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# Urban ground leases: a cross-country comparison

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## ABSTRACT

The ground lease is a form of land tenure where the property rights are split between the lessor (landowner) and the lessee (land user). Additional ground lease features, such as the obligation to pay ground rent, depend on factors including the legal framework and lessor requirements. Ground lease features can lead to interpretation problems for ground leaseholders and even valuers, such as misunderstanding the extent of ground rent review. This paper examines location-based differences in order to highlight ground lease variability across countries. The term ‘ground lease’ is effectively a catch-all term for a tenure type that can display considerable differences depending on the location. Recognition of potential ground lease pitfalls and how ground leases differ across jurisdictions is necessary in an increasingly connected world. This paper advocates for uniform international ground lease terminology that more completely explains the extent of tenure rights of each ground lease.

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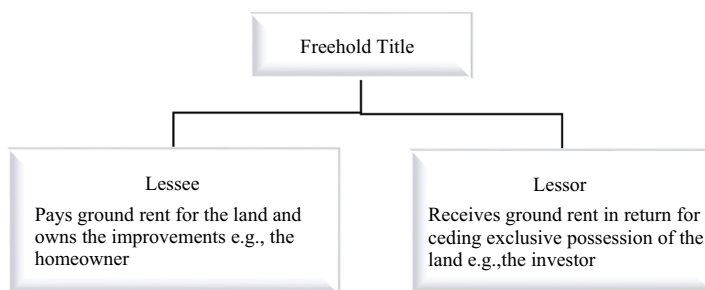
## Introduction

A common problem in housing studies involves data sourced from a single market where the ability to generalise the findings elsewhere is uncertain (L. Zhang & Leonard, 2021). Property tenure rights are a facet of housing data that can vary depending on the location and the extent of differences that may be overlooked by those who interact with property (Hulse, 2008). Property rights have been recognised for many years as being a fundamental part of property (Coase, 1960). Ground leases can have notable location dependent differences that need to be accounted for by those relying on information relating to them. It is argued that the perspective of the ground lease as a series of rights only conveyed in a lease document, does not fully describe the ground lease. Rather, a ground lease is the product of unique histories and can change in response to societal pressures, making the ground lease itself a worthy subject for research. Those referring to ground leases, therefore, should account for the context and purposes for which the ground lease serves in addition to fully describing the technical ground lease aspects.

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**Figure 1.** How the freehold rights can be split between the lessee and the lessor.

A typical description of a ground lease is framed as a set of property rights giving the building owner (lessee) the right of exclusive possession over the land in return for paying land rent to the landlord (lessor) (see, for example, Wyatt (2013)). Thus, the freehold property rights are ‘split’ into lessor (landowner) rights and lessee (ground leaseholder) rights (Jacobus, 2010). Figure 1 provides a typical and simplified description of a ground lease.

The simplified relationship displayed in Figure 1 does not fully explain the ground lease use. For example, there may not have been a freehold title previously issued, so the contention that the freehold rights as being split may not always be correct. An example of this situation is Māori land of customary title in New Zealand (Boast, 2004). While researchers can use statistical controls for variation in ground lease terms (e.g. Giglio et al. (2015)), a reader could overlook contextual information relevant to a full understanding of a ground lease. Figure 1 does, however, provides a summary of the common understanding of a ground lease.

Research involving property often does not discuss tenure issues because, understandably, there is an assumption that the reader should be aware of tenure matters and that the tenure characteristics do not impact upon the research findings. Yet it is that intersection of people and property that defines how people understand what property is. A subsequent section of this paper discusses how cultural concerns shape ground leases found in Ghana, Hawaii, and New Zealand. Furthermore, people can experience phenomena in unanticipated ways. The property literature details people’s foibles, such as succumbing to the anchoring heuristic (Hansz & Diaz, 2001; Lambson et al., 2004), or not anticipating potential framing effects (Levy et al., 2020; Witte et al., 2008). Given how people can sub-optimally respond to phenomena, for a variety of potential reasons, it is not surprising for there to be reported ground lease problems such as rent review clause misinterpretation (Sawyer, 2015), or weighing what will occur with uncertain ground lease renewal terms (Zheng & Ho, 2020). There are many ‘human reasons’ why people make assumptions as to the type of tenure and their assumptions may be substantially different from how others understand that tenure.

The methodology explaining the criteria for case selection appears in the next section. A summary of key ground lease clauses follows, indicating technical points of difference. More central to the purpose of this paper, however, are the reasons for ground lease use that require clear description. These diverse reasons require a breadth of information

from a variety of locations to explain how people can have different ground lease assumptions.

## Methodology

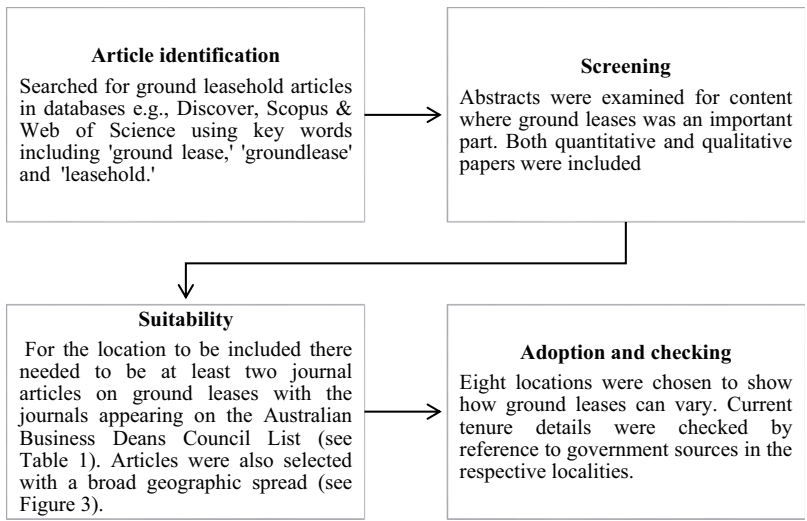
The methodology employed is that of a diverse, descriptive case study. See, for example, Gerring and Cojocaru (2016) for a description of case study types. In essence, the method emphasises the description of different ground leases in various localities and is not concerned with inferences about ground leases as they may apply to a worldwide population. Thus, the selection of different ground lease locations is influenced by the goal of this paper; to demonstrate that there *can* be variation in ground lease clauses. Interrelated with the goal of demonstrating variation is the desire to explain greater contextual information that can help explain why there can be differences in various localities.

The number of cases examined was determined by the need to demonstrate ground lease variety and sufficient detail about each ground lease. There is no formula to determine the number of cases to survey, with researchers tending to use their own judgement (Yin, 2012). For this task, surveying too few cases would not highlight the range of ground lease variation. Surveying numerous ground leases, although providing useful summary information, would not emphasise the reasons for ground lease use in enough depth. Depth of analysis is fundamental to the case study methodology (see, for example, Tsang (2013)). To fully consider the merits of one ground lease type over another, understanding the context for their formation is important. To illustrate, ground leases in one location may have been created to provide for social housing and municipal finances (e.g. Mandell, 2002), whereas ground leases in other locations provide an income for the traditional landowners (e.g. Asabere, 2004). Therefore, the ground leases surveyed are determined by the context in which ground leases are used.

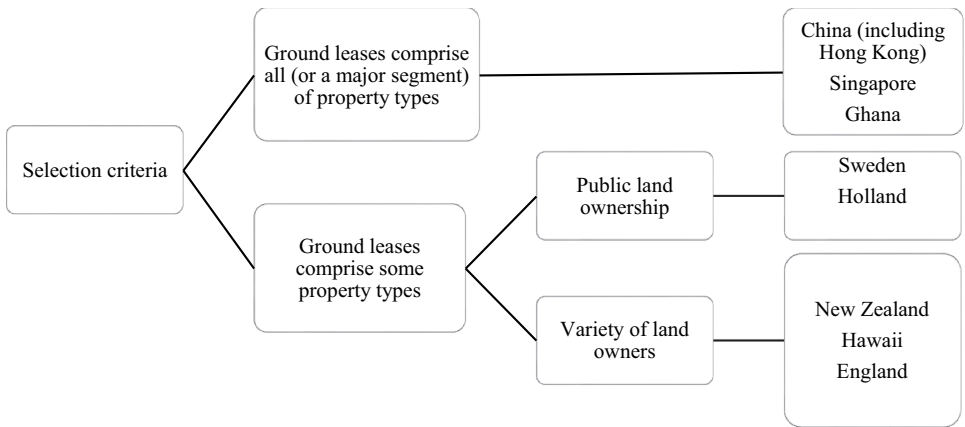
The locations selected are drawn from articles in the academic literature. The literature has been influential in determining the selection of study locations because it demonstrates there has been sufficient interest in the ground lease type, which has been subject to rigorous academic scrutiny. Given that some time has passed since the initial publication of some sources, verification of ground lease details was by reference to public websites and/or contacting the relevant government authorities where possible. In some countries all or most properties are of ground lease tenure, so arguably all property papers are relevant. However, given the research focus, specific terms such as 'ground lease' were used. A summary of the process used to select locations is shown in Figure 2.

Given the motivation to compare different ground lease types, ground lease selection is based on locations where the ground lease is the majority or only tenure form compared to locations where they are less common. This contrast of commonly versus infrequently encountered ground lease forms, places emphasis on the motivating reasons for the ground leases, which is discussed later in the paper. In locations where ground leases are infrequently encountered, a further subcategorisation involves public, e.g. municipal ownership, contrasted with private ownership. These categorisations provide a basis for selection of ground lease types and are summarised in Figure 3.

Ground leases from eight locations were selected, providing a reasonable balance between depth of analysis and breadth of ground lease variety. Ensuring that the ground leases surveyed were not concentrated in one part of the world is important, therefore



**Figure 2.** Process used to obtain and select ground leases for categorisation and discussion.



**Figure 3.** Selection criteria relating to ground lease concentration and ownership profile.

a variety of locations were chosen. To summarise, ground leases from Europe (3), Asia (2), Africa (1) and the Pacific (2) were included.

**Observations of ground lease differences**

The common factor for ground leases across jurisdictions is that there is a lease document conveying ownership rights that are of a lesser degree than freehold rights. Specific ground lease terms differ. Table 1 shows that ground lease lengths vary from low or no ground rents (e.g. China), to more substantial ground rents (e.g. Sweden), through to situations where interventions now shield ground leaseholders from the impact of full market ground rent reviews (e.g. Hawaii). Table 1 also shows variation in renewal terms: renewals are usually allowed in Amsterdam, England, or Ghana; while renewals are dependent on the

Table 1. Typical ground lease lengths, renewal and rent review terms.

Location	Common renewal & lease lengths	Rent review	Source of information
Amsterdam (Holland)	Fifty-year terms are now replacing seventy-five-year terms. Ground leaseholds are almost always renewed by the ground leaseholder. There are also perpetual ground lease terms.	'Continuous' ground leases are reviewed based on the land value every 50 or 75 years. 'Perpetual' ground leases have a ground rent that is not subject to review. The ground rent can be prepaid as a single lump sum or paid annually. The perpetual ground lease was introduced circa 2016.	City of Amsterdam (2021); Gautier and Vuuren (2019); Ploeger and Bounjouh (2017).
China including Hong Kong	In China (mainland) residential ground leaseholds usually have a 70-year term. After this the period ownership can be extended, however the right to renew terms are being clarified as there has been ambiguity as to the specific terms of ground lease extension. In Hong Kong, most ground leases are for time periods of less than 75 years, with many having expired in 1997, and then renewed until 2047 (50 years) without a requirement for a payment. Most ground leases are renewed, subject to government requirements. There are some 999-year leases on Hong Kong Island.	In China there are no ground rents as can be found in other countries. However, there can be fees payable to local government. For example, there have been experiments with taxes based on property value in Chongqing and Shanghai. The Hong Kong government uniformly sets ground rents, currently at 3% of rateable value. Rating valuations are revalued annually.	Chiu-Shee and Zheng (2021); Chiu (2007, 2019); Haila (2000); Hong (1998); Lai (1995, 2005); Lai et al. (2006); Liu and Liu (2021); Teng et al. (2013); The Government of the Hong Kong Special Administrative Region (2021); Zheng and Ho (2020); J. Zhu (2004); G. Zhu and Dale-Johnson (2020).
England	Terms are commonly set for 99, 125, 150, 250 or 999 years. Legislation provides for lease extensions in most circumstances.	Ground rents are commonly encountered at peppercorn (low) levels. Payment for the ground leasehold is at the start, or extension, of the ground lease term. More recently, new build housing with ground rent review clauses can in some cases allow the doubling of ground rents every ten years.	Bracke et al. (2018); Dixon et al. (2002); Giglio et al. (2015); Grover (2014); Mackmin (1995) Cole and Robinson (2000); Ministry of Housing Communities and Local Government (2018); Wilson and Barton (2019).
Ghana	Ninety-nine-year terms are prescribed by the Ghanaian Constitution. Local practice can, however, grant shorter leases. The Constitution does not clarify if ground leaseholds can be renewed. However, the Lands Act of 2020 allows renewals for citizens with an upfront payment for ground rent and/or regular ground rent payments.	Ground rents are at peppercorn (low) levels. The ground rent is effectively capitalised into the purchase price when the ground leasehold is purchased.	Abubakari et al. (2016); Akaabre (2023); Asabere (2004); Gyamfi-Yeboah and Zinzi Ayitey (2021); Gyau Baffour Awuah and Gyamfi-Yeboah (2020).

(Continued)

Table 1. (Continued).

Location	Common renewal & lease lengths	Rent review	Source of information
Hawaii	Common ground lease terms can be between 50 to 99 years. Renewal terms vary with some leases unable to be renewed.	Earlier ground leases had rents set for 25 years and then reviewed by a valuation or agreement. More recently innovations include prearranged rent increases such as every 10 years and ground leases that had been partially prepaid with a higher purchase price in return for lower ground rents. There have been attempts by the state legislation to limit ground rent increases e.g. to 4% of land value for single family homes.	Croix et al. (1995); DeWeese (2017); Rothermich (2009).
New Zealand	Various terms available especially 21 years, often perpetually renewable. Additionally, there is recent adoption of terminating prepaid ground leases e.g. 125 years.	Rent reviews are negotiated between lessor (freeholder) and the ground leaseholder, often as a percentage of land value specified in the lease or by negotiation.	Auckland Council (2023); Boyle et al. (2009); Freeman (1993); Lally (2001); Lally and Randal (2004); Sawyer (2015).
Singapore	Ground lease terms are commonly encountered at 99 and 999 years (older lease forms). Renewals are on a case-by-case basis, determined by the government.	Ground rent is prepaid when the ground leasehold is initially purchased, so there are no regular ground rent payments.	Agarwal et al. (2018); Giglio et al. (2015); Haila (2000); Hui et al. (2004); Purves (2023); Tu (2003).
Stockholm (Sweden)	Initially 60 years, with 40-year extensions. Usually ground leases are renewed although the lessor can have the ability to terminate the ground lease for limited reasons.	Negotiation between lessor and ground leaseholder to determine a reasonable ground rent, with court determination e.g. at 3–3.75% of land value. Rent reviews can be at 10 years, or 20 years for some older lease forms.	Caesar et al. (2019); Caesar and Kopsch (2018); Hall (2008); Mandell (2002); Ratzka (1981).

Note. It is acknowledged that there can be ground lease clause variation in countries as outlined, for example, in Holland (Ploeger & Bounjoh, 2017). In some cases, a particular city is described as the ground lease type in that specific location was of predominant interest to researchers, e.g. Amsterdam and Stockholm.

ground lease terms in Hawaii and New Zealand. In Singapore renewal depends on government redevelopment plans, while in China renewal details are still being clarified.

Table 2 indicates that ground leases can comprise a relatively insignificant number of tenure types (New Zealand) through to all property types (China). Central government management plays an active role in China, Ghana, and Singapore, while there is more municipal government involvement in Amsterdam and Stockholm. Considering the information in Tables 1 and 2 the ground lease bundle of rights varies notably across jurisdictions.

**Table 2.** Proportion of ground leases in terms of the total tenure types and management of ground leases.

Location	Extent of ground lease ownership	Ground Lease Management details
Amsterdam (Holland)	The City of Amsterdam owns approximately 80% of the land, where most is subject to ground leases (Organisation for Economic Co-operation and Development, 2017).	The City of Amsterdam manages the municipal ground leases and there are also some private ground leases (Ploeger & Bounjouh, 2017).
China including Hong Kong	The central government owns all the residential land in China, as determined by the Chinese constitution (J. Zhu, 2004). All land is subject to ground lease on Hong Kong Island apart from St John's Cathedral (Haila, 2000).	In China the local government (for example, Shanghai Municipal Government) actively manages the development of land where the land use right is granted to house owners (J. Zhu, 2004). Chinese ground leases were influenced by ground leases formed earlier in Hong Kong (see, for example, Anglin et al., 2014). Consequently, Hong Kong and Chinese (mainland) ground leases are discussed together given their interrelationship. All land is subject to ground lease on Hong Kong Island apart from St John's Cathedral (Haila, 2000). An active land issuance and redevelopment programme is managed by the Hong Kong government.
England	England has a well-established market for ground lease use, where approximately 18% of the housing stock is of ground leasehold tenure (Wilson & Barton, 2019). Ownership of the land is often by long-established private landowners, often noted for their wealth (Bracke et al., 2018; Grover, 2014).	The Leasehold Advisory Service offers advice to ground leaseholders, while disputes, especially those regarding ground lease extensions, are resolved through tribunal (Ministry of Housing Communities & Local Government, 2018). The British government has over time sought to balance out the rights between the landowner and the ground lessee (Grover, 2014).
Ghana	Traditional land holdings make up approximately 80% of the tenure types which is mostly subject to a ground lease, with the balance being freehold (United Nations Human Settlements Programme, 2011)	The Lands Commission, a Ghanaian Government Department, administers ground leaseholds, such as collecting the pepper corn ground rents (Gyau Baffour Awuah & Gyamfi-Yeboah, 2020). The sale of traditional land into freehold tenure was banned in 1992 (Asabere, 2004).
Hawaii	The proportion of ground lease titles to freeholds is not available. However, of properties on the market, approximately 2% of standalone housing and 12% of condos are of ground leasehold tenure (Honolulu Board of Realtors, 2014, as cited in Berger, 2014).	In Hawaii, where ground leases are commonly found with condominium developments, there are a variety of private landowners, such as the Bishop Estate. Legislative changes over the years have benefited the ground leaseholders by, for example, limiting the extent of the ground rent increases and enabling the purchase of the freehold (Croix et al., 1995).
New Zealand	New Zealand ground leases are a small part of the total tenure types at 1.4%, with most other titles being of freehold form (Land Information New Zealand, 2021).	Ground leases are used by a variety of organisations including the government, for example railways, municipal authorities, entities for serving the public (such as Cornwall Park (Cornwall Park Trust Board, 2021)), and traditional Māori landowners (McPhail, 2004). Compared to the other countries detailed, there are few restrictions on lessor conduct with some relatively minor obligations provided in legislation.

*(Continued)*

**Table 2.** (Continued).

Location	Extent of ground lease ownership	Ground Lease Management details
Singapore	In Singapore the government owns more than 75% of the land and continues to actively sell ground leases to facilitate development (Agarwal et al., 2018).	The Singapore Land Authority manages the ground leasehold development land sales and management of ground leases.
Stockholm (Sweden)	In Sweden municipal land ownership amounts to only about 3% of land, although ownership is more concentrated in cities, for example, Stockholm at 70% (Caesar & Kopsch, 2018).	The Swedish municipal authorities manage the allocation process of land to developers to provide social housing and manage the ground leases (Mandell, 2002).

### Why cognisance of ground lease differences is important

Those wanting to learn ground lease lessons from another country need to be aware of differences between jurisdictions, as detailed in [Tables 1 and 2](#). To illustrate, someone wanting to research ground rent review best practice should not examine Singaporean focused literature because there are usually no regular ground rent payments. A search of the Scopus database was carried out using combinations of the terms ‘Singapore’, ‘lease’, ‘housing’, and an examination of the first ten relevant downloadable articles was undertaken. Searching each article using the words ‘ground rent’ and ‘land rent’ indicated that only one article mentioned ground rent (Purves, 2023), and clarified that there were no regular ground rental payments. While a lack of ground rent payment clarification is inconsequential to each of the nine other articles, it does illustrate that knowledge of the Singaporean leasehold system is often assumed.

Of more notable concern, however, is when there is misunderstanding of ground leasehold systems, even for residents of a country where there otherwise might be a presumption of market knowledge. In the United Kingdom, there are documented cases of ground lessee misunderstandings as to the implications of buying a leasehold. Cole and Robinson (2000) illustrate how, for example, some ground lessees do not understand how leasehold values decline closer to the ground lease expiry, and do not fully understand that ground leaseholders have lesser rights than freeholders. More recently, ground leaseholder misunderstanding around their ground rent reviews has led to the Leasehold Reform (Ground Rent) Act (2022) that prohibits ground rents for residential leaseholds where previously leaseholders were subject to alleged unfairness and unclear ground lease terms (Department for Levelling Up Housing & Communities, 2022). There are further calls for legislative reform relating to cladding repair where the units are of leasehold tenure (Sawtell, 2019). Lack of leaseholder power when properties were being re-clad is a cause of considerable stress for leaseholders (Brill, 2022; Sawtell, 2019). Consequently, these ground leasehold issues can lead to additional, unaffordable expenses for ground leaseholders.

Outside of the United Kingdom there are further recorded ground lease problems. In New Zealand, the extent of ground rent review levels has long caused angst for ground leaseholders (Lusk, 1993) due to misestimation of the extent of ground rent increases (Pope et al., 2023). Further cases of ground rent reviews and ground leaseholder objections to what the ground leaseholders considered to be unreasonably high ground rent

levels are documented in Holland (Ploeger & Bounjouh, 2017), Hong Kong (Hong, 1998), and Sweden (Mandell, 2002). Misunderstanding the extent of ground rent increases can lead to stress on family finances, where the ground leaseholder may be forced to sell their property as the ground rent has risen above what the ground leaseholder can afford (Lusk, 1993). An investor may be in a similar situation to an occupying ground leaseholder, where an increase in ground rent may not provide enough of a margin from rents received from a tenant of the land and buildings. Ground leases therefore present a form of tenure where there can be noted disagreements and misunderstandings.

Evidence of ground lease misunderstanding and uncertainty is documented within the valuation profession. There is evidence of valuers not fully comprehending the implications of a ground lease on lessee or lessor value. Gyau Baffour Awuah and Gyamfi-Yeboah (2017) outline how some valuers can ignore the consequences of the unexpired leasehold term when valuing residential leasehold properties. The likelihood of improvements lasting longer than the ground lease end date, when considering the leasehold reversionary value, needs greater valuer consideration (Rothermich, 2009). Contract ground rent payments can be greater than the market ground rent level, creating a negative leasehold value (Mackmin, 1995). Such a situation of excessive contract ground rents is a challenging issue for valuers. Dixon et al. (2002) outline that, even after concerted industry effort to provide clearer leasehold valuation frameworks, there are still challenges. For example, determining an appropriate risk premium when converting from leasehold to freehold tenure requires careful judgement. Ground leases thus present numerous challenges, even for trained valuers operating in their individual countries. Valuers learning from their international counterparts, in this case with ground leasehold valuation practices, will enhance end-user confidence in valuation reports.

Understanding of the problems inherent in differing ground lease structures is important. To illustrate, Purves (2023), proffers the idea that adoption of regular ground rent payments could help address wealth inequalities in the Singaporean land tenure system. However, reference to the broader ground lease literature would suggest that levying regular ground rent payments could lead to problems for ground leaseholders, if ever adopted. The documented cases of ground leaseholder and valuer misunderstanding points to an asset type where market participant knowledge can be improved. Given that world property markets are becoming more interconnected through trends such as financialisation of housing (Wijburg, 2021), greater understanding internationally is necessary.

### **What does the literature reveal as the reasons for the formation and retention of the ground lease?**

A fundamental objective of this paper is to outline the reasons for the variation in ground leases. Hulse (2008) explains how tenure issues can be simplified to a description of data that ‘... lacks rigour as an explanatory concept’ (p.217). Consequently, this section explains the motivating reasons for ground leases detectable in the literature. The reason for ground lease use may not only be a decision relating to the advantages of one tenure type over another, for example, freehold vs

leasehold, or an investment decision. Rather the choice of tenure can be linked to societal considerations where the ground lease may be an important part of the broader political or economic system.

Ground leasehold formation starts with the landowner or government as they usually have the motivating reason for ground lease establishment. Initially, selling land as freehold is the common alternative to ground lease formation. However, at some point the landowner decides to form a ground lease that will be advantageous to the landowner, or to provide some form of public benefit. The landowner benefits can, for example, be in the form of regular ground rent or to exert control over land.

There are various reasons for the use of ground leases, as outlined in the literature that shapes the following sections of this paper. Creating affordable housing balanced with the generation of revenue for public authorities by the ground lease is a prominent motivation encountered in the literature. Another reason for ground lease use is where the ground lease forms an intrinsic part of the broader economic and political system. Such use of the ground lease model can be viewed as part of the bedrock of the government and economic system. Providing a form of town planning rules that are enabled through ground lease covenants is also discussed in the literature, although this could be viewed as part of the system of government in some cases. Another purpose served by the use of ground leases is the retention of land for the traditional tribal owners while generating revenue. Lastly, ground leases provide financial benefits for landowners, although the financial benefits are often linked to other factors, such as creating affordable housing.

### **Ground leases can help to provide affordable housing and can be a source of public (often municipal) finance**

The motivation to affordably provide public housing by using ground leases is encountered in the literature. ‘Affordable’ is expressed in terms of the price comparison between ground leaseholds and freeholds, where a lower ground leasehold purchase price is considered favourable for purchasers. Locations where the affordability objective is discussed include China (Chiu-Shee & Zheng, 2021), Hawaii and other US states (Croix et al., 1995), Holland (Ploeger & Bounjouh, 2017), Hong Kong (Chiu, 2019), Singapore (Tu, 2003), and Sweden (Hall, 2008; Olsson, 2018; Ratzka, 1981). In other contexts, although the ground lease may support a lesser purchase price, there appear to be other more central reasons relating to the needs of the lessor, as in traditional ownership structures in Ghana or New Zealand. In England ground leaseholds are generally cheaper than freeholds, and ground leaseholders enjoy legal rights to purchase the freehold. The ground leasehold to freehold discount is demonstrated in value graphs in common use by appraisers to indicate a fair price for the freehold rights (Bracke et al., 2018).

The case for affordable housing is usually supported by the financial benefits ground leaseholds convey to the landowner. The financial benefits can be either in the form of annuity ground rent payments such as in Hawaii or Sweden, or in predominantly prepaid forms such as in Singapore or China. Both methods benefit from increases in underlying land values through increased annuity ground rents or higher prepaid ground rents if renewed (usually). These benefits have, for example, been detailed in Holland (Ploeger &

Bounjough, 2017), Hong Kong (Haila, 2000; Hong, 1998), Singapore (Haila, 2000), and Sweden (Ratzka, 1981).

Invariably the requirement for affordable housing and the funding benefits can result in conflict between the ground leaseholder and the lessor. Regularly, such conflict relates to the ground rent. Since ground rents are often related to a measure of value, such as a percentage of land value, an increase in freehold values results in increased ground rents. Consequently, there can be resistance from ground leaseholders to paying an increased ground rent as has been experienced, for example, in Holland (Ploeger & Bounjough, 2017) and Hong Kong (Hong, 1998). Given the public objections, which are often of a strong nature, full market ground rent reviews led to the adoption of a more moderate method of setting ground rent reviews in Hong Kong. The balance of benefits between the ground leaseholders and the lessors, who often hold land on behalf of the public, requires careful consideration.

In addition to ground rent problems, there can be concerns relating to the role of municipal authorities in being both the government regulator (e.g. town planning rule provision) and housing developer. Despite the Swedish post-war housing development being seen as successful (see for example Olsson, 2018; Ratzka, 1981), the interests of the public may not be prioritised. The municipal regulatory role is in conflict with the development of land where economic growth is the motivation (Olsson, 2018). Furthermore, this dual role conflict has more specific implications for the ground lease. The municipality has more information on the supply and demand of real estate impacting future ground rents (Mandell, 2002). The ground leaseholders are, therefore, disadvantaged. Such information concerns are, however, not always prioritised, such as in Holland, where the municipal land use planning system is viewed as successful (van Oosten et al., 2018).

## **The ground lease forms an intrinsic part of the economic and political system**

Ground leaseholds are the only realistic land tenure option in some jurisdictions, being a fundamental part of the political philosophy. This is a more central role than a particular policy initiative such as the post-war development of housing in Sweden (Olsson, 2018), but rather a fundamental part of the system of central governance, such as in China.

In Hong Kong the ground lease system was mandated in the period following the British Crown's occupation from 1841. Haila (2000) noted that the British ground lease system was simple to implement and manage, because the ground lease did not give a full set of (complicated) property rights. Nissim (2012) describes how there was pressure from the British government for Hong Kong to '... pay its own way ...' that motivated the collection of ground rent from properties (p.11). To recognise the need for funding and the desire for government control, 999-year leases were disallowed from 1898 in favour of 75- or 99-year leases (Nissim, 2012). The period from 1841 effectively set the future direction of the Hong Kong ground leasehold tenure system as it is used today.

The Hong Kong system of ground leases has been influential in the more recent development of ground leases in mainland China (Lai, 2005). Under the Chinese

Constitution there can be no freehold land ownership in urban areas; only ground leaseholds are permitted (J. Zhu, 2004). Sale of land development rights that enable the creation of ground leasehold titles is an important source of funding for local government that, in turn, enables further investment into infrastructure (Liu & Liu, 2021). Specific economic benefits are noted in the literature including reduced levels of vacant urban land (Ding, 2003) and positive local GDP growth (Li, 2014). The land tenure system, while having taken time to develop, is now central to the Chinese economy (Li, 2014; Tong et al., 2019; J. Zhu, 2004).

Since the establishment of the current Chinese land tenure system a market for ground leasehold apartments has developed (e.g. see Lai, 1995) due to the ability to transfer title. Zheng and Ho (2020) explain that purchasers of a new apartment obtain a land use permit and housing title for a 70-year term. X. Q. Zhang (1997) observes that land ownership is vested in the state, with people purchasing land-use rights with this arrangement striking a balance between 'economic capitalism and ideological socialism' (p.192). The subject of ground lease renewals past the 70-year term has gained researcher attention where government funding needs and public sensitivities concerning ground lease renewal fees requires careful balance. Zheng and Ho (2020), for example, discuss uncertainty of ground leases renewals, while fees for ground lease extensions is investigated by Tong et al. (2019).

In a similar manner to China, Singaporean land sales of ground leaseholds form an important government funding source (see, for example, Agarwal et al. (2018)). The Singaporean land tenure system has a similar British origin to the Hong Kong tenure system and benefits from simplicity of use (Haila, 2000). The Singaporean government takes an active role in managing the property market through mechanisms like housing grants and provision of public housing (Hui et al., 2004). Haila (2015) refers to Singapore as a 'property state' where property development and management plays a central role in the overall economic success of Singapore. Singapore is, therefore, a planned property market where the ground lease plays a central part.

## **The ground lease as a town planning tool**

In the previous section the ground lease plays a central part in the system of government for revenue raising and to guide the development of locations. Some articles focus on the ability for ground lease contracts to provide rules that are an addition to, or a substitute for, town planning ordinances. A central recognition of the ground lease as a town planning tool has been discussed in the literature concerning Hong Kong, in the work of Ho and Ho (2006); Lai (1995, 1997, 2005); Lai et al. (2006). In the case of Hong Kong, the ground lease system predated the imposition of town planning (Lai, 2005), during the early years of colonisation. The impact of the ground lease on property rights, in addition to zoning ordinances has, thus, gained considerable attention in the Hong Kong context.

Other papers discuss restrictions contained in ground leases that have similarities to zoning ordinances but which may, however, be limited in their scope compared to a full set of zoning regulations. Ground lease clauses exist that can restrict activities like commercial activity in an English residential area (Giglio et al., 2015), restrict significant further improvements in Hawaii (Croix et al., 1995), restrict land use to residential uses with further detail than zoning plans in Holland (Ploeger & Bounjough, 2017) or in

Sweden (Mandell, 2002), restrict usage changes or alterations in Singapore (Hui et al., 2004), or restrict the amount of buildings to one on each site in New Zealand (Sawyer, 2015). In summary, the ground lease can encumber the ground leaseholder with lesser rights to enjoy their property when in comparison to a freehold with a fuller set of property rights.

### **Provision of funding and to retain links to the land by the traditional landowners**

Traditional ties to the land are an important consideration. There are large estates in London with owners of multiple generations. Canelas and Raco (2021) outline how there are ‘... [p]owerful aristocratic elites ...’ exercising ownership rights that are often facilitated through ground leases (p.269). Differentiating from the English traditional owner is a landowner who has, what could be considered as, a form of spiritual tie to the land.

For traditional owners in Hawaii, New Zealand and Ghana, land can be of special significance, allowing them to keep a sense of connection to the land. In Ghana customary land can have spiritual status for the owners (Abubakari et al., 2016). In New Zealand the Māori are considered to be the ‘people of the land’ (tangata whenua), whereby they are intrinsically linked to the land (see Belgrave, 2014). A similar observation is made by McCubbin and Marsella (2009), who state that native Hawaiian’s have ‘... a sense of harmony ...’ with their land (p.376). Retaining ownership of the land can be very important to these traditional landowners. However, this consideration needs to be balanced by a need to derive income. The ground lease offers a way for both ownership and income objectives to be achieved.

In Hawaii the Bishop Estate was established in 1884 to provide for the education of native Hawaiians and is funded by the use of ground leases (Croix et al., 1995). Much of the lands of native Hawaiians were sold to settlers (Kelly, 1980; Lam, 1985), despite initial planning by the Hawaiian royal family to create titles to protect Hawaiian ownership (Banner, 2005). The actions of a private citizen, rather than the government, led to the Bishop estate formation to provide funding for education of native Hawaiians (Croix et al., 1995). The number of ground leases have fallen over the years as law changes and policies have tended to favour the lessee position (Carneghi, 1994; Croix et al., 1995).

Contrasting the Hawaiian situation with native lands, greater ground leasehold rights are provided for the traditional (Māori) landowners in New Zealand. The rights of Māori to their lands are of constitutional status within the auspices of the Treaty of Waitangi (Pryor, 2005). It should be noted, however, that New Zealand does not have a formal written constitution. The Treaty of Waitangi is an agreement signed in 1840 between the Māori and European settlers. The ground lease plays an important part within the broader set of rights enjoyed by Māori to their lands, recognised in legislation such as the Māori Reserved Land Act (1955) and the Māori Reserved Land Amendment Act (1997). This legislation concerning Māori land has resulted in compensation paid to the land owners for insufficient previous ground rent payments and revision of rent review terms to every 7 years to keep up with market changes (McPhail, 2004). In summary, while initial treatment of Māori and their land is viewed as unjust there have been more

recent attempts to redress past grievances through legislative amendments that have enhanced Māori ground lease (lessor) rights.

In Ghana, recognition of the importance of retaining the chiefly system of land ownership is recognised under the Ghanaian Constitution of 1992, wherein freehold interests of customary land can no longer be sold (Asabere, 2004). The ownership of customary land is with tribal chiefs (see Abubakari et al., 2016; Asabere, 2004) and can also include migrant family descendants who have final authority over their lands (Abubakari et al., 2016). This system of ownership of chiefly administration of the land on behalf of other tribal members is common in sub-Saharan Africa (Asabere, 1981). Ground leases were granted in return for ‘drink money’ (Asabere, 2004, p. 676) or ‘kola nut’ (Abubakari et al., 2016, p. 388). This system has since developed to where the consideration is at market levels, while the ground rents tend to be at small (peppercorn) levels (Asabere, 2004; Gyau Baffour Awuah & Gyamfi-Yeboah, 2020). The ground leasehold system plays a central role in the Ghanaian property market.

In summary, the ground leasehold tenure system is used by those who have a different concept of what the land is, as compared to the view of the land as being an asset class alone. This special importance placed on the land in Hawaii, New Zealand, and Ghana means assumptions regarding the purpose for the ground lease need careful consideration.

### **The ground lease provides financial benefit for the landowner**

A common motivation is the lessor’s ability to profit from the initial ground leasehold sale proceeds, or from regular ground rent payments, or both. All ground leases discussed in this paper provide financial benefit for the lessor, even if there were other reasons relating to the public benefit for the ground lease use.

A strong motivation to profit from ground leases in Britain is observable in the literature. While there is a long history of aristocratic rural estates receiving income from tenant farmers (e.g. Rothery, 2007) the urban ground leasehold is a more recent development. British urban ground lease use is linked to the development of towns and cities, especially from the nineteenth century (Grover, 2014; McDonald, 1969). The assumption that negotiations between landlord and tenant would be fairly balanced has proven to be unfounded (McDonald, 1969). In particular, the motivation to profit from the ground lease is clear, either from the ground rent and a possible profit rent to the building developer (see Grover, 2014), or at the end of the lease where the tenant improvements could pass to the land owner (Grover, 2014; McDonald, 1969). The disadvantageous circumstances for ground leaseholders led to reform where the right to purchase the freehold (enfranchisement) was granted to ground leaseholders under the Leasehold Reform Act (1967). Since then, there have been further ground lease innovations relating to new build housing where ground rent review clauses can result in substantive increases in ground rents where the properties have apparently sold at, or close to, freehold levels (Wilson & Barton, 2019). Consequently, new legislation has been introduced to further support ground leaseholders with these issues (Leasehold Reform (Ground Rent) Act (2022)).

The New Zealand ground leasehold market has operated with limited protections for ground leaseholders, where collecting ground rents has been an important motivating

reason for the landowner. Unlike the United Kingdom, there is no body that advocates for the rights of ground leaseholders. Consequently, New Zealand ground leaseholds have a reputation for disputes between the lessor and the ground leaseholder (lessee). These disputes typically relate to the level of reviewed ground rents (Lusk, 1993; Myers, 1948; Sawyer, 2015). Clearly there is a motivation for deriving a profit from the ground leaseholder in New Zealand, even if there are some good reasons for the use of ground leases such as provision of funding for charitable purposes.

## Conclusions and discussion on future ground leasehold research

The term 'ground lease' is effectively an umbrella term for a title form that can be notably different depending on which nation and situation it is utilised in. While this paper summarises technical ground lease tenure differences, of greater importance is the demonstration of differing reasons for the formation and continuance of each ground lease type. Ground leases can enable the achievement of diverse policy initiatives, such as provision of less expensive housing or protection of indigenous land rights, while still generating income. Researchers and others need to account for these differences while appreciating that there is not one set of underlying assumptions as to what a ground lease is that can be applied from one jurisdiction to another.

This paper uses a breadth of sources to demonstrate the variation in ground leases internationally. The recognition of ground lease differences including the reasons for their use, displayed together, is intended to trigger ideas for researchers and others when evaluating ground lease systems. Shared experiences between jurisdictions can be helpful. However, recognising which country's ground lease case studies are relevant can be challenging if there is insufficient description of the ground lease features.

To effectuate greater global understanding, a more descriptive ground lease terminology is suggested. Formal adoption of a more specific ground lease terminology can occur by agreement within international standards frameworks. Some possible terminology examples include 'prepaid ground lease' (e.g. Singapore), 'nominal ground rent ground lease' (e.g. Ghana) or 'ground rent incurring ground lease' (e.g. Sweden). Such descriptions would convey greater meaning than terms encountered in the literature such as 'the leasehold' or 'leased fee' interest (DeWeese, 2017), 'ground lessee' (Dale-Johnson, 2001), 'leaseholds' (Asabere, 2004; Giglio et al., 2015; Grover, 2014; Wyatt, 2013), or simply 'lessee' or 'lessor' (Boyle et al., 2009; Jacobus, 2010; Lally, 2001; Mandell, 2002; Ploeger & Bounjoh, 2017). Despite which particular phrasing is adopted, a greater descriptive ground lease terminology is preferable to references to the 'ground lease' alone.

Enhanced international connection justifies greater clarification of ground lease issues. Two specific motivations are identified for a more descriptive and common international ground lease terminology; enhanced connection through social media, and a need for more consistent asset reporting standards. Connection of market participants through social media's increasing role in property transactions is now well documented (Shi et al., 2019). Social media is also increasingly used as an education tool (Zachlod et al., 2022), where people can conceivably learn about ground lease issues. Consistency in the way assets are reported is motivated by increasing use of international standards, for example, the International Financial Reporting Standards (IFRS) or the International Valuation Standards (IVS). To emphasise the status of ground leases as an international asset class,

consistency of both ground lease terminology and key terms such as renewal clauses would contribute. In summary, clarifying the place of ground leases within an international framework is an appropriate action in this increasingly connected world.

Given the international variation in ground leases it follows that education of purchasers and existing ground leaseholders is needed. Even in single jurisdictions there are evident problems in relation to, for example, ground rent reviews, that require education of market participants. Gyau Baffour Awuah and Gyamfi-Yeboah (2020) state that professional organisations and academia should provide guidelines to cope with ground leasehold valuation issues. We agree with Gyau Baffour Awuah and Gyamfi-Yeboah (2020) and emphasise that international collaboration will support better guidance through shared experiences. Education of ground leaseholders can also be achieved through organisations like the United Kingdom's leasehold advisory service. Actions by a range of actors to educate the public and professionals will enhance the operation of ground lease markets internationally.

This paper also points to the opportunity the ground lease presents for in-depth comparative intercountry studies. Ground lease content from different countries can provide a broader perspective when evaluating research findings. For example, an examination of the factors that lead to tenure reform in Amsterdam or in England may highlight common elements that can enhance ground lease management. Alternatively, traditional landowner rights' preservation and balancing the need for income generation, for example in Ghana, Hawaii and New Zealand, can be investigated by comparative research in greater depth. Comparing policy maker experiences can offer genuine advantages to each jurisdiction, especially when the ground leases are of similar design. There is much to be learned by comparing experiences of people who interact with ground leases in different countries.

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