis courts Meeting house Dining hall Parking Rugby field		Existing 24 Proposed 12 Total 37

12	Tuteringa Marae, Tangitu Rd, Te Puna	6. 7.79	No further developments	Tennis courts Dining hall Meeting house Ablution block
13	Wairoa Marae, SH 2, Bethlehem		No plan has been submitted	Tennis courts Meeting house Parking area Dining hall Toilets
14	Te Awhe Marae, Te Awhe Road, Maketu		No plan has been submitted	Meeting house Dining hall

TABLE VIII : Scale of Marae Development : Marae Community Zones

Source : Tauranga County Council Records

4.2.2 MARAE COMMUNITY ZONE CASE STUDIES

4.2.2.1 WAIKARI MARAE

a Background

Waikari marae serves the settlement of Ngati Tapu, a hapu of Ngaiterangi at Waikari (Stokes 1980 : History) on the western side of the Matapihi peninsula. The marae is approximately 8 kilometres from Tauranga City and 9 kilometres from Mount Maunganui Borough. A considerable proportion of the peninsula is Maori land and there are various Maori cemeteries and one traditional pa site on the peninsula⁷. Maori occupation of this area goes back over 25 generations - see Figure 4.2, page 75.

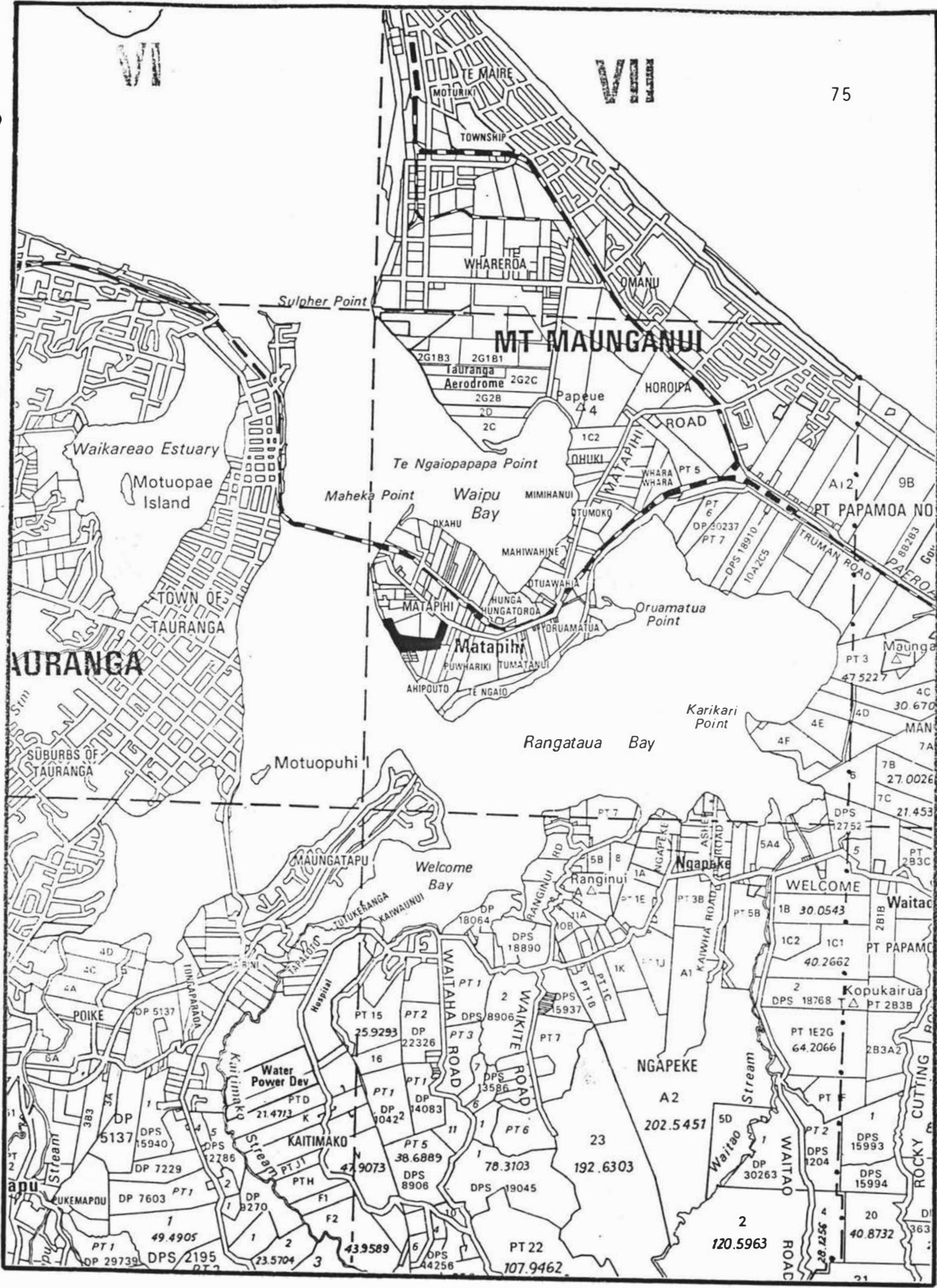


FIGURE 4.2 : Waikari Marae Community Zone

b Development

In 1974, submissions were made to the Tauranga County Council on behalf of the Matapihi-Ohuki trustees by Mr E T Durie (now Chief Judge of the Māori Land Court) seeking council's recently devised "marae community zoning for the Waikari marae. Durie's submissions included the following extract :

"Matapihi is county land but with a somewhat uncertain future as to its local body status. The trustees hope to take advantage of the tranquil period before the impending invasion should this area become part of the city. They seek the interim period to consolidate and amalgamate titles to establish marae community zones that would ensure the continuation of their way of life here in future. They seek also the opportunity to allow some residential development to meet the needs of the Māori landowners who cannot presently cut out their land shares to build in the area. Many of these people have been forced to move to Tauranga City or Mount Borough Council in order to live, but retain hopes of reestablishing their children in the area. For these reasons given in the general submissions the trustees seek :

- i The provision of marae community zones around the two existing marae at Matapihi.
- ii The provision for other residential development in the Mahiwahine and Otuawahia blocks"⁸.

Subsequently a Waikari marae community zone was included in the first review of the Tauranga County district scheme - operative from April 1, 1976. The Whakahinga marae further down the peninsula did not receive marae community zoning.

In May of 1976, a meeting of the owners of land within the Waikari marae community zone was called, with those attending hearing submissions by both the county chairman and the county council's Maori land officer, on the purposes of marae community zoning. This meeting then elected six people to act as a management committee for the marae zone as per the district scheme requirements.

In early 1977 the county council advertised and subsequently approved in March of that year change number 6 to the district scheme. This scheme change extended the boundary of the zone to include an area for housing between the marae proper and the urupa (Figure 4.3, page78).

TAURANGA COUNTY COUNCIL

CHANGE N° 6

78

MAP AMENDMENT TO SHEET N° 45

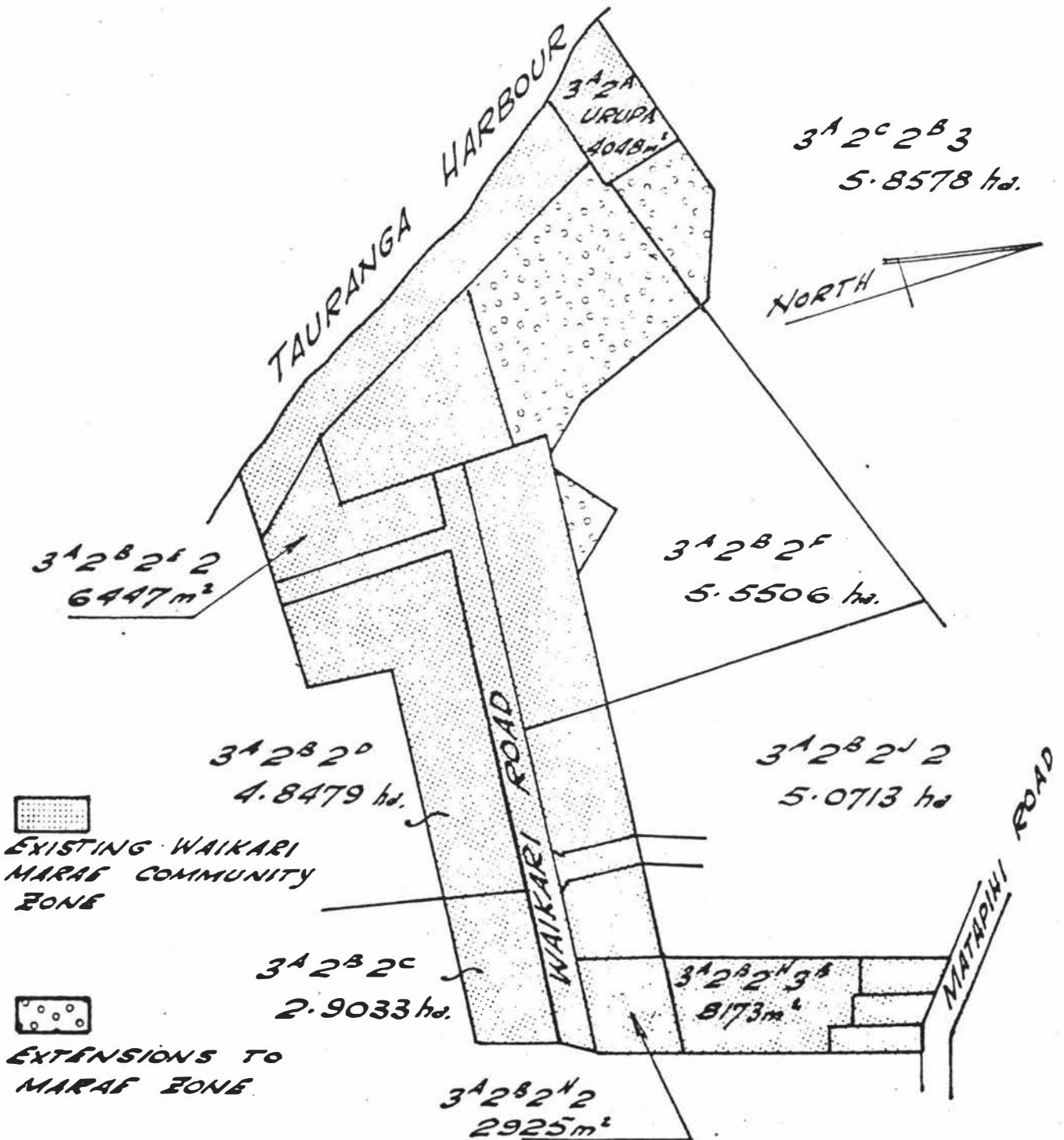


FIGURE 4.3 : Waikari Marae Community Zone
Scheme Change Number 6

In May 1977, the marae committee wrote to council advising them that marae community zoning for Waikari as defined in the district scheme had been "unanimously accepted" and that the group of six trustees chosen to manage the marae earlier was confirmed. Under the guidance and advice of the Maori land officer, a provisional development plan was prepared and submitted to council (Figure 4.4, page80).

Development within the zone consisted of :
cemetery
meeting house
dining hall
dwellinghouses.

The number of dwellinghouses in existence at this time was 5, with a further 22 sites being proposed and a further 9 pencilled in as possibilities.

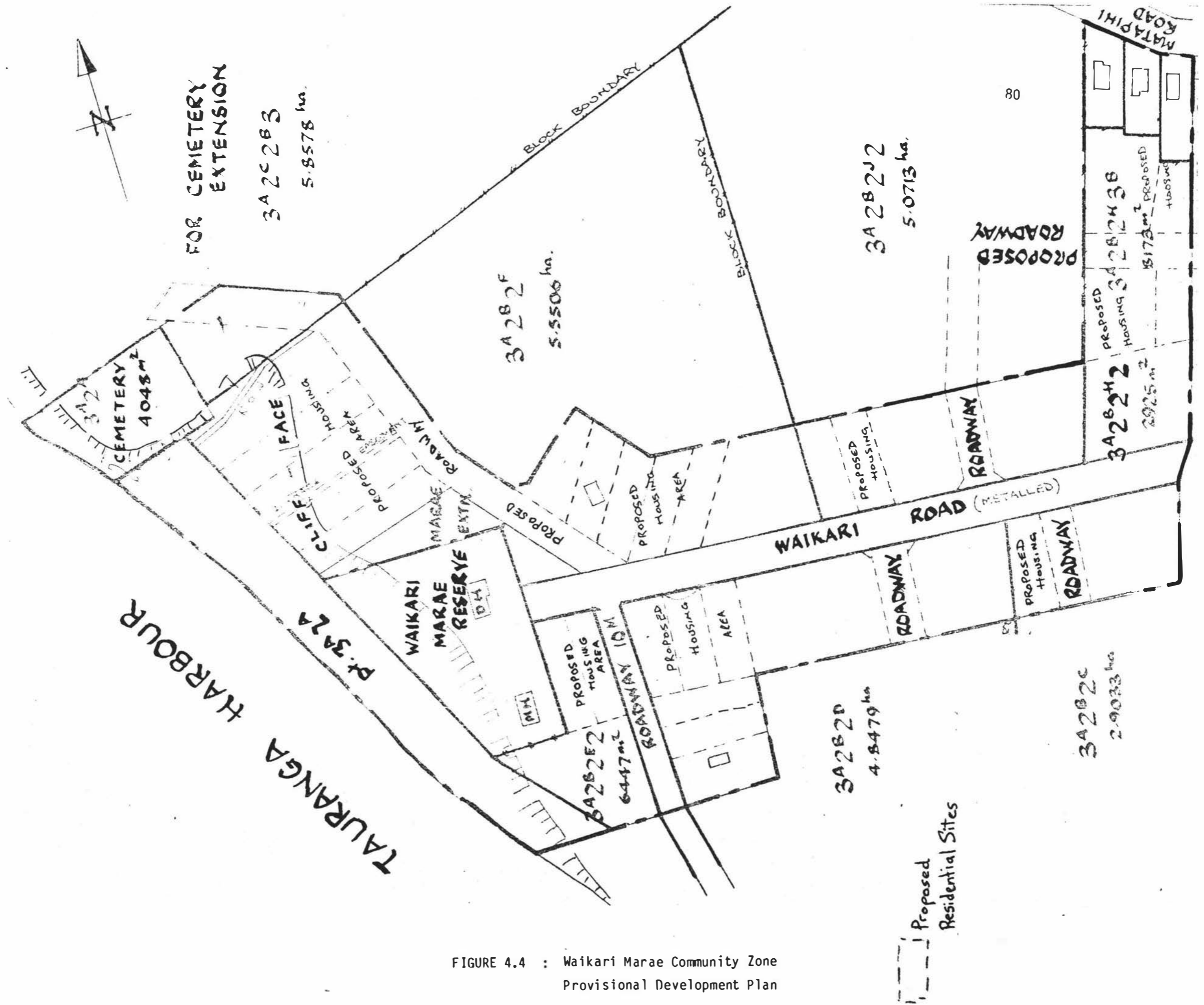


FIGURE 4.4 : Waikari Marae Community Zone Provisional Development Plan

The Tauranga County Council approved the management committee and the development plan on December 22, 1977.

The marae community zone as amended by change number 6 was carried over into the second review of the district scheme.

In March of 1983 representations were made to council for a donation to a childrens playground to be established on the marae but nothing further has occurred since.

c Subdivision

To date the county council has received and considered a total of four scheme plans of subdivision for land within the marae community zone. Briefly they can be described as follows :

- i Sub 2962 April 1980 : The applicant sought to subdivide for the purposes of realising his interest in an area of land and utilising that land for horticulture.

The county council resolved to approve the proposed partition in June 1980.

- ii Sub 3350 October 1981 : The applicant sought to realise her interest in an area of land and partition out a housing site for a family home.

The county council resolved to approve the proposed partition in December 1981.

- iii Sub 3614 December 1982 : The applicant sought to realise her interest in an area of land and partition out a housing site for a family home.

The county council resolved to approve the proposed partition in April 1983.

- iv Sub 3634 March 1983 : The applicant sought to realise her interest in an area of land and partition out a housing site for a family home.

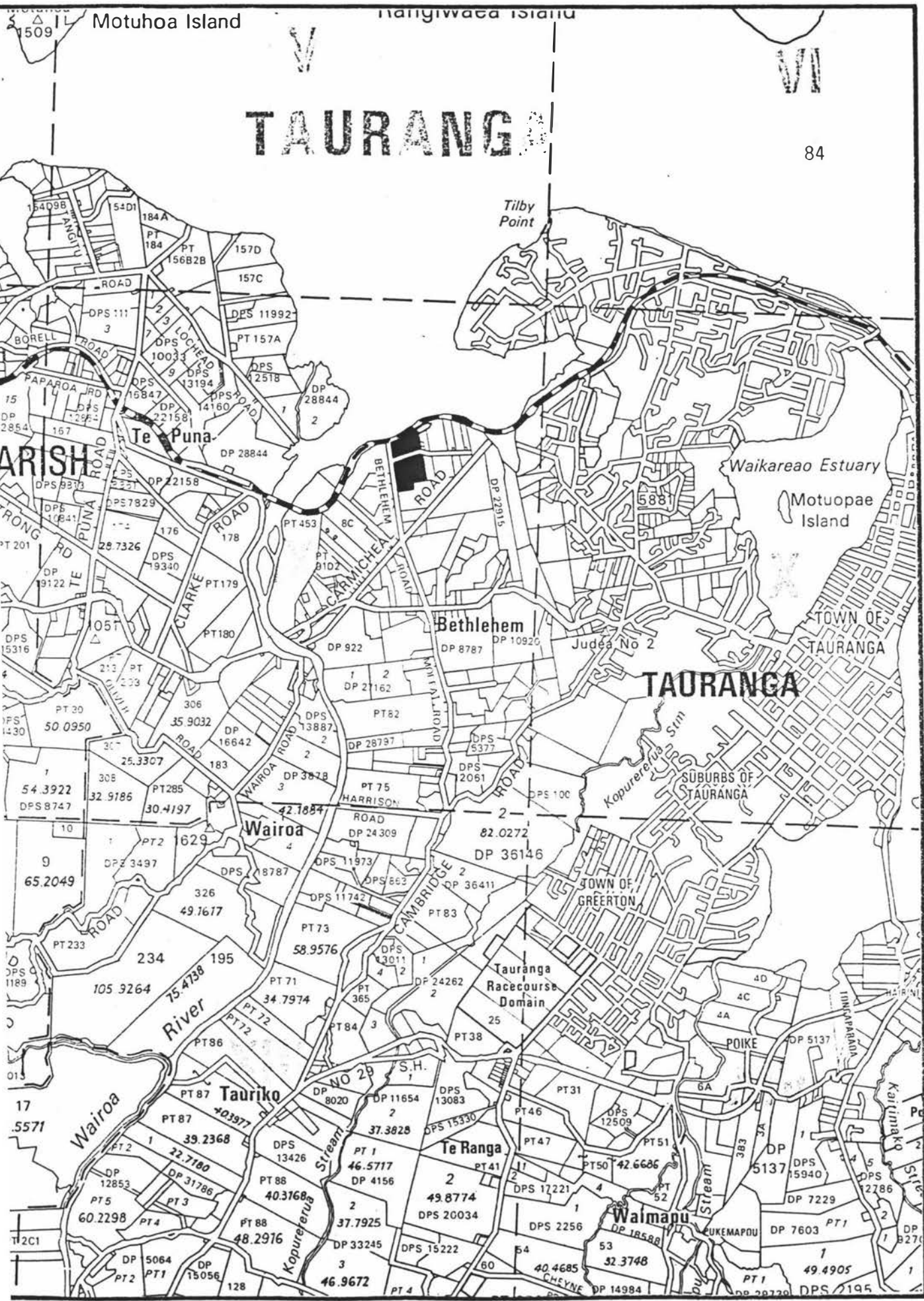
The county council resolved to approve the proposed partition in June 1983.

Apart from this, there have been attempts to amalgamate the land within the marae community zone. A report of a meeting held at Waikari marae on July 12, 1981 states that the meeting considered a proposal to amalgamate various blocks within the zone - Matapihi 3A2B2C, 3A2B2F, 3A2B2J2 and 3A2C2B3. This proposed amalgamation was to enable the marae community zone area to be subdivided and the balance area to be utilised as one block. However, the owners at this meeting opposed this suggestion. they agreed that the zoned area be subdivided for housing with the proviso that sections created on their parts of the amalgamation be allocated to nominees of their own. Nothing further has taken place.

4.2.2.2 BETHLEHEM MARAE

a Background

Bethlehem is the marae of the Ngati Hungarau, hapu of Ngati Ranginui. It is located approximately 800 metres from the western boundary of Tauranga City and 1.4 kilometres along Bethlehem Road from its intersection with SH 2. Land in the area is generally classified as class IIE2 by the NZ Landuse Inventory Worksheets and is regarded as good horticultural land to be preserved from residential or other urban development⁹ - Figure 4.5, page84.



TAURANGA

FIGURE 4.5 : Bethlehem Marae Community Zone Location

b Development

In March 1973 the Tauranga County council's Maori land officer convened a meeting with locals to put to them and discuss the idea of marae community zones. At this stage the marae community zones were a 'concept' only and he considered that given its location and circumstances, Bethlehem would benefit greatly from the zoning. He reported after this meeting that the response from the local population was favourable and the concept was accepted in principle by those present. Subsequently in 1974, the marae committee having agreed in principle with the marae community zone concept, made submissions to the Tauranga County Council seeking a marae community zoning for their lands¹⁰.

Submissions were made on their behalf by E T Durie. The following is an extract from his submission :

"There are six persons who are anxious to build in this area now and who are looking for ways and means of doing so, but who are unable to partition their shares. If it were possible several others would probably seek the opportunity to partition out in the marae community zone. Again several young people have had to move away from the area because of the restrictions on partitioning and building.

Again there are substantial areas of Maori land running from the coast inland along Carmichael and Bethlehem Roads.

The Bethlehem marae committee seeks to extend the marae community zone beyond the limits outlined by council's draft plan. They would seek to extend the zone from Bethlehem Road through to Carmichaels Road and then to the coast. Such developments must be done in stages, as demand requires, but they seek this zoning of the land now for two reasons :

- i Planning by zoning should be projected for several years ahead; and
- ii The committee is concerned that certain areas of land that would be most appropriately used for a marae community zone area could be sold in the near future owing to the frustrations that the existing owners have felt about being able to do anything with their lands. Such zoning would assist the committee in retaining this land for the benefit of the people and to ensure their future needs of the area¹¹.

Subsequently, a Bethlehem marae community zone was included in the first review of the Tauranga County district scheme in April 1976. In May 1976, trustees for the management of the land within the marae community zone were appointed. In line with the requirements of the district scheme provisions, a development plan was prepared under the guidance and advice of council's Maori land officer. This plan specified the future and existing landuses in the zone and is reproduced below - Figure 4.6, page 87.

Existing developments outlined by the plan were :

- 1 A modern dining hall;
- 2 A new meeting house;
- 3 A Catholic church;
- 4 Parking area;
- 5 Four pensioner units.

Future development outlined included :

- An ablution block - ie, showers, toilets etc;
- A sports field.

The Tauranga County Council approved both the committee of management and the development plan for the zone in December 1977. The proposed development to be undertaken on the marae was subsequently revised and the number and layout of residential sites within the zone was altered. A revised development plan was therefore produced and in March of 1983, the council considered this plan and approved it - Figure 4.7, page 89. All future partitions and landuses within the zone are to be in accord with this plan and the district scheme requirements.

TAURANGA HARBOUR

E.C.M. T. RAILWAY

URUPA
7945m²
95B

4.3760ha
409B2

2.3052ha
95Z3

1.3462ha
J3

EXISTING
RESERVE FOR
SPORTS FIELD

95E2

95F2

22

Z1

3566m²

95Y1

95X

PENSIONERS

4 FLATS

J2

J1

MARAE

MH

PARKING

R.C
CHURCH

BETHLEHEM PA ROAD

BETHLEHEM ROAD

95L1

95E1B2B2
1.6086ha

95F2
1.2351ha

95G2
1.5750ha

95W2
3.4965ha

95J3B2
2.1660ha

95E1A

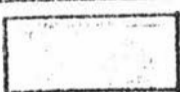

KEY	EXISTING HOUSING 1982 SHOWN	
	PROPOSED RESIDENTIAL SITES SHOWN	

FIGURE 4.7 : Bethlehem Marae Community Zone Revised Development Plan

In November 1983, the marae committee advised council of a proposal to erect a sports complex, in line with the development plan. In its advice to council, the committee included plans and estimated costs. The matter was considered by the county councils reserves committee which advised that the proponents of the complex be made aware of the need for a "controlled use" application. To date nothing further has occurred.

c Subdivision :

There have been a total of six scheme plans of subdivision for the area inside the Bethlehem marae community zone since its inception.

The three most recent have been identical situations whereby the applicants sought to realise their interest in land to partition out a residential site from the parent block. In these situations, the council's Maori land officer was able to assist the applicants before they made a case to council and to assist the council in addressing the desirability of these proposals with his assistance and advice, all proposals complied with the approved marae development plan and the council approved all three partititons pursuant to Section 432 of the Maori Affairs Act 1953.

The subdivisions for residential purposes have enabled two families to move back into the area, while one family already living within the zone has been able to partition out their own section.

d Landuse :

Land within the marae community zone is used for either residential purposes, community uses or for the grazing of stock. Examples of landuse within the zone are pictured below.



a Variety of Landuse : Grazing Background,
Residential Foreground



b Four Pensioner Units



c The New Dining Hall



d Vacant Residential Site (unpartitioned)
Between Existing Dwellings



e Two New Houses on Partitioned Sites



f The Meeting House

4.2.2.3 TUAPIRO MARAE

a Background :

Tuapiro is the marae of the Whanau a tuawhao (Bryan family), Hapu of Ngaiterangi¹².

It is located on the northwestern corner of the Surtees Road SH2 intersection approximately 6.5 kilometres north of Katikati. The land within the marae community zone consists of a level plain running parallel with Surtees Road, a steep bank and then another flat plain approximately 9 metres below the level of Surtees Road - see Figure 4.9, page 96.

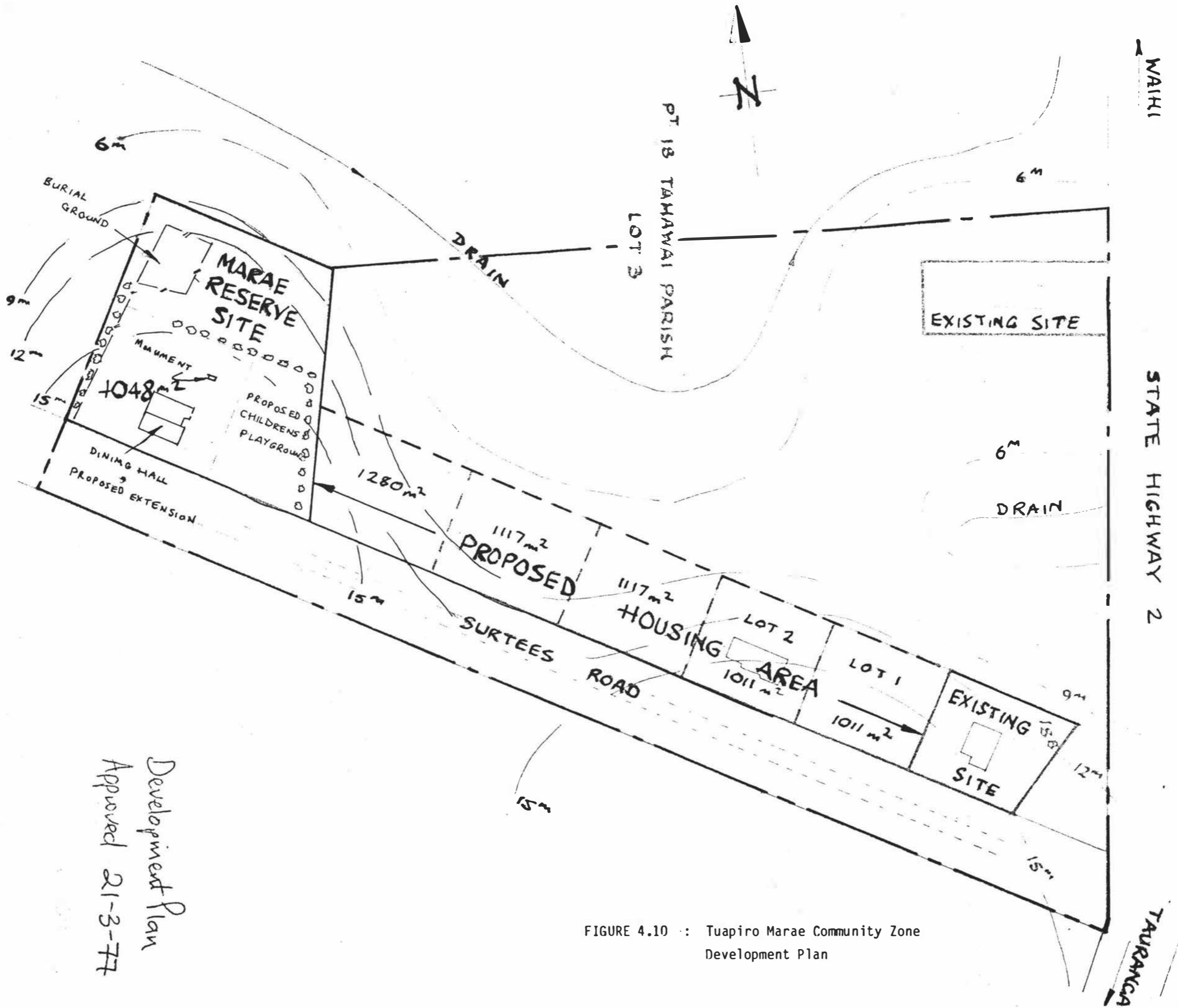
This marae is a good example of a rural "family" marae.

b Development :

In mid 1973 the Tauranga County Council's Maori land officer held a meeting to explain to the local representatives, the concept of marae community zoning. Subsequently in December 1973, the Maori land officer produced draft plan of proposals for the marae, including the creation of residential sections and the definition of a marae reserve. Progress lapsed after this however and in December 1974, the local people requested the Maori land officer to hold over the matter of marae community zoning until problems within the family group had been resolved.

In June 1975 the Maori land officer met again with the local people and the outcome was the election of a number of trustees to oversee marae development and a commitment to develop a marae community zone. A Tuapiro marae community zone was subsequently included in the first review of the district scheme in April 1976.

In March of 1977 a further group of trustees was appointed, replacing those elected earlier. A draft development plan was prepared - once again with the assistance of the Maori land officer - and submitted to council. Council approved this plan - Fig. 4.10, page 98 in late March 1977.



Development Plan
 Approved 21-3-77

FIGURE 4.10 : Tuapiro Marae Community Zone Development Plan

c Subdivision :

Concurrent with its consideration of the marae development plan, The council also considered a proposal to partition out the residential lots and marae reserve as per the development plan. the council approved the partition under the Maori Affairs Act 1953 on 21 March 1977.

The proposed partition was then submitted to the Maori Land Court for approval in June 1977, by the Maori land officer on behalf of the owners. There followed a period when the Maori Land Court returned the partition application twice due to errors in procedure and format. The Maori land officer corrected the deficiencies both times. These errors however, resulted in an additional five month delay before the court even received the application in the correct form. The partition was approved, but only in regard to Lot 1, the marae reserve. No residential lots were approved in the consent given on 1 April 1980.

On the 23 December 1980, the Tauranga County Council advised the surveyors acting for the marae committee that the subdivisional approval given on 21.3.77 had lapsed and that reapproval in terms of the Local Government Act 1974 and the Maori Affairs Act 1953 would be necessary. Subsequently in June 1983, a scheme plan was submitted for council approval (Fig. 4.11, page 100) and this was approved by council in September 1983.

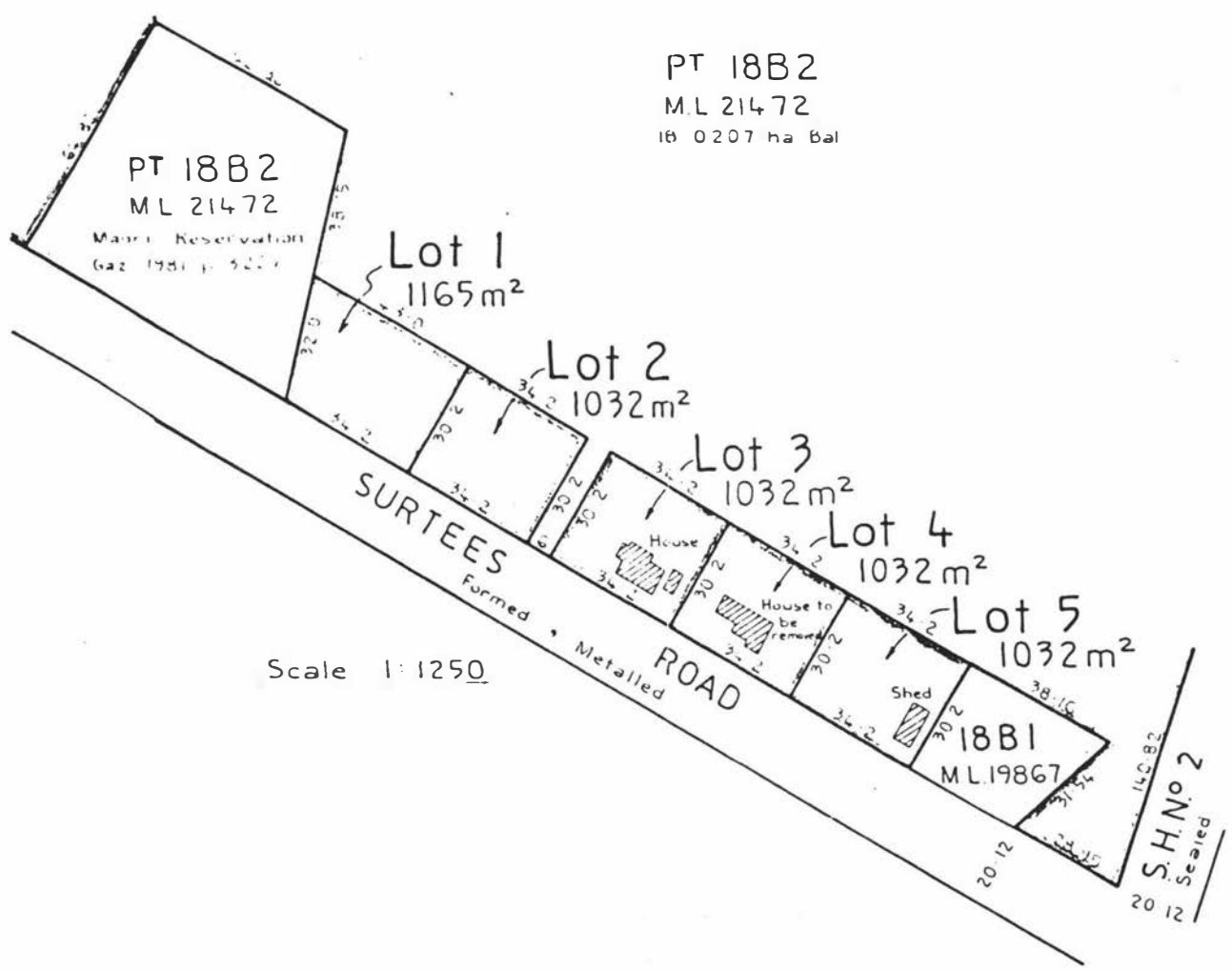


FIGURE 4.11 : Tuapiro Marae Community Zone
Scheme Plan - Residential Purposes

Prior to this, two other developments occurred which affected the marae community zone. firstly, subsequent to the Maori Land Court approval for the partitioning out of a marae reserve site, this area was granted marae reserve status in terms of Section 439 of the Maori Affairs Act 1953 in November 1981.

Secondly, the Hikurangi Trust was established under Section 438 of the Maori Affairs Act 1953 to administer the land.

d Landuse :

There are a total of three dwellinghouses currently occupied within the marae community zone, although one of these is substandard and will be removed. Other than the residential component, the zone includes a dining hall and an ablution block and a cemetery. The remainder of the land is currently used for grazing purposes. The landuse situation is depicted in Fig. 4.12, pages 102, 103.



a Substandard Dwelling, to be Removed



b Existing Dwelling and House Site being Prepared



c Grazing Land, the Foreground being Within the MCZ



d The Dining Hall, with the Cemetery on the Right

4.2.3 MARAE COMMUNITY ZONES : EVALUATION

i Zoning :

The use of a specific zone to permit a desired landuse to the exclusion of others is a continuation of general planning practice in New Zealand. Although the term is not mentioned in the Town and Country Planning Act 1977, zoning is authorised under Section 36 of the Act and has evolved to become "the" technique for landuse control and planning in New Zealand.

Zoning however as traditionally conceived, does not alter existing landuse allocations directly but merely guides future landuse decisions so as to encourage those which complement one another and to preclude those which conflict. Consequently, it is viewed as a negative tool for the prime reason that zoning does not ensure that a particular landuse will eventuate, all it does is to restrict other activities from using an area¹³.

Another negatory connotation of zoning is that the technique is based on the notion of segregation of different and "ill conforming" uses. This notion of separation may have been appropriate when zoning was used to combat an unhappy mixture of uses in 19th Century industrial England, but it is not necessarily relevant today¹⁴.

The introduction of modern technology and ideas has changed the nature of many uses and the way we live in a spatial as well as social sense. Thus, many uses do not require physical separation and increased yields from agricultural land has meant that separation of agricultural and residential uses is not seen as being as critical as it was in the past. The matters of national importance specified in Section 3 of the Act however, tend to be based on the philosophy of segregation and this is evident in the way recent planning schemes treat rural residential developments. The preoccupation in New Zealand with the economic use of the land and the scale of that use, has tended to mean that defacto residential developments in rural areas have been viewed as an incompatible use and consequently zoned out of the rural area¹⁵.

This same notion has to a large degree, been retained by Tauranga County with its marae community zone concept. The zone provisions give council the discretionary power to limit the number of residential units permitted so that they are only ancillary to the other marae uses. Thus, the notion of residential development as incompatible in the rural zone, has been retained, but in attempting to achieve a balance between social and economic considerations, the scale at which residential use becomes "nonconforming" has been altered by the county council. Hence, where five dwellings, self contained service wise, may have previously been unacceptable in a rural area, they may now be permitted under the marae community zoning. In fact several marae community zones have had plans approved, which propose many more than five dwellings. Other than dwellings however, the range of uses permitted is limited to community uses and traditional rural uses. Other forms of industry and commerce that could make a residential node "self sufficient" are not permitted and to this extent, the traditional notions of rural land for rural purposes only, have been retained.

This same notion is also evident in the fact that not all maraes are zoned for marae community purposes and that those that are not are protected only by "existing use" rights unless they are gazetted Maori reserves, whereupon they are a predominant use in most of the rural area.

ii Community Response :

Despite the above, marae community zoning does permit the development of selected marae in a manner that has met with a positive response from the Maori community. In May 1978, Tauranga County Council's Maori land officer made the following comment in a report on the zones "although the general idea was somewhat slow to be appreciated, it has now reached the stage where this zoning has proved eminently successful. Furthermore, the opportunity for the Maori people to have their own community zoning including a residential area, appears to have led to an upsurge in interest toward considerable improvements to dining rooms and marae surroundings generally and from the social point of view, it must have a very good effect in that younger people are being more closely affiliated with their elders"¹⁶.

A favourable response to the concept of marae community zoning is evident in the development of the Bethlehem, Waikari and Tuapiro maraes. In two of the three cases, the local community actively sought the introduction of the zoning, making extensive submissions to the Tauranga County Council seeking its imposition. Once the zoning was included in the district scheme, the council was advised that the concept had been "unanimously accepted" by the communities concerned.

In the third instance, the impetus came from the county council's Maori land officer, but the suggestion that the concept be adopted was readily accepted by the community. Thus, throughout the development phase, the concept was attractive to the communities involved and the fact that it was desirable was communicated to council.

Most recently, comments from the chairman of the Tauranga Moana District Maori Council indicate that the favourable response to the zoning when it was first mooted are still applicable now. It is the chairman's view that the aspirations of the local people can be satisfied with the marae community zone concept - and although there are ways in which it can be improved, the zones have largely achieved what the District Maori Council wished¹⁷.

In addition to direct comments, feedback has come through the planning application process. The Tauranga County Council has not had to consider a single notified application seeking the development of either community or residential buildings on marae since the inception of the zones. The absence of applications tends to indicate that the marae community zone provisions have been able to provide adequately for marae based development in Tauranga County (although the fact that the council has not selected a marae for marae community zoning may act as a disincentive for that maraes representatives to seek this zoning).

Overall, the response of the community at large to marae community zoning has been positive, with the positive response appearing to stem from the confidence this has instilled in the local Maori population.

iii Ahi Ka :

One of the main thrusts of Maori representatives to the county council prior to the establishment of marae community zones was to convince council to permit residential development on the marae. By getting houses permitted on marae, the Maori people hoped to fulfil the traditional concept of "ahi ka" and the revitalisation of marae through the continued presence of people.

When the provisions were included in the district scheme, residential development was permitted at a scale "ancillary" to the other functions of the marae, but a great degree of flexibility and discretion was reserved by council to determine what the scale permitted would be. The ordinances were therefore interpreted as a way of providing housing around a marae whilst permitting council to retain control over subdivision in the rural areas¹⁸.

As a consequence, residential development has been the predominant "new" function in most of the development plans that have been prepared. In fact in a large number of cases, the residential development is the only further development to existing marae facilities to be planned as a result of the introduction of marae community zoning (excluding rebuilding and upgrading of existing facilities). This is evident from Table VIII.

While the number of residential sites permitted has varied between the different marae, in nearly every case the zoning has doubled the number of sites on each marae. In the case of Waikari for example, the number of existing residential sites was five and the development plan proposed a further 22. Similarly, Bethlehem marae consisted of 16 existing sites and the development plan proposed a further 21. Not all proposals have been for large numbers of residential sites however. At Tahuwhakatiki marae in Welcome Bay, it is proposed to have a total of seven residential sites where there are currently none. In the Tuapiro zone a total of six residential sites is proposed. Of the marae that have had development plans prepared and approved, only a single marae has retained the same number of residential sites, before and after development plan approval.

The Tauranga County Council's marae community zones have permitted residential development on marae at a scale which the council views as appropriate for each marae's situation. The response the council has received and the comments of local Maori representatives¹⁹ allows for the "ahi ka" concept. Thus, marae community zones provide for "ahi ka" and allow the continued presence of people on the marae.

v Landuse :

While the major "new" development in marae community zones is residential, traditional rural uses do not appear to have suffered as a result of marae community zoning. In the Tuapiro zone, the bulk of the land is in fact used for grazing and pastoral agriculture, while residential development is concentrated along the Surtees Road frontage.

The Bethlehem zone contains a substantial level of "urban" development but land here is also kept in pasture and grazed. Similarly, in the Waikari zone, much of the land is still in pasture and in fact there is a substantial area devoted to kiwifruit within the zone, although this has been excluded from the "development plan" for the marae.

Other uses to be developed are "community uses" and the Bethlehem marae development committee has proposed and prepared plans for a sports complex. Apart from this other marae have proposed ablution blocks and childrens playgrounds for the future. A considerable range of uses therefore, including agriculture and horticulture, are being developed or are proposed for the future under marae community zoning.

iv Confidence :

The other major effect of marae community zoning has been to instill confidence in the rural Maori population. The creation of a specific zone in which traditional Maori activities are the main uses, provides an assurance that these uses will be permitted to continue and confirms to the populous, council's awareness of the relationship between the Maori people and their lands. This confidence and the certainty the zoning provides has manifested itself in a renewed vigour in upgrading of dining halls, meeting houses and other facilities²⁰.

Apart from the confidence that traditional uses will continue in such a zone, marae community zoning appears to provide some confidence that land will be retained in Maori ownership. In the submission made by E T Durie seeking marae community zoning for Waikari and Bethlehem maraes, the fear was voiced that both these periurban areas may well become areas of Tauranga City. In the event of that happening, there would be considerable pressure for Maori land to be generally available for urban purposes²¹. The inclusion of any land in a marae community zone however, is seen to discourage "outside" investors hoping to acquire Maori land for development and to encourage those who own the land to retain it²². Thus, these particular communities sought marae community zoning not only as a means to permit traditional lifestyles to continue as such, but also to retain Maori land in Maori ownership.

Once the land was zoned for marae community purposes, the frustrations that landowners felt with planning requirements would be reduced and an incentive to retain land. In addition, any owner who attempted to sell land once zoned for marae community purposes, would almost certainly fence the wrath of the remainder of the tribe. For all these reasons therefore, marae community zoning appears to provide the community with confidence that Maori land will be retained in Maori ownership.

vi Problems :

Not all the problems of marae community development are solved by the establishment of a marae community zone on a district scheme plan²³. The complications of administration of land in multiple ownership and the problems of partitioning out residential sites remain to be faced by the community. Such problems occur frequently and can result in marae development being kept "in limbo" while they are sorted out. The development of the Tuapiro marae is a case in point. The marae committee had submitted to the county council a scheme plan to enable the partition of five residential lots and a marae reserve. The county council approved the plan. However, when the plan was subsequently submitted to the Maori Land Court, the plan and application were returned twice with a request for further information and a change in format. The deficiencies in the original application were the result of the complex shareholding situation and the problems this caused in attempting to ascertain who was entitled to what. This to-ing and fro-ing caused a five month delay before the application was considered by the Land Court. In any event, the residential sections were not approved because of shareholding problems and only the partition of the lot for the marae reserve itself was consented to.

The whole procedure of scheme plan preparation and submission to the Maori Land Court had taken so long that the original scheme plan approval had lapsed and a further consent was necessary. This was subsequently sought and received from the Tauranga County Council, but Land Court approval for the residential lots has yet to come. Thus the zoning will permit residential development, but the reality is that the ownership provisions are delaying development.

Similar difficulties have been experienced at the Waikari marae. While four separate individuals have been able to partition out residential sites in separate instances, there has been little progress in attempting a "zone wide" rearrangement of land ownership so that residential development can take place. Landowners within the zone agree that the area should be subdivided for housing, but they have disagreed over who amongst the owners are entitled to house sites within the zone. Consequently, the development that is permitted within the zone has yet to take place because of difficulties with ownership.

It is unlikely that the occurrence of these and similar problems is a rare event. Rather, it is likely that problems or some form of difficulty will occur in most situations where considerable residential development is proposed. As the Waikari and Tuapiro examples show, providing for marae development in a district scheme, does not guarantee that development will take place. There are many problems to be overcome - who amongst the multitude of owners gets a house site? What happens to members of the marae with land outside the zone? What happens when those who own the land in the zones do not want to amalgamate their land with someone else's or subdivide their land? These and similar problems are present with development in the marae community zones.

Given however that marae community zoning is effectively only a means to permit residential and community uses in rural zones, these problems may well in fact be present in any situation where similar uses are permitted by any zoning technique. Given the nature of the problems experienced they may well be overcome by changes to the legislation relating to land ownership rather than to land use.

Despite these problems, the marae community zone concept does permit those uses desired by the Maori people to continue. It provides for ahi ka; it provides for the development of community facilities; and it has led to a resurgence in the marae. All these things have been achieved under the existing planning legislation, while the delays in implementing marae development are caused by factors unrelated to planning legislation.

4.3 WHAKATANE DISTRICT : OVERZONING

4.3.1 INTRODUCTION

Rather than using special zoning over specific pockets of land to cater for the Maori relationship with traditional lands, this is achieved with the Whakatane District through the use of a general "rural" zoning in conjunction with the application procedures authorised by the Town and Country Planning Act 1977. There are no special "Maori zones" - instead Maori land along with all other nonurban land in various forms of tenure, is divided into either one of the five rural zones and the provisions of these zones used to permit the establishment of Maori settlements and other uses in particular circumstances.

Existing marae and urupa are a predominant use in the rural zones and a conditional B²⁴ use in the other two. Apart from these, more "traditional" Maori uses, the scheme provisions permit "special villages" of two types within the various rural zones. Villages for Maori people are permitted as a conditional B use on Maori ancestral land immediately adjoining a marae in four of the five rural zones - and "other villages" are permitted as a conditional B use in the rural B zone only - the largest of the rural zones.

As a conditional use council must consent to a notified application before any development can be undertaken. The concept of a conditional use is that no use is permitted as of right and that any matter is discretionary. As a consequence, the standards specified in the district scheme are used as a guide by council when exercising this discretion. In this particular case, the standards are both comprehensive and specific as council intends to apply these to every proposal.

In much the same way as under marae community zoning, there is a requirement that a management committee of trustees or advisors be formed to assume responsibility for the ownership, operation and maintenance of the land and buildings and for the preparation of an overall development plan for the village. All applications must include a development plan and report specifying the proposed development and the reason for it.

In addition, there are conditions specifying the maximum size of a settlement that will be permitted - up to (50) dwellings; the maximum density for residential development - not to exceed 1 dwelling per 2000 square metres of land that is the subject of the application; and the range of uses permitted within the village. These uses are predominant uses provided other conditions are met.

- i Dwellinghouses - New (movement of existing houses is a discretionary use).
- ii Multiunit residential development (includes town houses and apartments, semi detached houses and terrace houses).

- iii Boarding houses and private hotels.
- iv Home occupations.
- v Accessory buildings.
- vi Primary schools, preschools and institutions, child care centres, marae, churches, Sunday schools, church halls, community halls.
- vii Shops in total not exceeding 200 square metres in area for the whole village.
- viii Rural industries provided they meet the requirements of ordinance 4.43.

Subdivision of land within a village is permitted for the purposes shown in the village plan once the village plan is approved. Subdivisional standards are the same as those for residential A zone.

Evaluation :

At this point in time, objections to the proposed district scheme review are currently being considered by the district council. Objections have been lodged to the village provisions, seeking to liberalise them further, by seeking for example the deletion of the term "Maori ancestral land" and replacing it with "Maori land" where the creation of villages is concerned. Because no decision has been made by the district council as yet, the provisions are not operative and consequently, no examples of Maori or special villages are available for study. Nevertheless the scheme provisions may be investigated, from a theoretical standpoint at least.

4.3.2 OVERZONE

This special village approach in effect represents a type of "overzone"²⁵ where the existing rural zoning is left over the land and another "zoning" which permits the development of Maori settlements is superimposed on this. Thus once an application for an area of land is granted, it permits the owners to develop both those uses permitted under the rural ordinances and those permitted under the particular village provisions.

The use of this "overzoning" technique and the specific provisions of the Maori villages, indicates a departure or move away from the idea of purely "economic landuse" and the consequent notion of the incompatibility of "urban development" in the rural area. This is evident from the type and scale of "urban" uses permitted in the scheme in conjunction with various statements in the scheme - thus :

"although some villages may be located about a marae in the very fertile areas such as the Rangitaiki Plains, it is considered that the social advantages that would accrue to the Maori people and their heritage, outweigh the need to protect a proportionately small amount of fertile land from nonfarming development".

Specific statements of this nature coupled with the expressly stated district objectives -

"to maintain and encourage the traditions, lifestyles and cultural identity of the Maori people"

- are clear indications that a balancing of the matters specified in Section 3 of the Act has taken place and that Subsection 1(g) has been given a great deal more recognition than similar matters were in the previous scheme and many other contemporary schemes. The council is aware of the rather unique nature of Whakatane district in terms of population composition - and having recognised the importance of Maori tradition in the area, it has developed a policy which places cultural values on a more equal footing with economic considerations. This approach ensures that purely economic considerations will not restrict the location of a settlement in a rural area.

4.3.3 ADVANTAGES

On a practical level, overzoning offers specific advantages to the community. It will allow the Maori people to develop their communities along traditional lines with the marae as focus and to be able to utilise the surrounding lands under the rural zoning to obtain an economic return. In this sense, the landowners "get the best of both worlds" in that the rural zoning provides for (or at least constitutes no impediment to) economic development based on agriculture/horticulture and the village zoning permits traditionally urban uses to be undertaken. Thus, with the appropriate management any settlement established has the potential to become at least partly self sustaining, thereby ensuring the continued presence of people in the rural environment and the marae particularly.

The whole village concept compares quite favourably in this respect with marae community zoning for example. The range of uses permitted is considerably wider emphasising the differences between the "cultural landuse" base and full settlement function of the former, with the "economic landuse" base and consequent dormitory function of the latter.

The other and perhaps the most eagerly awaited advantage with the village concept, is that it will permit the establishment of communities on any suitable Maori land within the rural B zone²⁶, not only that adjacent to a marae. While the concept of ahi ka has meant the marae has been singled out for special attention by planning authorities, other locations are sacred also - refer Chapter II.

Under these provisions a community could develop near an old pa site, the site of a battle, at a river crossing of significance or whatever location holds special significance for the local tribal group. Consequently, the provisions could alleviate some of the shortcomings evident in the marae community zone approach. For example, where any members of a tribe own land outside of a permitted village - and cannot as a consequence live there - they may, on presenting a reasonable case, be permitted to establish a similar settlement themselves on land they have an interest in. It is doubtful that this situation would arise frequently especially with the scale of village development permitted adjacent to marae, but the provisions do cater for such an occurrence.

There are other positive features. Any addition of land to a village area can be accommodated through a notified planning application. While a daunting prospect in itself, it would appear to be less daunting than going through the scheme change process, necessary under the marae community zone approach. In addition, the time period specified for consideration of planning applications, is slightly less than that for a scheme change.

One other aspect which could be interpreted as a positive one, is that subdivision is permitted. Subdivision enables the issuing of separate titles and provides security of tenure which is essential for housing and general finance.

4.3.4 NEGATIVE ASPECTS

While there are some negative aspects to this approach, these are generally minor and far outweighed by the positive effects. One such example is that for a small number of dwellings around a family marae, the density standards may be too high²⁷. There are others, equally as minor, but one more substantial shortcoming in theory at least, is subdivision. While being viewed as a positive facet, it could also be construed as negative if the experiences in Tauranga are anything to go on. While subdivision in various separate titles provides security of tenure for loan finance purposes, it also means that the land could be sold by a disgruntled owner once title is obtained.

If the land was sold to a non-Maori, it would be contrary to the concept of *kia mau ki te whenua* (hold on to the land)²⁸. Any individual who did this would almost certainly face the wrath of the tribe (and this makes the likelihood of it occurring more remote), but it could occur. In view of these strong social disincentives to sell however, it should not be a frequent occurrence and for this reason, the negative component is far outweighed by the advantages subdivision provides in obtaining development finance. If subdivision did lead to land loss, then the only solution is to prohibit subdivision.

4.3.5 NON PLANNING FACTORS

Unfortunately, permitting the development of houses and community buildings on a marae in terms of the planning legislation, does not necessarily mean that development will occur. The likelihood of similar problems to those experienced in Tauranga County occurring here, is reasonably high. There are still large numbers of owners whose views and intentions must be reconciled. There is still the question of finance and there is still the administrative procedures of either the Maori Land Court or the local government legislation to go through. Until these factors can be overcome, the concept as detailed in the district scheme, may never provide the benefits it has the potential to provide.

4.4

CONCLUDING REMARKS

The relationship between the Maori people and their ancestral lands results in specific areas of land and particular landuses assuming great social and spiritual significance. These areas of land are the marae and urupa located throughout the rural area and the landuses are those traditionally associated with the marae.

By virtue of the fact that the Whakatane District and Tauranga County district schemes include provisions which recognise the most significant locations and activities in Maori culture as a "legitimate" landuse, they fulfil the requirements of Section 3(1)(g) of the Town and Country Planning Act 1977.

The provisions of the Act however, are quantitative only in the sense that while the relationship is provided for, there is no specification of how it should be provided for.

Consequently district scheme provisions may vary according to the local context and to the interpretation placed on Section 3. Nevertheless, in Whakatane District and Tauranga County, it is clear that the guidance provided by the planning legislation has meant that :

- i The locations which have assumed paramount importance in Maori culture are permitted to exist and develop further; and that
- ii The concept of ahi ka, which has meant desire for housing around maraes, appears to have been provided for.

CHAPTER IV

FOOTNOTES

- 1 Stokes, E. (1980)
Tauranga Moana : A Study of the Impact of Urban Growth on Rural Maori Communities. Hamilton. Centre for Maori Studies and Research, University of Waikato. Occasional paper No. 7, p 23
- 2 Whakatane District Council Records.
- 3 Tauranga County Council. (1982)
Tauranga County District Planning Scheme Second Review
p 45
- 4 ibid : 150
- 5 Stokes, 1980 : 27
- 6 Tauranga County Council Records.
- 7 Stokes, E. (1980)
A History of Tauranga County
Palmerston North. Dunmore, p 38
- 8 Durie, E T.
Submissions to Tauranga County Council quoted in
Stokes, E. (1980)
Tauranga Moana : A Study of the Impact of Urban Growth on Rural Maori Communities. Hamilton. Centre for Maori Studies and Research, University of Waikato. Occasional paper no. 7 : p 39-40

- 9 Stokes, 1980 : Tauranga Moana : A Study of the Impact of Urban Growth on Rural Maori Communities. p 51
- 10 ibid
- 11 Durie, E T
Submissions to Tauranga County Council quoted in
Stokes, 1980
Tauranga Moana : A Study of the Impact of Urban Growth on Rural Maori Communities. p 51
- 12 Stokes, 1980 : A History of Tauranga County. p 418
- 13 Meister, A D. (198)
The Preservation and Use of Agricultural Land : Land Use Policies and their Implementation : A Survey.
Palmerston North. Department of Agricultural Economics and Farm Management, Massey University. Discussion paper in National Resource Economics No. 5 : p
- 14 Williams, W. (1983)
City of Christchurch District Scheme First Review 1968 - A Wide Range of Predominant Uses and Virtual Elimination of Conditional Uses
Town Planning Quarterly, 70 p 18
- 15 Thomsen, S S. (1979)
A Critique of Planning Practices with Special Reference to Maori Communities - A Noneuropean Perspective
Research Essay. BTP, Auckland University. p 57
- 16 Stokes, 1980. Tauranga Moana : A Study of the Impact of Urban Growth on Rural Maori Communities. p 31

- 17 Personal Communication.
- 18 Stokes, 1980. Tauranga Moana : A Study of the Impact of Urban Growth on Rural Maori Communities. p 57
- 19 Personal Communication.
- 20 Stokes, 1980. Tauranga Moana : A Study of the Impact of Urban Growth on Rural Maori Communities. p 31
- 21 ibid : 39-40
- 22 ibid : 73
- 23 ibid : 29
- 24 A use control technique along busy highway or arterial roads. These uses will be prohibited where access is via an arterial, but where access is via other roads the uses will be subject to the normal conditional use procedures.
- 25 Thomsen, 1975 : 58
- 26 The rural B zone is the largest rural zone making up 54% of the area zoned rural. It is a general rural zone used for farming forestry, horticulture.
- 27 Not exceeding 1 dwelling for each 2000 square metres of land covered in an application.

28. Anderson, R. (1983)
Planning for Maori Needs
Auckland. Ministry of Works and Development

CHAPTER V

GENERAL RURAL LAND

5.1

INTRODUCTION

While there are "pockets" of Maori ancestral land that constitute Waahi Tapu, the bulk of Maori ancestral land is in fact "ordinary" rural land in the sense that it is not associated with any marae, urupa, pa site or in fact, any place of "special" significance to the tribal group.

In the planning context virtually all of this "ordinary" Maori ancestral land is treated in the same manner as other nonurban land in general tenure - that is, it is zoned "rural". Under this "rural" zoning uses permitted are largely those based on traditional agriculture and horticulture.

However, if we accept Anderson's conclusion that the relationship between the Maori people and their lands means that land is perceived in terms other than its commercial worth¹, then it may well be that given similar zoning, Maori land may be used differently from other land; or that depending on the zone provisions, there is an expressed desire to use the land for purposes not permitted by the zoning.

The occurrence or nonoccurrence of both of these, is a reflection of the adequacy and appropriateness of the existing planning controls and should be considered in any "test" of the planning legislation.

5.2

APPROACH

The question of differences in landuse has been addressed by comparing the utilisation of holdings of "Maori ancestral land" with the utilisation of physically similar holdings in general title.

The holdings chosen for comparison are as physically similar as is feasible to achieve so that there is no significant differentiation between them in physical terms. Any difference that is apparent can then be attributed solely to the different tenure situation and the operation of the specified relationship on Maori land as opposed to its nonoperation on general land. The effect of the relationship may then be quantified in terms of differences in land utilisation.

5.3

METHODOLOGY

5.3.1 LAND SELECTION

Maori ancestral land within the Bay of Plenty was identified using Maori Land Court records and a number of those lots meeting the general criteria adopted were selected at random for more detailed study. Once these "Maori land" lots were selected, individual lots of general land having the same physical characteristics as the Maori lots were selected for comparison purposes.

The criteria used in selecting the Maori land lots (and subsequently affecting the choice of lots for comparison purposes) were :

- i All land selected was "Maori freehold land" as defined by the Maori Affairs Act 1953 and its amendments. Adopting the interpretation of the Royal Commission into the Maori Land Courts (1980), this means - that land which comes under the jurisdiction of the Maori Land Court¹.
- ii All lots selected to be greater than 4.5 hectares in area. This is necessary to remove purely residential/commercial holdings from consideration whilst enabling "smaller" intensively used rural lots to be considered.

iii Lots chosen are representative of the topographical land types in the coastal Bay of Plenty. Consequently land chosen falls into two categories. Firstly, land of the coastal plains, which is that land within 5 kilometres of the coastline which is generally flat with slopes not exceeding 3°.

Secondly, land of the inland/upland areas which is that land greater than 5 kilometres from the coastline and of varied slope.

iv Lots were not near any marae, urupa or any form of Waahi Tapu.

The salient features of the selection of land for comparison purposes are :

- i Sample size is constrained by the total number of lots that can be identified as "Maori ancestral land" and the randomly selected sample of these lots.
- ii "General" land is that contained in a title in the general land registry. Theoretically this can include land owned by Maori people.
- iii The location and size of general land for comparison purposes is dictated by the location and size of the Maori ancestral land. These lots chosen are of a similar size, similar in the physical constraints affecting the size and similar in location, being a maximum distance of 3 kilometres of the Maori land lots.

- iv The criteria on which physical similarity between Maori land and general lots is determined are :
 - a Lot size or area;
 - b Soil type;
 - c Slope; (of terrain)
 - d Rainfall - annual;
 - e Landuse capability.

- v Other management influences on landuse identified and accounted for to nullify differences between Maori and general land are :
 - a District scheme zoning;
 - b Proximity to urban centres and their services;
 - c Proximity to transport routes.

5.3.2 SIZE OF SAMPLE

A total of one hundred (100) lots were identified; fifty (50) being "Maori ancestral land" and fifty (50) being general land. Of the fifty (50) from each local authority area, twentyfive (25) holdings were of the "coastal plains" type and twentyfive (25) in the "inland upland" category.

5.3.3 LOCATION OF LOTS SELECTED

The localities from which lots for comparison purposes are drawn may be described as follows :

- i Whakatane District coastal plains -
Within a radius of approximately 5 kilometres of Whakatane, to the north and northwest of the township. Access to lots is via sealed county roads which junction with State Highways 30 and 2. The area is generally flat , adjacent to the coast and between the estuaries of the Whakatane and Rangitaiki Rivers - see figure 5.1, page 138.

- ii Whakatane District "upland/inland" -
From the Waiohau valley area. This is a flat to steep valley through which runs the Rangitaiki River. A sealed two lane county road runs through the valley between Murupara 30 kilometres to the southwest and Kawerau 30 kilometres to the north. There is no major urban settlement as such, although there is a store and petrol station and a primary school. Milk tanker collection service is available. Generally the area can be described as isolated - Figure 5.2, page 139.

- iii Tauranga County coastal plains -
Properties are sourced from two areas, Te Puna and Ngapeke. The Ngapeke area is approximately 8 kilometres to the southwest of Tauranga City and 5 kilometres to the west of Welcome Bay. Access is by way of a sealed two lane county road. Generally the area has good access to the facilities offered by Tauranga City and Mount Maunganui.

The Te Puna area is directly off State Highway 2, approximately 8 kilometres east of the Tauranga City boundary. The county roads serving the locality are two laned and sealed. Te Puna has its own facilities, such as petrol station, tavern etc, but the facilities of Tauranga City are easily accessible - Figure 5.3, page 140.

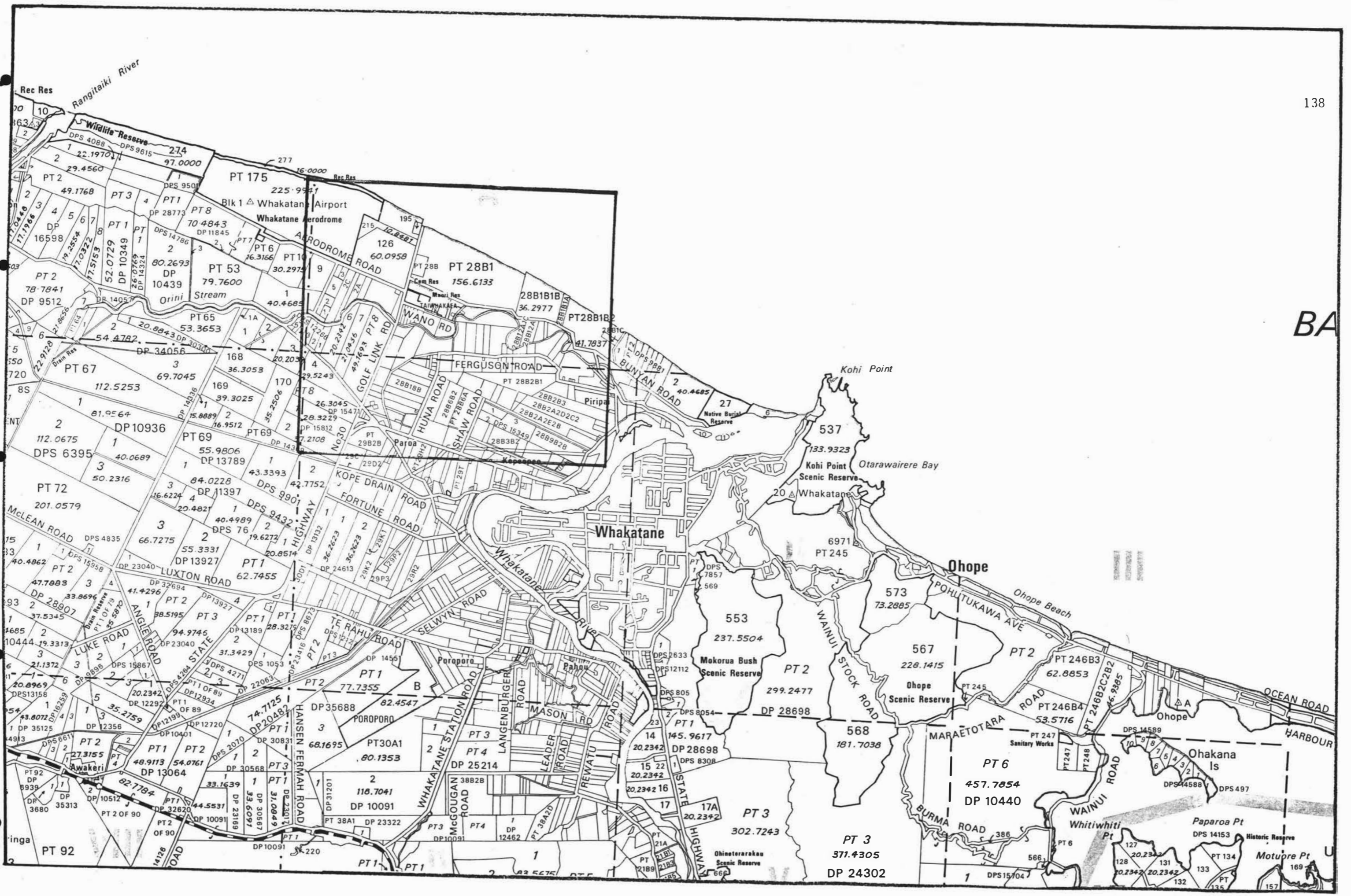


FIGURE 5.1 : Whakatane District : Coastal Plains Area

Base Map : Department of Lands and Survey

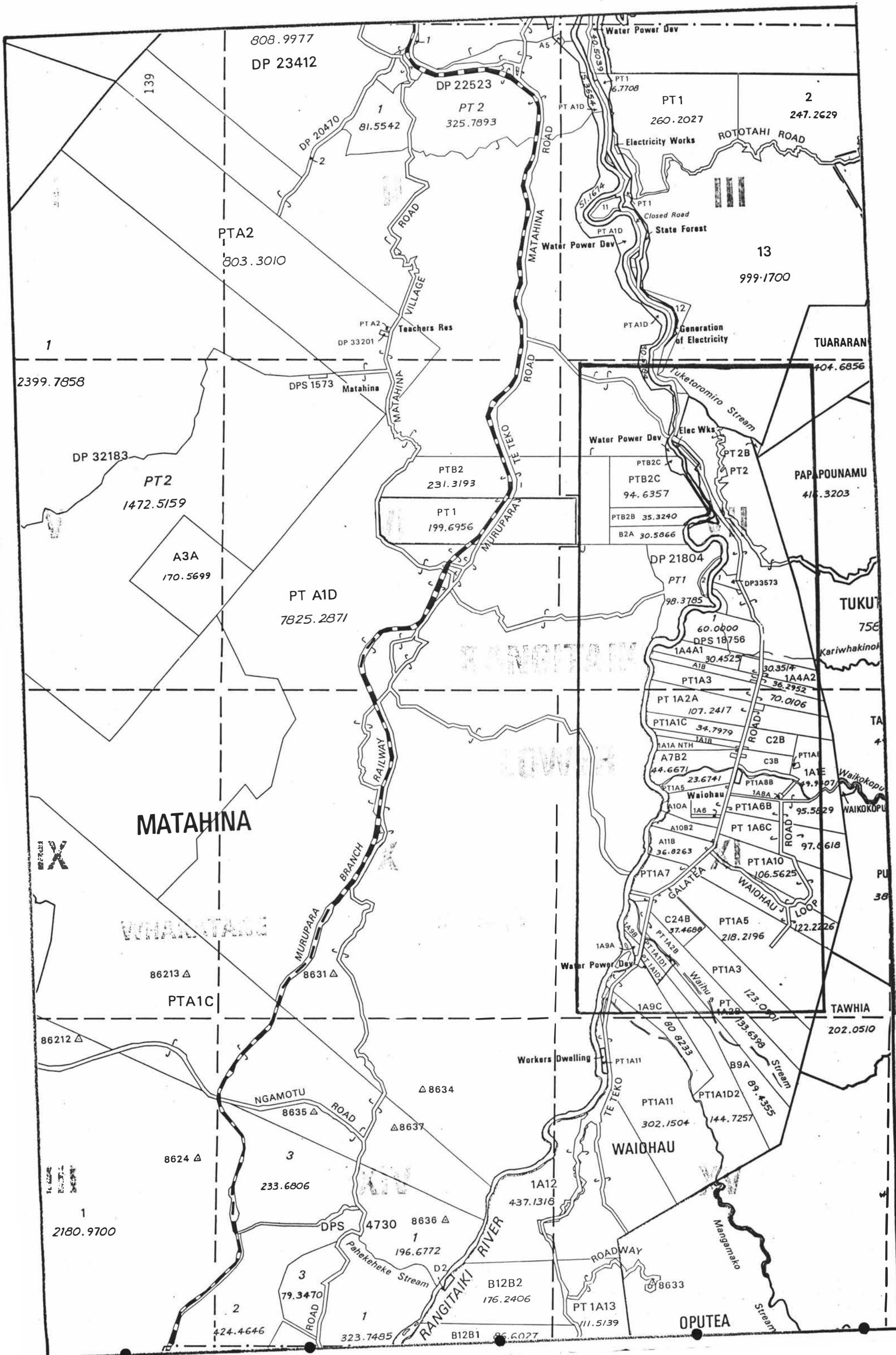


FIGURE 5.2 : Whakatane District - Inland/Uplands Area

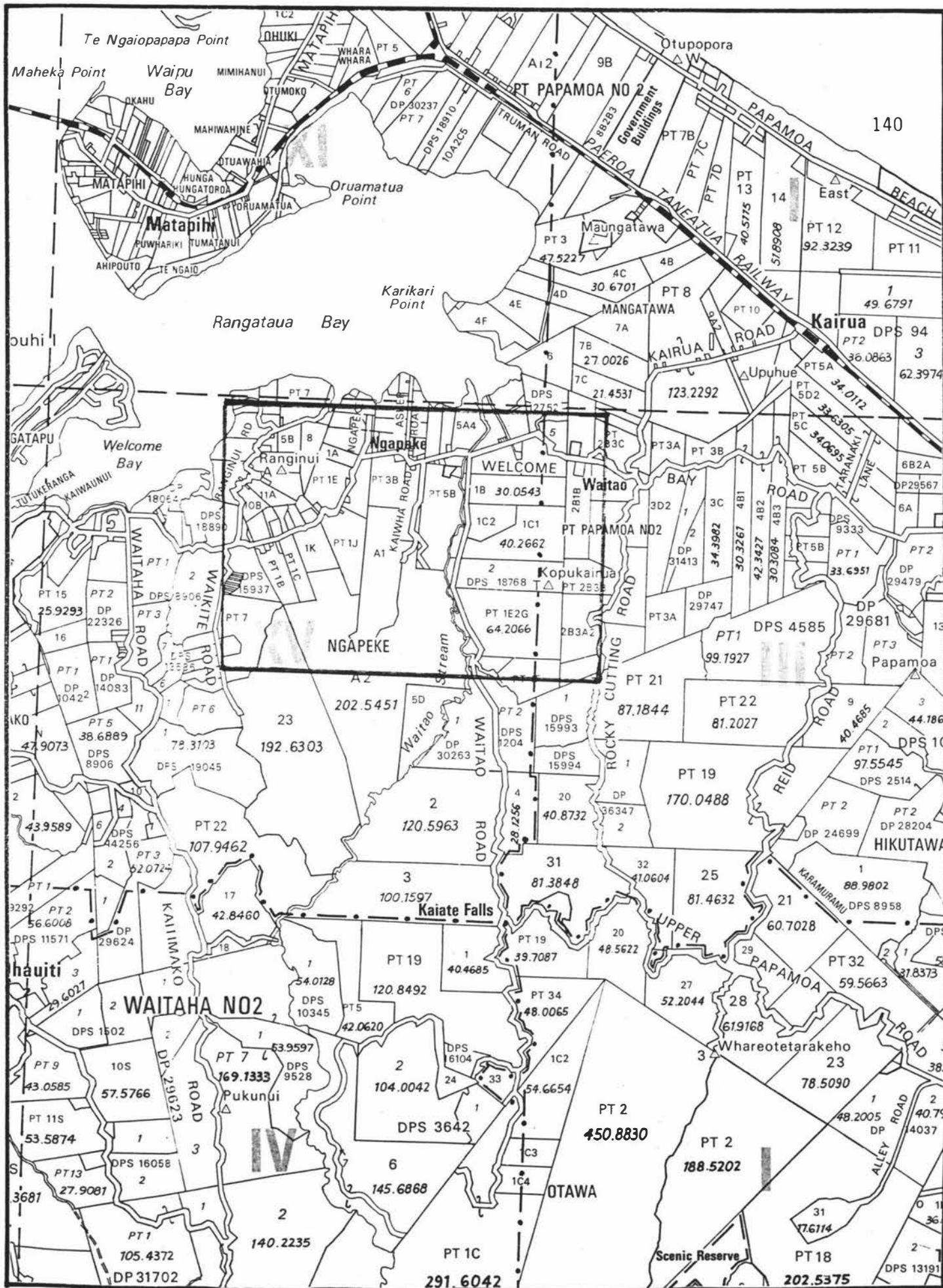


FIGURE 5.3 : Tauranga County : Coastal Plains

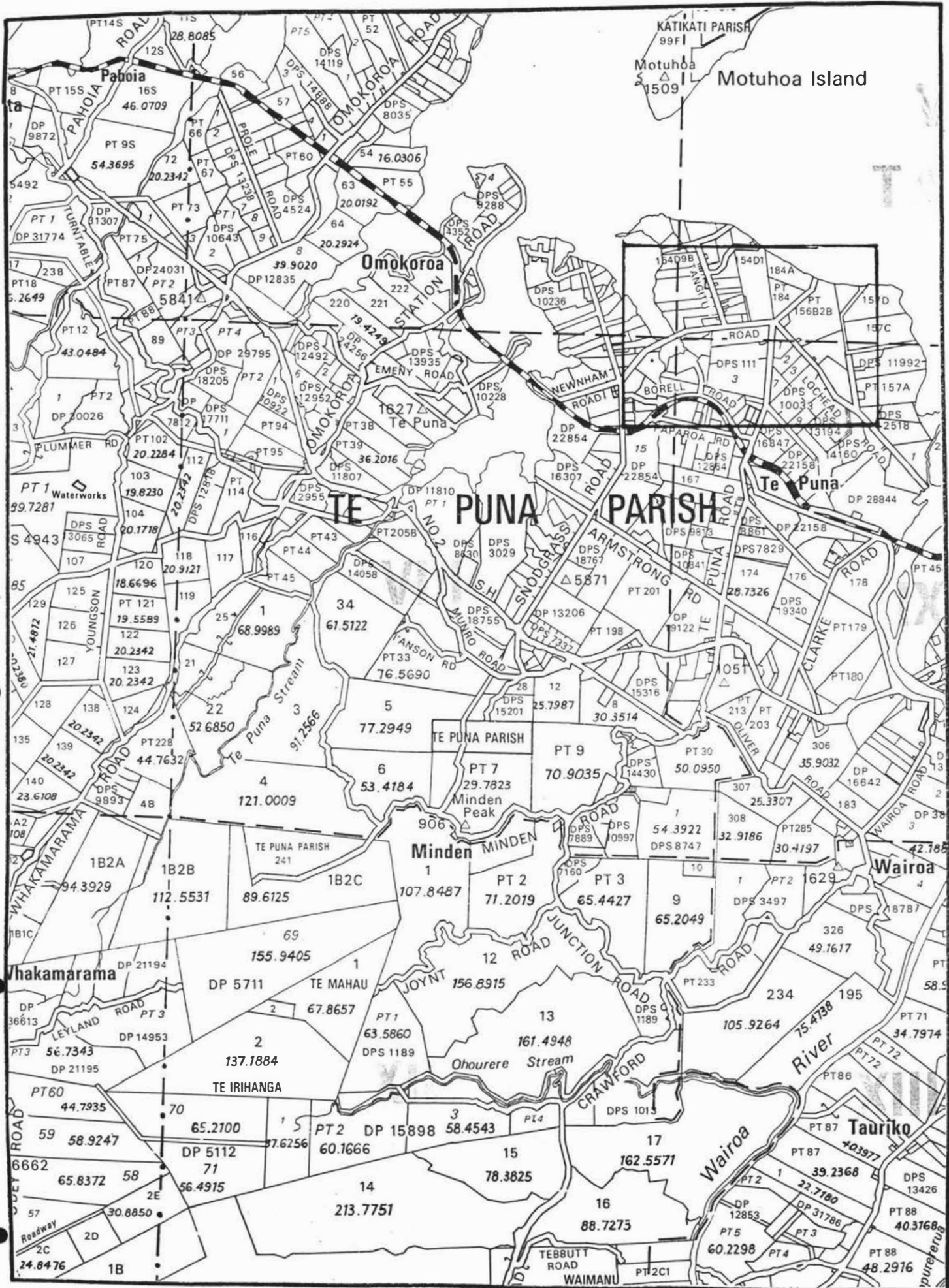


FIGURE 5.3(A): Tauranga County :
Inland/Uplands Area

iv Tauranga County "upland/inland" -

This consists of lots some 15 to 20 kilometres to the southwest of Tauranga City, in the Kaimai foothills area. The lots are considerably larger in area than those on the plains and the country is gently rolling to steep. Access to the area is by way of county roads which are part sealed, part unsealed. Generally the area is relatively isolated.

5.3.4 INDEX FOR COMPARISON : LANDUSE/LAND QUALITY

- i As part of the process of valuing land, the New Zealand Valuation Department gathers a large amount of information about each property in the country. One factor that is recorded is the actual use of each property.

The Valuation Department data on landuse is used as one index for comparison between the selected lots in different forms of tenure.

Determining landuse provides a quantative index for comparing holdings in the two different forms of tenure.

A qualitative index on which Maori land and general land may be compared is necessary. Data collected by the Valuation Department supplies this also. The department's Farmland Quality and Type of Holding Classification is used as a further index for comparison between the selected lots in different forms of tenure.

- ii A summary of the landuse codes for primary landuse with examples of the types of each property falling in each category follows :

Land Use	Code
MULTIUSE WITHIN PRIMARY INDUSTRY	10
DAIRYING	
All types including stud	11
STOCK FATTENING	
Cattle and sheep	12
ARABLE FARMING	13
Animal feed crops	Hemp
Cash crops	Potatoes
Flax	Root crops
Grassland (cultivated)	Seed crops
STORE SHEEP	
Including sheep studs	14
MINERAL EXTRACTION	18
Dredging and sluicing	
Gas and oil wells	
Mining and quarrying	
MARKET GARDENS AND ORCHARDS (HORTICULTURAL)	15
Glasshouses	Orchards
Market gardens	Soft fruit
Mushroom growing	Vineyards
Nurseries (not forestry)	
MINOR FARMS AND SPECIALIST LIVESTOCK	16
Catteries	Oyster farms
Fish hatcheries	Pig farms
Horse stud farms	Poultry farms
Kennels	Racing stables
FORESTRY	17
Exotic forests	Plantations
Forest nurseries	Native forests
VACANT OR IDLE - PRIMARY INDUSTRY	19
MAJOR USE - VACANT/INDETERMINATE	00
RESIDENTIAL	09

- iii A summary of the farmland quality and type of holding classification is below :

CODE

- A Denotes an excellent economic farm well located in a sought after community - durable soils - subject to minimum hazards - very readily saleable and much sought after in normal times. High production - suitable sized unit for the particular type of farming, generally associated with a high standard of living. The highest valued class in each type and in all cases excellent securities.
- B Denotes an average to good economic farm but normally less sought after than "A" on account of lower production - size of unit - topography - higher working costs - location etc. May be subject to more hazards than "A" but still quite good property. The bulk of New Zealand farms for the purpose of this classification should be in this group. This farm should comprise those farms that are valued about average and are generally suitable securities to be entertained for advances of mortgage.

- C Denotes a fair to poor economic farm not sought after to the same degree as "A" or "B" - may be in an undesirable locality - fair to poor or run out soils - improvements not good - generally deficient in some particular respect. Earnings are limited either on account of fertility - or costs of working. Doubtful loan propositions not suitable for maximum loan advance. The cheaper classes of property.
- D Denotes an assessment which is an economic sized block or farm land but in an unimproved or substantially unimproved state.
- E Denotes an uneconomic farm or farmlet with a homestead and farm buildings which is being run as a separate minor farm entity.
- F Denotes an uneconomic sized assessment of farm land without a homestead and does not comprise part of a separate farm unit.

OTHER

Refers to holdings that are not generally graded by the department - for example, vacant forestry land.

5.3.5 COMPARISONS

The landuse code is determined for each lot or holding identified and the total number of Maori land lots devoted to each particular landuse is compared with the total number of "general land" lots devoted to each landuse. Tests are then used to determine if any difference in the number of holdings devoted to particular landuses that is apparent is statistically significant. The "quality of use" information is treated similarly.

5.4 RESULTS

5.4.1 SUMMARY OF OBSERVATIONS

a Whakatane district - Landuse

USE CODE INDEX:

- 00 Major use - vacant/indeterminate
- 09 Residential
- 10 Multiuse within primary industry
- 11 Dairying
- 12 Stock fattening
- 13 Arable farming
- 14 Store sheep
- 15 Market gardens and orchards (horticulture)
- 16 Minor farms and specialist livestock
- 17 Forestry
- 19 Vacant or idle - primary industry

Use Code	00	09	10	11	12	13	14	15	16	17	19	Total
Maori land	-	-	-	3	7	3	1	-	1	-	-	15
General land	-	-	2	3	3	2	2	3	-	-	-	15
TOTAL												30

TABLE VIV : Coastal Plains

Use Code	00	09	10	11	12	13	14	15	16	17	19	Total
Maori land	-	-	-	9	1	-	-	-	-	-	-	10
General land	-	-	-	6	3	-	-	-	-	-	1	10
TOTAL												20

TABLE X : Inlands/Uplands

Use Code	00	09	10	11	12	13	14	15	16	17	19	Total
Maori land	-	-	-	12	9	3	1	-	1	-	-	25
General land	-	-	2	9	6	2	2	3	-	-	1	25
TOTAL												50

TABLE XI : District Totals

b Tauranga County - Landuse

Use Code	00	09	10	11	12	13	14	15	16	17	19	Total
Maori land	1	1	-	5	2	1	4	1	-	-	-	15
General land	-	3	-	2	3	-	1	6	-	-	-	15
TOTAL												30

TABLE XII : Coastal Plains

Use Code	00	09	10	11	12	13	14	15	16	17	19	Total
Maori land	-	-	-	-	3	-	-	-	-	7	-	10
General land	-	-	-	5	3	-	-	-	-	2	-	10
TOTAL												20

TABLE XIII : Inlands/Uplands

Use Code	00	09	10	11	12	13	14	15	16	17	19	Total
Maori land	1	1	-	5	5	1	4	1	-	7	-	25
General land	-	3	-	7	6	-	1	6	-	2	-	25
TOTAL												50

TABLE XIV : County Totals

c Summary of Observations : Quality of Use :
Whakatane and Tauranga

Property Category	Maori Land	General Land	Total
A/B	5	14	14
C	5	5	10
D	23	12	35
E/F	9	14	23
Other	8	5	13
TOTAL	50	50	100

TABLE XV : Quality of Use : Whakatane and Tauranga

5.4.2 STATISTICAL TESTS

a Landuse : Kolmogorov-Smirnov Two Sample Test

The Research Hypothesis (H_1) is that : There is a significant difference in the way in which the frequencies are distributed among the landuse categories, between the sample of Maori Land and the sample of General Land.

The Null Hypothesis (H_0) is that : There is no significant difference in the way in which the frequencies are distributed among the landuse categories, between the sample of Maori Land and the sample of General Land.

- i A Kolmogorov-Smirnov two sample test for the Tauranga County and Whakatane district data combined is :

Landuse Code	Maori Land		General Land		Difference
	Freq- uency	Cumu- lative %	Freq- uency	Cumu- lative %	
00	1	1.00	0	1.00	0
09	1	.98	3	1.00	.2
10	0	.9	2	.94	.2
11	17	.96	16	.90	.6
12	13	.62	12	.58	.4
13	4	.36	2	.34	.2
14	5	.28	3	.30	.2
15	1	.18	9	.24	.2
16	1	.16	0	.6	.10 kD
17	7	.14	2	.6	.8
19	0	0	1	.2	.2

$$n_1 = 50$$

$$n_2 = 50$$

$$kD = .10$$

Tabled value of D for two tail test at .05
significance level :

$$= 1.36 \frac{n_1+n_2}{n_1 n_2}$$

$$= 1.36 \frac{50+50}{50 \times 50}$$

$$= 1.36 \quad 0.04$$

$$= .27$$

kD is $<$ tabled value \therefore We accept H_0 , reject H_1

- ii A Kolmogorov-Smirnov two sample test for the coastal plains land for Tauraga County and Whakatane District

Landuse Code	Maori Land		General Land		Difference
	Freq- uency	Cumu- lative Freq- uency	Freq- uency	Cumu- lative Freq- uency	
00	1	30	0	30	0
09	1	29	3	30	1
10	0	28	2	27	1
11	8	28	5	25	3
12	9	20	6	20	0
13	4	11	2	14	3
14	5	7	3	12	5
15	1	2	9	9	7 kD
16	1	1	0	0	1
17	0	0	0	0	0
19	0	0	0	0	0

$$n_1 = 30$$

$$n_2 = 30$$

$$kD = 7$$

Tabled value = (sample < 40, $n_1 = n_2$) at 0.5 significance two tailed test

$$= 11$$

$kD < \text{Tabled value} \therefore \text{Accept } H_0 \text{ reject } H_1$

- iii A Kolmogorov-Smirnov two sample test for the inland/upland land in Tauranga County and Whakatane District

Landuse Code	Maori	Land	General Land		Difference
	Freq- uency	Cumu- lative Freq- uency	Freq- uency	Cumu- lative Freq- uency	
00	0	20	0	20	0
09	0	20	0	20	0
10	0	20	0	20	0
11	9	20	11	20	0
12	4	11	6	9	2
13	0	7	0	3	4
14	0	7	0	3	4
15	0	7	0	3	4
16	0	7	0	3	4
17	7	7	2	3	4
19	0	0	1	1	1

$$n_1 = 20$$

$$n_2 = 20$$

$$kD = 4$$

Tabled value = (sample < 40 $n_1 = n_2$) at 0.5 significance two tailed test

$$= 9$$

$kD < \text{Tabled value} \therefore \text{Accept } H_0, \text{ reject } H_1$

5.4.2 b Farmland Quality and Type of Holding : Chi Square Test

The Research Hypothesis (H_2) is that : There is a significant difference in the way in which the frequencies are distributed amongst the farmland quality and holding type categories between the sample of Maori land and the sample of general land.

The Null Hypothesis (H_0) is that : There is no significant difference in the way in which the frequencies are distributed among the farmland quality and holding type categories, between the sample of Maori land and the sample of general land.

$$\chi^2 = \sum \frac{(f_o - f_e)^2}{f_e}$$

where f_o =actual (observed) frequency for a given cell; and

f_e =expected frequency for that cell.

expected frequencies (f_e) are calculated thus :

A	B	C	T_2
D	E	F	T_2
T_3	T_4	T_5	T_9

$$feA = \frac{T_1 \times T_3}{T_g} \quad feB = \frac{T_1 \times T_4}{T_g} \quad feC = \frac{T_1 \times T_5}{T_g}$$

and so on.

where A, B, C, D, E and F are classification categories; T_1 and T_2 are the total frequencies in rows 1 and 2; T_3 , T_4 and T_5 are column totals and T_g is the grand total of all frequencies in the table (Chase 1976 : 198).

- i Chi Square test - farmland quality and type of holding - Tauranga County and Whakatane District combined - all land types

Property Category	Maori		General		Total
	fo	fe	fo	fe	
A/B	5	9.5	14	9.5	19
C	5	5	5	5	10
D	23	17.5	12	17.5	35
E/F	9	11.5	14	11.5	23
Other	8	6.5	5	6.5	13
Totals	50		50		100

$$\chi^2 = \sum \frac{(f_o - f_e)^2}{f_e}$$

$$= \begin{array}{r} 2.13 \\ 2.13 \\ 0.00 \\ 0.00 \\ 1.72 \\ 1.72 \\ 0.54 \\ 0.54 \\ 0.34 \\ 0.34 \\ \hline 9.46 \\ \hline \end{array}$$

$$\chi^2 = 9.46$$

$$\text{degrees of freedom} = (c-1)(r-1)$$

where r = number of rows and

c = number of columns

$$= (5-1)(2-1)$$

$$= 4$$

Tabled value at .05 level of significance (two
tailed)

= 9.48

$\chi^2 < \text{Tabled value} \therefore \text{Accept } H_0, \text{ reject } H_1$

- ii Chi square test - inland/uplands land only,
Tauranga County and Whakatane District combined

Property Category	Maori		General		Total
A/B	2	4.5	7	4.5	9
C	4	3.5	3	3.5	7
D	1	1	1	1	2
E/F	7	7	7	7	14
Other	6	4	2	4	8
Totals	20		20		40

$$x^2 = \sum \frac{(f_o - f_e)^2}{f_e}$$

$$\text{degrees of freedom} = (c-1)(c-1)$$

$$=4$$

$$\chi^2 = \begin{array}{r} 1.38 \\ 1.38 \\ 0.0714 \\ 0.00 \\ 0.00 \\ 1.00 \\ 1.00 \\ \hline \end{array}$$

$$\chi^2 = \begin{array}{r} 4.90 \\ \hline \end{array}$$

Tabled value at .05 significance = 9.48 (two tailed test)

$\chi^2 < \text{Tabled value} \therefore \text{Accept } H_0, \text{ reject } H_1$

iii Chi square test coastal plains land only Tauranga County and Whakatane District combined

Property Category	Maori		General		Total
	fo	fe	fo	fe	
A/B	3		7		10
C	1		2		3
D	22		11		33
E/F	2		7		9
Other	2		3		5
Totals	30		30		60

$$\chi^2 = \sum \frac{(f_o - f_e)^2}{f_e}$$

$$\text{degrees of freedom} = (c-1)(r-1)$$

$$= 4$$

$$\begin{array}{r}
 = \quad .8000 \\
 \quad .8000 \\
 \quad .1666 \\
 \quad .1666 \\
 1.8333 \\
 1.8333 \\
 1.3888 \\
 1.3888 \\
 \quad .1000 \\
 \quad .1000 \\
 \hline
 \end{array}$$

$$\chi^2 = \underline{8.576}$$

Tabled value at .05 significance = 9.48 (two tailed test)

$\chi^2 < \text{Tabled value} \therefore \text{Accept } H_0, \text{ reject } H_1$

5.4.3 CONCLUSION

Assuming that the majority of owners of Maori ancestral land enjoy a "special" relationship with their lands, the results of the statistical tests support the conclusion that this relationship does not manifest itself in any significant difference in landuse and land quality between Maori land and general land. Thus, while land may be perceived differently, this does not appear to mean any particular landuse differences as a result. This however, must be qualified by the existence or nonexistence of any desire to alter zoning provisions which may have dictated or influenced landuse.

5.5 RURAL ZONING : DESIRE FOR CHANGE

5.5.1 TAURANGA COUNTY

The bulk of the 24 000 hectares of Maori land in Tauranga County is distributed amongst the four rural zones that cover the county. These four zones - rural A, B, C and D, permit a variety of uses including :

Rural A Forestry, scenic reserves, cottage industry

Rural B Agriculture, horticulture, forestry, dwellings - 2 per conforming site, 1 per nonconforming site - reserves under the Reserves Act 1977 or the Maori Affairs Act 1953, cottage industry.

Rural C Agriculture, horticulture, forestry, dwellings - 2 per conforming site, 1 per nonconforming site - reserves under the Reserves Act 1977 or the Maori Affairs Act 1953, cottage industry.

Rural D Agriculture, horticulture, residential buildings - 1 per site - cottage industry.

Subdivisional controls require a minimum lot area of 200 hectares or such lesser area as may be demonstrated to be an economic farming unit in the Rural A zone. In the Rural B zone, the minimum lot size for pastoral agriculture is 50 hectares and 2 hectares for horticulture. In the Rural C zone, minimum lot size is 2 hectares, while in the Rural D zone, it is 1 hectare².

Under rural zoning, it is apparent that Maori ancestral land is used in a manner similar to general land. However, it is also evident that there has been no serious pressure to alter either the rural zoning over Maori ancestral land, or the use and subdivisional provisions of the rural zones on the basis of Maori culture and traditions. Thus it is apparent from the lack of planning applications seeking to establish either "traditional Maori uses" - ie, marae urupa - or seeking to permit dwellings or second dwellings on land on the basis of culture and tradition. A check of council's register of planning applications from June 1976 to May 1984 revealed no such instances. It is also supported by the fact that no formal approach has ever been made to the county council to alter the rural zone provisions on the basis of Maori needs since the coming into operation of the first review.

5.5.2 WHAKATANE DISTRICT

All nonurban land in Whakatane District (excluding designated areas and roads) is zoned "rural" under both the operative district scheme and the proposed review. The operative scheme, covering the former Whakatane County area zones 202 500 hectares Rural A and 598 hectares Rural B. The predominant uses in the Rural A zone are those traditionally agriculturally based used and related service uses. These include general farming, forestry, horticulture and accessory buildings and parks and scenic reserves and residential buildings on papakainga. The Rural B zone permits general farming, forestry, horticulture, accessory buildings and parks and scenic reserves.

Dwellinghouses not accessory to a predominant use require conditional use consent and only when a dwelling is accessory to a predominant use or has conditional use consent, can an allotment for residential purposes be created³.

Under these provision, the district council has received a number of planning applications from owners of Maori ancestral land. Four applications have sought consent to establish dwellings on "ordinary" Maori land. However, this was on the basis that the land was being used as an "economic farming unit" and a dwelling was necessary on these grounds, as opposed to any other reason. There has been one recent application seeking the establishment of a number of dwellings in order that the owners may live on their ordinary ancestral land as a "group". Consent was refused for various reasons, including the effects of the proposal on the highway and the loss of productive high quality land. Apart from this, a total of ten other applications relating to Maori ancestral land were received by council, but all of these seek marae based development and thus focus on Waahi Tapu, as opposed to "ordinary" Maori land.

The situation has been similar as far as representations to change the zoning are concerned. The representations of various marae groups (those of Mr John Peri of Omataroa Marae for example)⁴, have sought alterations in zoning provisions around the marae, as opposed to land in general. The requests for changes have been to accommodate more fully the development of the marae and the concept of ahi ka.

The proposed review zones all Maori ancestral land rural of one form or another, but includes provisions for the development of marae and urupa along traditional lines. It in effect is a response to the representations made by Maori groups under the operative scheme and in keeping with this, addresses itself to the development of Waahi Tapu rather than developing special provisions for "ordinary" Maori land. At this stage, it remains to be seen whether this is adequate.

5.6

CONCLUSION

The evidence suggests that treating "ordinary" Maori ancestral land in the same way as other nonurban land of general tenure results in :

- i No significant difference in landuse patterns between the two; and
- ii No concerted or orchestrated effort or desire to alter the zoning provisions over this land.

This supports the conclusion that if specific sites ie, Waahi Tapu, are given special recognition in planning terms, "ordinary" Maori ancestral land may be zoned for rural purposes without suppressing or detrimentally affecting the relationship between the Maori people, their culture and traditions and their ancestral lands.

CHAPTER IV

FOOTNOTES

- 1 Royal Commission of Inquiry on the Maori Land Courts. 1980 Report. Wellington. Govt Print, p 23
- 2 Tauranga County Council. 1982
Tauranga County District Planning Scheme - Second Review
- 3 Whakatane County Council. 1973
Whakatane County District Scheme
Appendix One
- 4 Personal Communication

CHAPTER VI

CONCLUSION

On the basis of current district scheme planning practice in the coastal Bay of Plenty, it is apparent that the existing planning legislation permits the development and continuation of those uses which arise from and form the basis of Maori cultural and traditional attitudes to land. Thus in a strict sense, the Town and country Planning Act 1977 constitutes no real legislative barrier to the development of Maori landuse.

However, in developing and administering district scheme provisions, the Act places an onus on local authorities to consider all the matters of national importance specified in Section 3(1) and in this there is a potential "barrier" in the various interpretation of and commitment to, these broad principles.

None of the matters listed in Section 3(1) statutorily assumes predominance over any other. Rather, each assumes a degree of importance bestowed by the community at large (and their representatives) in a fashion similar to that of the matters referred to in the Second Schedule to the Act - that is, they are provided for "as are appropriate to the circumstances" of the district. In the case of Whakatane District for example, Subsection (1)(g) has assumed predominance over the other matters specified in Section 3(1). The scheme states "Although some villages may be located about a marae in the very fertile areas it is considered that the social advantages that would accrue to the Maori people and their heritage outweigh the need to protect a proportionately small amount of fertile land from nonfarming development¹."

It is clear when seen in this light, that it is not the Act itself that places a limitation on what uses will be permitted and where. Rather it is the interpretation of the Act and how the participants in the planning process see the broad principles in terms of the local context.

With the development and operation of the marae community zone concept in Tauranga County and the village concept in Whakatane, it is apparent that an "informal planning system" was operating alongside and influencing the formal system. This informal system consisted of the interrelationship of the values, attitudes, knowledge, capabilities and interests and objectives of the participants in the formal process; and its effect has been to influence decisions on the interpretation of and commitment to the legislative provisions, so as to ensure that Maori interests have been provided for within the formal planning framework.

Principal in the formal but more especially in the informal planning processes in Tauranga County has been the county council's Maori land officer. Assuming the role of advocate for the Maori people the Maori land officer actively communicated the needs, wants and goals of the Maori community to the decision makers and other participants in the formal system.

More specifically the Maori land officer :

- Educated councillors and council staff on Maori landuse needs.
- Made the Maori population aware of the opportunities available within the formal planning process eg, development of Tuapiro Marae.

- Operated with other interest groups ie, Tauranga Moana District Maori Council, to advocate planning controls enabling the development of the marae and housing around the marae.
- Stimulated interest within the Maori community for such planning controls ie, meetings to discuss marae community zoning.
- Assisted in the selection of maraes for marae community zoning.
- Assisted in the preparation of marae development plans and their consideration by council.

All these actions combined with those of other participants in planning system affected both the policies devised by the technicians; and the interpretation of the statutes (firstly the 1953 Act and latterly the 1977 Act) by the political representatives - to result in the current district scheme provisions.

In Whakatane District, the informal system has tended to be more dispersed - in that there has been no principal advocate as in Tauranga - but it has a wider base in that many more people are involved. The physical and social circumstances of the district mean that Maori landuses have a high profile with the consequence that local authority politicians and their staff come into contact very regularly with Maori landuses and their proponents, more often perhaps than in many other areas of New Zealand. The great frequency and wide range of contacts between Maori people and both politicians and council staff has resulted in greater understanding of Maori needs. Reports prepared by council's planning staff on applications relating to Maori land, display both an understanding of and sensitivity to Maori needs, a fact which has ultimately resulted in favourable consideration of proposals by the council itself.

The key therefore to providing for Maori landuses need not be extensive legislative change. There are already favourable provisions within the existing legislative framework. Rather, the key lies in communication, education and minor legislative change. Effective communication between and education of those in the planning process to the needs of Maori people, has been successful in the coastal Bay of Plenty and there is no reason to suggest it will not be successful elsewhere.

Maori groups need to defined specifically what they want and to effectively communicate these needs to all involved in the planning process. Local authority politicians and their staffs need to be made aware of the significance of specific uses through "educative" and advocacy" programmes at the local level.

However, effective communication requires a cohesive and consistent message and to achieve this, many social and land ownership issues need to be addressed by Maori groups prior to formal involvement in the planning process. The acceptability of subdivision in a special marae zone and the means of holding land in such a zone - ie, individually or as a group - are two such issues highlighted by the Bay of Plenty example. Only once these issues have been resolved will the message to the participants in the planning process become clearer and the responses of the local authorities correspondingly better directed.

With the effective communication and education therefore, change in the planning legislation need only be restricted to devising and including a definition of "ancestral" land. Such a definition will provide certainty on which land should be considered under Section 3(1)(g) for both local authorities and Maori groups alike, even though the Bay of Plenty example suggests the interpretations already adopted are acceptable to many.

Unfortunately, while there is little need for major changes to the planning legislation, it is apparent that problems of land ownership and land transfer have operated to frustrate and sometimes negate, the landuse provisions developed under Section 3(1)(g) of the Act. The case of marae community zones in Tauranga County epitomises this situation and until such time as the processes by which Maori land is held and transferred are reviewed, this situation is likely to remain to one degree or another.

CHAPTER VI

FOOTNOTES

- 1 Whakatane District Council. (1983)
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