A planning model to incorporate socially-based tenure principles into mainstream planning

David GOODWIN and James BERGHAN, New Zealand

SUMMARY

The best-planned housing developments, with optimally designed and built houses, may nonetheless fail as viable communities. A possible contributing factor is the manner in which individualised tenure systems tend to divorce land rights from social responsibilities. Recognising this, some Māori planning initiatives in New Zealand have sought to re-introduce key communal or socially-based tenure principles to the planning equation. For example, that of emphasing broad aspects of wellbeing, and of establishing meaningful relationships with stakeholders throughout the development process. This paper begins by contrasting the inherent strengths and weaknesses of socially-based tenure and individualised tenure, then considers the implications on land tenure when the strand of land rights is separated from the strand of interpersonal links or social responsibilities. The paper goes on to describe early progress on a research project, planned to run for approximately two more years, which sets out to describe the aspirations and complex factors involved in such Māori planning initiatives and the degree to which they are succeeding. The research also considers extra-ordinary agreements that provide "work around" solutions to cater for Māori land-right preferences that are not currently provided for by off-the-shelf cadastral options. Two case studies are discussed, namely a village project located in Hamilton and a community development located in Kaitaia. These cases were selected for initial analysis based on their documented use and adoption of one or more core social tenure principles, as well as for having demonstrated positive social outcomes over a sustained period of time. The paper establishes a theoretical context and rationale for building socially-based tenure principles into contemporary planning, with a suitable legislative framework, and concludes that transferable lessons and approaches could result.

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1. INTRODUCTION

The best-planned housing developments, with optimally designed and built houses, may nonetheless fail as viable communities. A possible contributing factor is the manner in which individualised tenure systems tend to divorce land rights from social responsibilities. In other words, under individualised tenure it is possible to be a bad neighbour without jeopardising rights in land. In contrast, the security of land rights in communal land tenure systems, otherwise known as socially-based tenure, depends on good relationships between individuals and their belonging groups. In this kind of tenure, group members may view servicing social responsibilities as tantamount to paying rates. It is possible that in individualising land rights, a crucial responsibility set has been "lost in translation", and that mainstream planning needs to factor in communal principles better if more sustainable communities are to be achieved.

In New Zealand, some Māori planning initiatives are characterised by a recognition that communal principles are crucial and need to be re-introduced to the planning equation. This article describes early progress on a research project, due to run to the end of 2019, that sets out to describe the aspirations and the complex factors involved in such initiatives and the degree to which they are succeeding. The article is structured in four sections. First, this introductory section, giving the context and background. Second, a brief review of communal tenure in the twenty first century with particular reference to characteristics of communal tenure still associated with Māori Freehold Land (MFL) in New Zealand; strengths and weaknesses of communal tenure; and implications of separating land rights from community responsibilities in New Zealand's colonial history. Third, a summary and critique of progress to date on two early case studies of Māori developments that have, to different degrees, attempted to re-introduce communal values. Fourth, discussion and conclusions up to this point, and consideration of international cases, validation of recommendations, and future research directions.

2. A REVIEW OF COMMUNAL TENURE

Communal tenure, so called to reflect the socially embedded nature of its rights, still dominates right-holding in many parts of the world. This includes the Pacific, where the majority of land is under customary land tenure systems (Ward and Kingdon 1995), Africa, where only between two and ten percent of land is covered by formal tenure (Cotula 2006), and even pockets of land in developed countries such as Port Meadow in Oxford, England, and *saeters* in Switzerland and Scandinavia. One complicating factor when we speak of communal and formal is the consistent definition of terms. Custom is not static (Cheater 1990, Ranger 1983, Mamdani 1996, Chimhowu and Woodhouse 2006, 2010), and formal tenure is

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varied. For the purposes of this article, normative *communal tenure* (or socially-based tenure) is defined as comprising land that is not openly marketed and whose use-rights are not listed in any register; has non-exclusive rights (excepting, in some instances, homesteads); and has land rights that are bound up with the duties and responsibilities associated with belonging to a social group. *Formal tenure* (or individualised tenure) is defined as having marketable land with rights that are registered by the state (or sometimes by municipalities (Goodwin 2013b)); has exclusive rights (i.e. it is possible to forbid trespassing); and has rights that are held separate from social responsibilities (i.e. the land rights of bad neighbours and uncaring offspring are not compromised). In practice, between these two idealised extremes lies a complex continuum of locally specific land tenure forms (Chimhowu and Woodhouse 2006, 353; UN-HABITAT 2008).

Strictly, Māori Freehold Land (MFL) in New Zealand, comprising 6% of the land area, is not held under communal tenure at all. However, MFL has retained some characteristics of communal land, and for those living on general land – for example, in urban centres – it performs some functions of communal land. MFL has special issues associated with it that we need to be aware of when we consider how Māori are attempting to build communal values into planning. Its geographic location is often remote or rural, and its tenure often fragmented and multiply owned. There are challenges involved in raising and securing finance (banks are often wary, since the land is difficult to sell should the bank need to recover funds); in planning restrictions (MFL is often zoned as rural, resulting in costly resource consenting processes to combat more restrictive housing provisions); in the lack of infrastructure (servicing is often sparse where land is zoned as rural); and in the difficulties involved in gaining acceptance or agreeance among multiple owners or even contacting them (Durie 1998; Hutchings 2006). This research will consider developments on MFL within easy driving distance of urban centres (e.g. at Rapaki, near Christchurch), and on general land in urban centres that has connections with MFL (see later). It will also make conclusions more general by drawing on international case studies, for example in Denmark, the Netherlands and Africa, probably using a voluntary approach with willing communities.

There is a growing body of literature that seeks to understand how Māori frameworks and principles can be applied within a planning context to advance aspirations of Māori landowners (Awatere et al. 2013; Awatere et al. 2008; Rolleston & Awatere 2009). Māori interests in urban development are rarely solely economic, and instead draw in other aspects of wellbeing in a holistic manner (Ryks et al. 2014). For example, Awatere et al. (2013) stress the importance of whanaungatanga (kinship) and of establishing meaningful relationships with stakeholders throughout the development process in order to advance aspirations. More generally, Awatere et al. (2008) offer nine process-oriented Māori urban design principles which can be used to guide the design of papakāinga (communal villages): whānaungatanga (participation and membership); kotahitanga (cohesion and collaboration); wairuatanga (embedded emotion/spirit); mauritanga (essence/life force); orangatanga (health and well-being); manaakitanga (hospitality and security); kaitiakitanga (guardianship or stewardship); rangatiratanga (leadership, identity and self-determination); and mātauranga (knowledge and

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understanding). Similarly, Auckland City Council has adopted the outcome-oriented Te Aranga Māori design principles which offer practical guidance for incorporating Māori values in urban design (Te Aranga 2008). At a specific level, the Joint Agency Group in the Western Bay of Plenty have developed Te Keteparaha mo ngā Papakāinga, a toolkit to assist Māori to develop papakāinga proposals (Kingi & Viriaere 2015). These and other innovations point to a growing movement for Māori-focused frameworks to inform and provide for development of Māori land in a way that Western frameworks have not always been able to achieve.

In the same way, there is evidence of extra-ordinary agreements that provide workaround solutions to cater for Māori land-right preferences that are not currently provided for by off-the-shelf cadastral options. For example, in 2011, Judge Ambler of the Māori Land Court granted what he termed a "hybrid partition" (Ambler 2011: 18) where land was subdivided into different titles that outlined different use areas for different owners whilst retaining the underlying ownership of the land in undivided shares. The result bears similarities to the concept of cross-lease developments, but required combinations of occupation orders and trust orders to achieve its purpose. The hybrid partition concept stemmed from the owners' aspirations to partition separate areas for the different owners, combined with their desire to protect the land from being sold outside of the family. This case expands the research question to include whether regular cadastral options on offer may lack certain land-right preferences acceptable to Māori, and how legislation could best be modified to assist in re-introducing communal principles to mainstream planning in New Zealand. Once again, scrutiny of international legislation underpinning community housing initiatives is planned in order to make the research more general. International cases will also be used to validate any recommendations.

Where it is recognised that innovative approaches have been adopted in New Zealand (Ambler 2011; Kake 2017; Kingi & Viriaere 2015), a gap exists in the literature in terms of ascertaining the level of success of such approaches in the short and longer term. There is also a gap in establishing the manner in which design principles have been implemented, and the degree of faithfulness to these principles, which in some cases may only be at the level of lip-service. The question is also raised of whether any knowledge frameworks developed could then be extended to guide development and to build stronger communities on a wider cross-section of land, not just Māori land. Harmsworth and Awatere (2013) have raised the idea of a bicultural approach with an equal emphasis on Western and indigenous knowledges, but to date, such approaches are in their infancy with regard to land development.

2.1 Strengths and weaknesses

Before considering case studies of planning attempts that aim to re-introduce communal principles, it is important to recognise that neither socially-based tenure nor individualised tenure offer a "silver bullet." Socially based tenure has strengths, such as in the responsibilities that go hand-in-hand with land rights, but also weaknesses. For example, Sara Berry notes that investment by right-holders in social relationships may result in patronage, nepotism, inconsistent application of law and non-competitiveness in a free market, all of

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which have inherent insecurities. She also points to an investment in channels of access and a proliferation of these channels that may be difficult to withdraw from and can result in unproductive patterns of resource use (Berry 1989: 51). Demographics are important, because population growth adds another source of instability, in that even those eligible for customary rights and who have regularly sent remittances home in order to retain latent rights may be denied access to land where it is in short supply (Goodwin 2013a: 167).

At the formal extreme, individualised "Western" tenure has a destabilising propensity for polarisation of rich and poor unless controls such as death duties, capital gains tax and limits on farm size are imposed, all of which are difficult and costly to administer. It is also rare to achieve controls that are independent of governance and of economic systems, since the wealthy often possess vested interests, have more experience in negotiating bureaucracy, and wield inequitable lobbying power. Furthermore, in contrast with the deeply entrenched notion of communal land being held in trust for generations yet to be born (Meek 1949), formal tenure tends to be myopic in its emphasis on the short-term owing to factors such as finite terms of office and requirements to demonstrate regular profits. Formal rights are also often unfairly biased against women, offering them less security than for male right holders. In addition, commoditised land is vulnerable to irresponsible sales (for which male household heads are notorious), and to distress sales (for example to meet hospital or school fees, or to service debt). Finally, formal registration, whether imposed or voluntary, has a tendency to register primary rights and omit secondary rights. The latter may include grazing rights, gathering wild foods and materials, and the responsibility to provide food and shelter, all of which are generally important threads in the safety net of the poorest sector of society, and of emotional and cultural well-being.

Between the communal and formal extremes, right-holders are often denied the social safeguards of customary tenure while not yet having access to the unemployment, sickness and old age benefits of mature 'Western' tenure systems. At the same time, land rights in this zone are poorly protected either by custom or formal registration, with rights of the poor being particularly vulnerable to opportunistic land-grabs by the rich and powerful within a country or by outsiders such as multinational companies (Cotula et al. 2009). Women may be forced to stay in this unprotected zone longer than men if title registration is blocked in their names (Chimhowhu and Woodhouse 2006: 347). From the point of view of governance, interim shades of land tenure are often too varied to administer efficiently.

2.2 Implications of separating land rights from community responsibilities

It is helpful, when considering the idea of reintroducing communal values in planning, to understand the implications of separating the strands of land rights from links with people in the first place (Goodwin 2011). This kind of separation took place in New Zealand in the latter part of the nineteenth century following the passing of the Native Land Act of 1865. Before separating the strands, land rights are generally only secure if people remain part of an integrated community, because there is an inbuilt survival incentive to cooperate for hunting, cultivation and fighting. However, there is an obvious catch in re-introducing an element of

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survival into contemporary society. The same difficulties emerge as when attempting to re-introduce predators to wilderness areas, namely that life immediately becomes less secure, especially for vulnerable groups. While cutting social security benefits to the point where people need to rely on their neighbours will probably foster community, it will also cause suffering and is likely to contravene standards to which a country has subscribed. It is difficult or impossible to turn the clock back.

After separating the strands of land links and interpersonal links, land rights are secure even for uncooperative and antisocial individuals, and welfare benefits are an automatic right of citizenship (i.e. State security is more important to survival than either whakapapa (ancestry) or teamwork). Before separating the strands, rights to land are bound up with duties to family, community (including retrospective and prospective community; in other words, ancestors and children), and the spirit world. Survival is also tied to sound relationships with the natural world. After separation, duties to family, community, posterity and to the natural world become voluntary, personal and, with the direct link to survival removed, sometimes excluded from our busy schedules.

Another issue is that of discipline. Before separating the strands, discipline is possible because excommunication from the group is a real and possibly even a fatal threat. After, being able to "opt out" dilutes traditional authority. National and local political leaders have more authority than cultural heads, and discipline becomes problematic without either the incentives afforded by kinship and "being needed," or of the threat of ostracism/ excommunication.

Still another issue is the question of how rights are retained or lost. Before separating the strands, equitable benefits and group membership pass to all (i.e. no member of the group will ever be denied shelter and food) but management is passed either to individuals or families according to need, mana (charisma, authority), ahi kā (keeping the fires burning, and the effort and expense invested in this). After separation of the strands, in the absence of a will, tenancy in common (established under the Māori Land Court) conveys not only joint land rights but management of that land. This often results in "large committee" issues, and inefficient utilisation. Bottom-line food and shelter benefits are now tied to citizenship and not to the land.

Finally, before separating the strands, belonging groups share a common history and usually common ancestor/s, and comprise kinship units bound by love and affection. After, through treaty and naturalization, nations comprise larger groups with more disparate members who may have diverse histories and experiences. Enhanced unity is sometimes only brought about in times of war, or even sporting contests. Conversely, national unity may be eroded by strengthening perceptions of being a global citizen. Strong cohesion today is more often associated with smaller groupings and blood lines (families) than with tribes or nations.

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3. RE-INTRODUCING COMMUNAL VALUES IN MĀORI PLANNING

We now turn to some real-world case studies which have sought to reintroduce communal values into mainstream planning processes and developments. Case studies are appropriate since they seek to understand real-world situations predicated on 'contextual conditions' which cannot be controlled in the same way as a laboratory environment (Yin 2014: 16). Two preliminary cases have been included in this paper: first, a Kaumātua (elders) village project located in Hamilton, and second, the Whare Ora papakāinga development located in Kaitaia. These cases were selected for initial analysis based on their documented use and adoption of one or more core social tenure principles, as well as having demonstrated positive social outcomes over a sustained period of time (longer than one year). Further cases will be drawn on, both from New Zealand and internationally, to validate and test the wider applicability of any conclusions.

3.1 Kaumātua village, Hamilton

The concept behind the Kaumātua Village project in Hamilton arose from a concern regarding the living conditions of some kaumātua (elders) in the city and a desire to provide them with warm, safe houses. A joint venture between Rauawaawa Kaumātua Charitable Trust (RKCT) and Te Runanga o Kirikiriroa (TROK) enabled the housing development to be born. The project was developed in two stages, with stage 1 consisting of eight units, and stage 2 consisting of six units. The units comprise one or two bedrooms, one bathroom unit and either an integrated garage, on-site parking (uncovered or carport) or on-street parking.

The units have been designed based on the papakāinga (communal) model, where people learn to share and care for one another and look after one another as a quasi-whānau (family). Physically, the units are generally arranged around a central, communal space (platform/area under a shade sail) to encourage community interaction and passive surveillance, whilst also providing for the need for private spaces within individual units. One of the benefits of this layout was immediately apparent when a resident fell ill and other residents could easily rally around and provide support by cooking meals and watching over them. This degree of support is unlikely to have occurred in more isolated units, or where a communal space had not laid a foundation of trust and cooperation. In the same development, the residents refused the offer of a commercial gardener to mow the lawns, with one of the residents insisting he was capable of doing so himself. He now mows the lawns across the whole site, something recognised and supported by the other residents with a koha (donation) in return. These specific aspects align with the principles of whanaungatanga (participation and membership) and manaakitanga (hospitality and security) as design qualities highlighted by Rolleston (2006) and others (e.g. Awatere et al., 2008). Historically, participation in Māori society included responsibilities and roles in order to support the day-to-day functioning of the community, and membership was founded on genealogy. In this contemporary context, a comparable result has been achieved by the physical layout of the development, which encourages mutual support rather than isolation or segregation, as well as by informal, ad-hoc

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agreements for mahi (work) which have promoted a sense of belonging or investment in the group. A telling comparison should be possible, and is planned, for a second Kaumātua Village project that for a number of reasons has a different layout.

3.2 Whare Ora papakāinga, Kaitaia

The Whare Ora papakāinga is a communal village located on the outskirts of Kaitaia, a town of approximately 5,000 people in Northland. This project involved former state houses being relocated to the site and refurbished to house especially vulnerable members of society, living in substandard or unsafe conditions, in comparatively stable, affordable homes and a safe living environment. The village currently comprises nine houses and a childcare centre building, and on completion, is envisaged to include a medical centre, social support service, industry training facilities and community gardens. Residents sign up to a drug, alcohol and violence free policy within the village and utilise a rent-to-buy scheme to eventually own their own home.

This development demonstrates the principle of rangatiratanga (self-determination) in that it supports families to support themselves, through wrap-around services such as budgeting for residents to work towards their goals of home ownership. The project offered trade training involved with the refurbishment of the relocated houses, as well as associated opportunities for sweat equity to lower costs, whereby residents were encouraged to help paint and decorate houses prior to moving in. As well as fostering self-determination, this builds in the concept of mahi and provides opportunities for creativity to blossom.

4. DISCUSSION AND CONCLUSIONS

The research is still in its very early stages, and no firm conclusions are possible yet. One of the primary aims of this paper was to establish a theoretical context and rationale for building socially-based tenure principles into contemporary planning, and to describe the objectives and methods of the research project that is planned to run for approximately two more years. Two other case studies that have also been commenced already, include: first, the differently configured Kaumātua Village project in Hamilton, which should provide a good comparison. Second, a development in Invercargill with some distinctive features. In addition to further New Zealand cases, international cases are also planned, for example in Denmark, the Netherlands and perhaps Africa so as to make the conclusions more generally applicable and to validate recommendations. A major challenge of the research is likely to be the number of interrelated factors involved, and it is hoped that carefully chosen case study comparisons will enable parameters to be isolated and ranked.

The second aim of this research is to investigate a suitable legislative framework to accomplish design aims. It is perhaps significant that the Whare Ora papakāinga described above needed the land to be changed from general land to Māori land in order to utilise the papakāinga provisions in the local district plan (and therefore to provide mixed-use community facilities as well as housing). This required an application to, and processing by,

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the Māori Land Court, including extensive proof of whakapapa. This time consuming and costly step could have been avoided had planning legislation allowed for this type of development on general land to begin with. There are precedents of constructive engagement between runanga/representative bodies and their local district councils which have achieved pragmatic compromises over papakāinga land, such as Rāpaki, and also the provisions within the Whangārei district plan. Again, international legislation will need to be reviewed to contextualise cases from abroad. Transferable lessons and approaches from these experiences could assist mainstream planning practice to improve with respect to achieving viable and sustainable communities.

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