

Collective Ownership and Representation in a Sustainable City

Investigating the Potential of the Community Land Trust and the Zoöp Model

Laura Burgers & Kinanya Pijl*

Abstract

The question is no longer whether we should move to an environmentally sustainable way of living; rather, the question is – how are we supposed to do that? Katharina Pistor's seminal book *The Code of Capital* pointed out that our current form of capitalism is enabled by private law, which selectively 'codes' certain assets, endowing them with the capacity to protect and produce private wealth. Law can be changed by the legislature, but legal concepts can equally be imbued with new meanings due to changing ways of seeing in society. Indeed, our investigation into two legal innovations – the Community Land Trust (CLT) and the Zoöp model – demonstrates how little change of the legal hardware of society is required for meaningful legal change in service of sustainability in the city and beyond. Whereas the CLT rethinks the stewardship function of property rights, the Zoöp model transforms corporate governance structures to consider nonhumans' interests – and both do so without waiting for relevant legal changes to be enacted by legislatures. To evaluate the potential and the limitations of these two legal innovations, we assess the extent to which these innovations align with four 'glocal' lenses of the Doughnut model developed by the British economist Kate Raworth: to what extent to these legal innovations support the thriving of humans and environment both locally and globally?

Keywords: ownership, representation, community land trust, zoöp model, sustainable city.

* Laura Burgers is Assistant Professor in the Amsterdam Centre for Transformative private law (ACT) of the University of Amsterdam, the Netherlands. Kinanya Pijl is Assistant Professor in the Amsterdam Centre for Transformative private law (ACT) of the University of Amsterdam, the Netherlands. We would like to thank Klaas Kuitenbrouwer for making available Zoöp's legal documents and answering our questions, as well as Marjolein Smeele for keeping us posted on developments related to CLT's in Amsterdam. We would also like to thank our colleagues at ACT, with a special thanks to Marleen van Uchelen-Schipper; and the participants of the online seminar 'Using the Law to Save the Planet' of 20 May 2022, with a special thanks to Prof. Liesbeth Enneking. Lastly, we would like to express our gratitude to the editors of this special issue on inclusive prosperity, Alessandra Arcuri, Lieselot Bisschop and Frank Weerman, as well as the Erasmus Law Review's anonymous reviewers for their constructive feedback. This article builds on research conducted in the context of the N-EXTLAW project which has received funding from the European Research Council (ERC) under the European Union's Horizon 2020 research and innovation programme (Grant agreement No. 852990). We would like to thank the ERC and the UvA's Sustainable Global Economic Law (SGEL) research project for financially supporting our research.

1. Introduction

The question is no longer whether we should move to an environmentally sustainable way of living, the question is how. Current capitalism is clearly unsustainable. It is widely accepted that the economy needs to become circular, so that our societies operate ecologically sustainably, and the transition should take place in a socially just manner.¹ Katharina Pistor's seminal book *The Code of Capital* pointed out that our current form of capitalism is enabled by private law, which selectively 'codes' certain assets, endowing them with the capacity to protect and produce private wealth.² With the right legal coding, any object, claim or idea can be turned into capital and, thereby, increase its propensity to create wealth for its holders. The legal coding protects the asset holder and gives their wealth longevity, thereby setting the stage for sustained inequality.³

Thus, importantly, capital is coded in institutions of private law, including property, corporate law and contract law. These are the legal modules that bestow critical legal attributes on the select assets that give them a comparative advantage over others in creating new and protecting old wealth.⁴ Capital owes its power to law and is backed and enforced by the state. As Pistor points out, law is often treated as a sideshow, while in fact it is the very cloth from which capital is cut. Crucially, this means that the law is also a potential site for change. Hence, the question how to move to an environmentally sustainable way of living might well be answered by looking at how to change private law.

Law can be changed by the legislature, but legal concepts can equally be imbued with new meanings due to changing ways of seeing in society, which can translate in renewed (judicial) interpretations or usages of

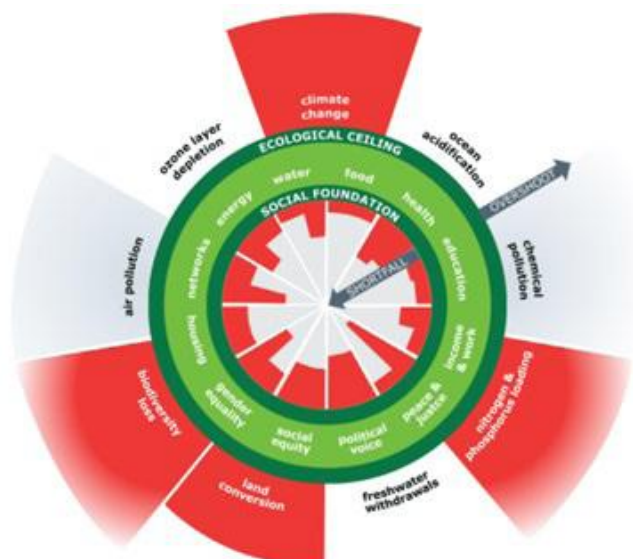
1 Indeed, this is the goal of the European Green Deal, see: Communication of the Commission 11 December 2019, COM(2019) 640 final, 'The European Green Deal', available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1588580774040&uri=CELEX:52019DC0640>.

2 Katharina Pistor, *The Code of Capital – How the Law Creates Wealth and Inequality* (2019).

3 *Ibid.*, 6.

4 *Ibid.*, 21.

Figure 1 Raworth's model of doughnut economics



existing law.⁵ Indeed, our investigation into two legal innovations – the Community Land Trust (CLT) and the Zoöp model – demonstrates how little change of the legal hardware of society is required for meaningful legal change in service of sustainability in the city and beyond. Whereas the CLT rethinks the stewardship function of property rights, the Zoöp model transforms corporate governance structures to consider nonhumans' interests – and both do so without awaiting legal change enacted by legislatures. We selected these two legal innovations as case studies as both are gaining popularity in the Netherlands but are understudied, while they appear highly promising to alter current conceptualizations of the legal modules of property and representation in a bottom-up fashion and in service of sustainable cities.

In this article, we aim to evaluate the potential and the limitations of these two legal innovations for the transition towards socially just and ecologically sustainable cities. As an analytical framework, we make use of the doughnut model developed by the British economist Kate Raworth. The city of Amsterdam, in its Circular Strategy 2020-2025, relies on the Amsterdam City Doughnut, which it designed with Kate Raworth and her team. The fact that Amsterdam's officials took it up as the basis for their strategy shows that they believe the Doughnut can act as a compass for human progress. Hence, we study the CLT and Zoöp models in Amsterdam specifically: our chosen analytical framework has democratic legitimacy there. The findings, however, are relevant for any community – city, village or neighbourhood – that pursue inclusive and sustainable design of their living environment.

The doughnut model depicts an economy where societies and businesses contribute to economic development while respecting the limits of the planet.⁶ The Doughnut provides a playful approach to framing humanity's challenge of the 21st century: meeting the needs of all people (the 'social foundation') within the means of the planet (the 'ecological ceiling') (Figure 1). The strength of this model is that it captures the dimensions of social justice and environmental sustainability in one simple – and tasty – metaphor. In the current era of the Anthropocene, it is vital to merge these social and environmental dimensions in one comprehensive picture – after all, the notion of the Anthropocene suggests that humans themselves are a geological force on earth, which blurs the boundaries between what used to be perceived as two separate domains. Climate change will disproportionately impact already marginalized groups, young people and those not yet born. Any conception of the common good must therefore reflect the interconnectedness of the natural and social environment. Hence, also the legal design of property rights and representation in organizational governance are legitimate only to the extent that they can be justified by reference to the common good.⁷ Does the design of the CLT and the Zoöp models, respectively, live up to this promise to foster a doughnut-proof vision of the common good? In this light, it is important to recognise that the city of Amsterdam demonstrates how global change requires local action. Within the city, the social foundation must be secured and the environment must be healthy;

5 See also: the account of deliberative democracy in L. Burgers, 'Should Judges Make Climate Change Law?' 9(1) *Transnational Environmental Law* 55-75 (2020).

6 K. Raworth, *Doughnut Economics: Seven Ways to Think Like a 21st-century Economist* (2017).

7 Eric T. Freyfogle, 'Taking Property Seriously', in David Grinlinton and Prue Taylor (eds.), *Property Rights and Sustainability: The Evolution of Property Rights to Meet Ecological Challenges* (2011) 51.

Table 1 Kate Raworth's Amsterdam City Doughnut

	SOCIAL	ECOLOGICAL
LOCAL	1. What would it mean for the people of Amsterdam to thrive?	2. What would it mean for Amsterdam to thrive within its natural habitat?
GLOBAL	4. What would it mean for Amsterdam to respect the well-being of people worldwide?	3. What would it mean for Amsterdam to respect the health of the whole planet?

however, the city must also strive not to adversely affect either of them elsewhere.⁸ In this vein, the central question to the Amsterdam City Doughnut reads: how can our city be a home to thriving people in a thriving place, while respecting the well-being of all people and the health of the whole planet?⁹ The following four interdependent questions provide a tool and starting point for reflection upon these 'glocal' ambitions (see Table 1).

This article is structured as follows. Section 2 looks through these four glocal lenses at *collective ownership* in the form of a Community Land Trust (CLT), by diving deep into the first CLT in the Netherlands, namely CLT H-neighbourhood in the Bijlmer, South-East Amsterdam. Section 3 applies the four glocal lenses to assess how *representation* is changed by the Zoöp model, an organisational governance model for both for-profit and not-for-profit organisations, in which interests of non-human beings are addressed. In our concluding remarks, we set out under what conditions these legal innovations contribute to meeting the needs of social justice and ecological sustainability, that is, the goal envisaged *inter alia* by the doughnut model. By doing so, we demonstrate how private legal institutions can be potential sites for change towards a sustainable future.

This article is based on desk research and thus relies on the information that can be found in the public domain. We have sympathy for both legal innovations, but we see it as our role to provide independent scrutiny to assess their potential and limitations. We do engage informally with some key figures involved in the CLT movement in the Netherlands and the Zoöp model to learn about latest developments and to share our thinking to help the Dutch CLT community think through if the Zoöp model can be integrated in their CLTs in development.

2 Ownership in a Sustainable City

This section reflects on the dominant models of property, contrasting them with the Community Land Trust (Section 2.1), after which it zooms into an Amsterdam-based CLT (Section 2.1.1), and analyses the potential of that CLT in light of our analytical framework: the four glocal lenses of the Amsterdam City Doughnut

(Section 2.1.2). The section finishes off with some concluding remarks (Section 2.2) before moving to an analysis of the Zoöp model in the next section.

Property in its broadest sense refers to the ways in which a society regulates the distribution of resources – be it land, buildings or other objects – and the level of care accorded to these resources.¹⁰ Both as a legal concept and social narrative, property shapes how humans relate to one another and to the nonhuman living world. While there is great variety in the meaning of property throughout cultures and over time, the contemporary default image of property in capitalist legal systems is associated with private entitlements. This default image is shaped by the liberal political ideology that promotes individual autonomy, by allowing owners to exclude others from their property as well as exercising power over the object itself.¹¹ The freedoms that our property laws ensure, especially through private ownership, have been a valuable component of the social order and of economic flourishing. Property can encourage and facilitate private efforts to build homes, stores and factories, making the economy grow and yielding widespread public benefits.¹²

However, while property empowers and enables the proprietor, it often disempowers and disables non-proprietary.¹³ Moreover, the freedoms that our property laws ensure, together with the notion that an economy can grow beyond ecological limits, have facilitated ecological harm.¹⁴ Over time, the legal institution of property has been shaped and interpreted by political ideologies, dominant social values and associated ideas about the purposes that property ought to promote.¹⁵ Property rights are legitimate only to the extent that they can be justified by reference to the common good.¹⁶ Due to new circumstances, knowledge or values, new visions of the common good arise. This requires lawyers and legal

8 Kate Raworth, 'Introducing the Amsterdam City Doughnut' (2020), www.kateraworth.com/2020/04/08/amsterdam-city-doughnut/.

9 *Ibid.*

10 Nicole Graham, Margaret Davies & Lee Godden, *The Routledge Handbook of Property, Law and Society* (2023), Introduction.

11 *Ibid.*; Klaus Bosselman, 'Property Rights and Sustainability: Can They Be Reconciled?', in David Grinlinton and Prue Taylor (eds.), *Property Rights and Sustainability: The Evolution of Property Rights to Meet Ecological Challenges* (2011) 42.

12 Freyfogle, above n. 7, at 52.

13 Margaret Davies, *Property: Meanings, Histories, Theories* (2007), at 7.

14 Prue Taylor and David Grinlinton, 'Property Rights and Sustainability: Towards a New Vision of Property', in David Grinlinton and Prue Taylor (eds.), *Property Rights and Sustainability: The Evolution of Property Rights to Meet Ecological Challenges* (2011) 10.

15 Margaret Davies, Lee Godden & Nicole Graham, 'Situating Property within Habitat: Reintegrating Place, People, and the Law', *6(1) Journal of Law, Property, and Society* 7 (2021); Freyfogle, above n. 7, at 50.

16 Freyfogle, above n. 7, at 51.

scholars to examine how legal tools such as the design of property rights – and associated understandings of responsibilities of owners – foster the new vision of the common good.¹⁷ Does Amsterdam’s property rights system foster a doughnut-proof vision of the common good?

In Amsterdam, 80% of the land is owned by the municipality of Amsterdam.¹⁸ Its use is distributed through ground lease (*erfpacht*), a limited proprietary right that enables the lessee to hold and use land that is owned by the municipality.¹⁹ In return for payment, the lessee has the right to use the property as if they were the owner. The City of Amsterdam has two types of ground lease: (1) continuous ground leases, where the price is adjusted every 50 or 75 years, or (2) perpetual ground leases, where a fixed land price is agreed and will remain at that level in perpetuity. The introduction of the latter in 2017 was an important innovation of the Amsterdam ground lease system. It ensures that lessees no longer have to deal with the uncertainty around increasing land lease prices. The other 20% of Amsterdam’s land consists of plots held in private ownership. These are mainly located in the city centre, within the ring of canals. These plots were already given out in private ownership before the emergence of the adoption of the ground lease system in 1896.

In Amsterdam’s context, relevant questions thus include: who gets to lease the city’s plots of land and therewith develop and own the building and facilities that make the city? Tenders for plots of land are competitive. Does Amsterdam’s doughnut-proof vision filter down to how it allocates its plots of land? In its vision for 2050, the Amsterdam municipality expresses its support for bottom-up initiatives, including the CLT H-neighbourhood.²⁰ Whether that translates to granting CLTs plots of land is yet to be seen. The following subsection explores further the model of collective ownership through a CLT.

2.1 Collective Ownership in the Community Land Trust

Collective ownership in the form of a Community Land Trust is an alternative approach to private or public ownership of land, houses and other facilities. A CLT is a non-profit and community-led organization that typically develops and manages homes for low- and middle-income groups of population. CLTs are open member organisations supporting the interests of residents of the buildings that fall under the CLT’s governance, the neighbourhood and the public interest. Ownership and management of the land, homes and neighbourhood facilities is anchored in a CLT organisation, and conditions are drawn up for sustainable and social use

of it. By means of a continuous anti-speculation clause and buyback arrangement on the houses, the CTL aims to establish affordable living for current and future generations. The ambition is to counterbalance the commercial real estate development, rising land and housing prices, and the slow ‘pushing away’ of low- and middle-income households from the city.²¹

‘Trust’ in CLT’s name is a somewhat unfortunate formulation in the Dutch context, as the Netherlands has not accepted the legal form of a trust. It is an Anglo-American legal form and one of the tools for ‘coding capital’ discussed by Pistor.²² The Anglo-American trust allows an owner to transfer an asset into a legal shell, which is set up only for this purpose. The rights to the asset are divided between the trustee, who holds formal title, and the beneficiary, who receives the (future) economic interest. Once the trust deed is drawn up and the asset transferred to the trustee, the original owner no longer owns the asset. His personal creditors therefore cannot seize it to satisfy their claims. To date, the trust is an invaluable legal coding device among the wealthy who wish to protect their assets from tax authorities and other creditors.

The CLT imbues the concept of trust with a different meaning. It builds on the ideas by one of the CLT thought leaders, Ralph Borsodi, who claimed that buildings can be treated as property but that land could never be called property.²³ Instead, it should be called trusty, as no man or government has a moral title to the earth’s ownership and we hold the earth in trust. Land is understood as part of the commons, a shared resource to be managed on behalf of the community of all mankind. Over time, the emphasis of whom the CLT should serve has altered. The community for whom land was held in trust was no longer all of mankind, but a disadvantaged subset, the people who are excluded from the economic and political mainstream.

CLTs are not a type of legal form. In some jurisdictions, such as the UK, CLT’s are defined in law and must adhere to certain requirements, such as: to be set up to benefit a defined local community; to be not-for-profit; and to grant local people the opportunity to join as members who have a controlling vote in the Annual General Meeting and the Board.²⁴ Often the model is combined with other models of private non-market housing, such as housing cooperatives. The difference between a CLT and an ordinary housing cooperative is that by design the interests of residents, neighbours and the public at large are represented in the organizational design of the CLT. Moreover, housing cooperatives are owned and run

17 *Ibid.*

18 See: Gemeente Amsterdam, ‘Eigendoms- en erfpachtk kaart’ (November 2021), www.amsterdam.nl/wonen-leefomgeving/erfpacht/erfpachtlocaties/ (last visited 4 December 2022).

19 Art. 5:85 Dutch Civil Code.

20 Municipality of Amsterdam, 2050 Vision for Amsterdam [Omgevingsvisie Amsterdam 2050] (2021), 250.

21 And The People, CLT Bijlmer, ‘Een Community Land Trust (CLT) in de Bijlmer – Whitepaper Betaalbaar wonen in verbondenheid met buurt’ (June 2020).

22 Pistor, above n. 2, at 42-43.

23 John Davis and the National Community Land Trust Network, ‘Roots of the CLT: Origins and Evolution of the Community Land Trust in the United States’ (4 chapters on YouTube, www.youtube.com/watch?v=aC7YRbhh4IY).

24 UK Housing and Regeneration Act 2008, section 79. See also: Community Land Trust Network, ‘Legal Structures of CLTs’, www.communitylandtrusts.org.uk/about-clts/what-is-a-community-land-trust-clt/ (last visited 4 December 2022).

by and for their members, while membership of a CLT is open to everyone in the local community. Communities around the world, in the most diverse contexts, have relied on the CLT model for more than 50 years to ensure their collective future.²⁵ The model finds its origins in the US (from 1969 onward), and CLT pilot projects were run at the beginning of the 21st century in the UK. There are now hundreds of CLTs in both the US and the UK, and the model is gaining popularity in other parts of the world, including in the continental Europe.²⁶ The Netherlands is relatively late to the game. A few years ago, the CLT model was introduced in the Netherlands by the advisory firm *And The People*, resulting in a first CLT being developed in the Amsterdam neighbourhood Southeast, also known as the Bijlmer. A community of more than 180 local residents are now actively working on project plans and neighbourhood development. The municipality of Amsterdam has set out in its 2050 vision statement that more space will be granted to housing and energy cooperatives and other forms of collective self-management of the living environment. The municipality stresses that it will support and monitor smaller bottom-up initiatives such as the CLT H-neighbourhood in the Bijlmer in their quest to realise sustainable and affordable housing for and by the local community.²⁷ Currently, a second CLT is under development in Amsterdam. 'De Ceuvel' in Amsterdam North is exploring the potential of the CLT model to transform a temporary circular innovation hub into a permanent space for circular innovation and community involvement.

The following sections examine the potential of the CLT model to contribute to a sustainable city as viewed through the four glocal lenses. Before doing so, the CLT H-neighbourhood in the Bijlmer will be discussed in more depth to deepen our insight into the workings of the CLT model.

2.1.1 The CLT H-Neighbourhood in the Bijlmer

For the past 50 years, the Bijlmer in Amsterdam South-East has been perceived as the roughest part of Amsterdam. The area was developed from 1966 onward, but its monotonous building blocks did not appeal to people and the buildings remained empty.²⁸ Rent prices dropped

and the Bijlmer started to attract the underprivileged, particularly large numbers of immigrants from Suriname. By the end of the 1980s, the area had the profile of a poor neighbourhood, with soaring crime rates, drug abuse and unemployment. In 1992, the municipality of Amsterdam, the city council of South East and the social housing corporations decided for a large-scale area renewal. Slowly, the Bijlmer is becoming a more attractive city district that never lost its unique character of a multicultural melting pot.²⁹ 'However, residents continue to struggle, to fully prosper socially and economically', Moses Alagbe – Initiator and Board Member of the CLT H-neighbourhood – notes, which he states can be explained by high costs of living and disappearance and lack of physical community infrastructure to support emancipation, community activities and capacity building.³⁰

The initiative the H-neighbourhood originated from a grassroots organisation that has been active in the H-neighbourhood for more than 15 years. Community members set up an open member association called CLT H-neighbourhood that consists of a diverse community with over 180 members. The group chose community development first, including the establishment of the association, even before a concrete plot of land was available to them. To date, the community is waiting for the municipality to set out a tender for a plot of land in their area, which tender has been postponed several times, to the community's dismay.³¹

The CLT H-neighbourhood built on the CLT model as developed in the US, which they sought to tailor to their own community. Three characteristics are core to any CLT, namely self-organisation, shared ownership and real estate management and operation. Organising management and locally, CLTs arguably have a strong connection with the neighbourhood and a good understanding of the local needs. Building on these core building blocks, this community developed five guiding principles: (1) affordability in the present for current residents hailing from low- and middle-income population groups; (2) affordability in the future by making speculation with housing or rapid rent increases impossible; (3) connectedness with the neighbourhood through permanent decision-making power of local residents over developments in the vicinity of their homes and neighbourhood facilities; (4) stimulating self-reliance and providing opportunities for the socioeconomic emancipation of residents from the neighbourhood, by having them take charge of the elaboration and organization of the projects; and (5) combining the development of the CLT model with circular area development.³² The H-neighbourhood set up three separate entities for its three stakeholder groups that collectively

25 John Davis and the National Community Land Trust Network, above n. 23.

26 Matthew Thompson, *Reconstructing Public Housing: Liverpool's Hidden History of Collective Alternatives* (2020); J.E. Davis, L. Algoed & M.E. Harnandez Torrales (eds.), *The Growth of Community Land Trusts in England and Europe* (2021); SHICC, 'Urban Community Land Trust in Europe – Towards a Transnational Movement' (2020), www.nweurope.eu/media/11838/shicc_eu-clt-guide_2020_en.pdf (last visited 8 December 2022); SHICC, 'Towards Stronger EU Support for Community Land Trusts' (Policy Paper, December 2020), www.nweurope.eu/media/12294/shicc_eu-policy-conference_policy-paper.pdf (last visited 7 December 2022); UK Community Land Trust Network, 'Success Stories', www.communitylandtrusts.org.uk/about-clts/success-stories/ (last visited 7 December 2022).

27 Municipality of Amsterdam, above n. 20.

28 Selma Zahirovic and Boudewijn Sterk, 'The Bijlmer: A Dutch Approach to Multiculturalism' (2007), https://humanityinaction.org/knowledge_detail/the-bijlmer-a-dutch-approach-to-multiculturalism/ (last visited 4 December 2022).

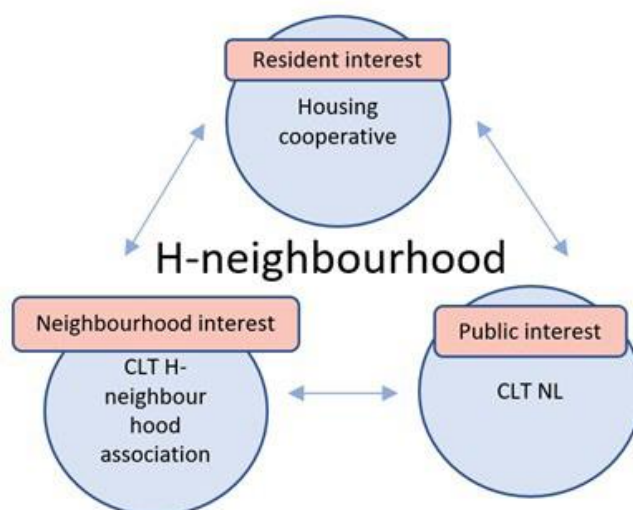
29 See also: <https://kadastralekaart.com/wijken/bijlmer-centrum-dfh-WK036393>.

30 Moses Alagbe (Initiator and Board Member of the CLT H-neighbourhood) in the video on www.clthbuurt.nl/home-english (last visited 7 December 2022).

31 CLT NL, 'H-Buurt', www.communitylandtrust.nl/clt-hbuurt (last visited 5 December 2022).

32 *And The People*, above n. 21, at 12.

Figure 2 The organizational structure of the CLT H-neighbourhood



work together to realize sustainable and affordable housing and neighbourhood facilities for people from the neighbourhood, by taking these assets under shared ownership and management (as commons) and by establishing legally embedded conditions that ensure sustainable and social use. See Figure 2 for a quick overview of the three separate entities and Annex 1 at the end of this article for a more elaborate overview.

First, an open membership association was set up for the CLT H-neighbourhood, in which local residents and other stakeholders from the neighbourhood represent their local interests. They stimulate the development of homes and neighbourhood facilities according to the CLT vision, map the neighbourhood needs, play a role in allocating new residents in the CLT properties and fulfil a procedural role in the buyback scheme.

Second, the development of the actual homes will be done with the soon-to-be residents who form a separate legal entity. As all the houses to be developed will be for rent (not for sale), this legal entity will be a housing cooperative.³³ In the statutes of this legal entity, a link is made with the CLT H-neighbourhood association when it comes to keeping houses affordable through a buyback scheme, rules regarding anti-speculation and an allocation policy for new residents. Third, the public interest is to be represented by the CLT NL platform which is currently being developed.³⁴ This platform consists of external advisors and experts, most of whom have been part of the development of the CLT movement in the Netherlands from the start. They advise and fulfil a control function vis-à-vis the CLT H-neighbourhood association and provide knowledge and support to the housing cooperative. To date, these advisors have fulfilled an important role when it comes to the engagement with local government, with regard to the search for a plot of

land. The CLT NL platform is in development. It must develop a clear understanding of the various social and ecological interests to be protected and who can be regarded well-positioned to represent these human and nonhuman stakeholder groups adequately. As we argue in the following, the Zoöp model could be integrated in this third stakeholder group that represents the public interest, in order to ensure that the interests of the non-human living world are taken into account. The public interest can also be safeguarded in the conditions that the municipality sets as part of land lease requirements or as additional tender requirements.³⁵

The municipality of Amsterdam would like to see the number of housing cooperatives in the city rise sharply in the coming years. The ambition is that by 2045, as many as 40,000 homes (10% of all houses in Amsterdam) must be owned by housing cooperatives. The municipality is releasing plots of land for new buildings and makes available a loan fund of €50 million.³⁶ However, these ambitious municipal plans do not cater for CLTs. By definition, these plans force the CLT H-neighbourhood to present themselves as a housing cooperative rather than a CLT to be eligible for plots of land or a loan from the municipal loan fund. The practice so far shows that the technical knowledge required to start a housing cooperative is already present within groups with above-average high education and with predominantly professional experience in city development and (self) building processes and/or existing relationships within municipal bodies.³⁷ These are not characteristics of residents of the CLT H-neighbourhood. With the support of knowledgeable partners (CLT NL, the Foundation Woon,

33 If the houses would be for sale, residents would form a Collective Private Commissioning (*Collectief Particulier Opdrachtgeverschap, CPO*).

34 Update provided by Marjolein Smeele – representative of Common City Development and advisor in the CLT NL platform – in private communication (5 December 2022). See also: CLT NL, www.communitylandtrust.nl/.

35 And The People, above n. 21, at 15.

36 Woon, 'Actieplan wooncoöperaties Amsterdam', www.wooninfo.nl/vraagbaak/wooncooperatie/actieplan-wooncooperaties-amsterdam/ (last visited 8 December 2022).

37 CLT H-neighbourhood, 'Workgroup – Self Building Course', www.clthbuurt.nl/event-blog/workgroup-selbuilding-and-wooncooperatie (last visited 8 December 2022). See also: CLT-H Members Platform, 'Woon Coop', <https://clt.community/Woon-Coop-27ab53654c25498c84d378fba5c73e8> (last visited 8 December 2022).

housing cooperation de Warren, and the organization New Economy), a working group is set up in the CLT H-neighbourhood to equip the community with the required capacity and knowledge to start a housing cooperative.

2.1.2 *The CLT through the Four Glocal Lenses*

What is the potential of the CLT model to contribute to a city being a home to thriving people in a thriving place, while respecting the well-being of all people and the health of the whole planet? In the following subsection, the impact of the CLT model on (1) local people, (2) local environment, (3) the global environment and (4) people elsewhere will be discussed.

Local People

Just like many other cities around the world, Amsterdam is suffering from a housing affordability crisis.³⁸ The further it penetrates into the fabric of the city, the more the social and economic sustainability of the city is threatened. The CLT model is promising when it comes to enabling affordability, community-building and agency. However, the CLT may equally be a vehicle that can be exploited by the insiders to ensure affordable housing for themselves and their loved ones. Hence, we argue that the statutes of the CLT H-neighbourhood association must help ensure that powers in the governance design are distributed in such a way that there are real checks on power and the CLT does not create novel inclusion-exclusion fault lines.

First, by controlling market speculation, homes are made affordable for generations to come. This results in lower costs of living and therewith more inclusive neighbourhoods. The CLT model also allows for the creation of neighbourhood shops, a daycare centre or a community centre, contributing to local employment opportunities.

Second, the model inherently fosters community-building. As said, a key difference between a CLT and an ordinary housing cooperative is that CLTs tend to arise from existing forces in a neighbourhood. Moreover, the interests of residents, neighbours and the public interest are represented in the organizational design of the model. The model is designed to foster co-creation, deliberation and participation. Due to the involvement of neighbourhood in area development, CLTs tend to have a keen eye for the integration of community assets that contribute to thriving neighbourhoods. Examples of such community spaces that are being considered in the CLT H-neighbourhood in the Bijlmer include co-working spaces, a shared kitchen where residents of the neighbourhood can cook for big or festive occasions, and a community-owned park with play facilities that will be maintained by the community.³⁹

38 Steffen Wetzstein, 'The Global Urban Housing Affordability Crisis', 54(14) *Urban Studies* 3159 (November 2017).

39 And The People, New Economy, and Space&Matter, 'Co-operate – A Neighbourhood for Seven Generations', slide 28, https://docs.google.com/presentation/d/1bSFo8vAJhUo0visOCsveSBvr3rnkj7LXFj3RaA7xGx0/edit#slide=id.gcc49d07726_0_674 (last visited 8 December 2022).

Third, the CLT model aims to provide for permanent agency of the local community to directly influence their living environment through coordinated action. The model seeks to nurture an increased sense of ownership for one's neighbourhood. By design, the model is community-led, which empowers locals to voice their needs and wishes and to contribute to neighbourhood development.

Nevertheless, the CLT may equally be a vehicle that can be exploited by insiders to ensure affordable housing for their loved ones. Hence, CLTs must be very careful that they do not create novel inclusion-exclusion fault lines. As the CLT H-neighbourhood association influences who gets selected for the CLT houses, favouritism or even xenophobia may be lurking. The organizational design must therefore ensure that participation is open to anyone residing within the geographically defined community. The CLT H-neighbourhood association is in the process of developing criteria for the allocation of houses for rent. They consider the following to be of relevance, but concrete criteria must still be validated by their members: one's current living situation, income and connection with and involvement in the H-neighbourhood.⁴⁰ The third stakeholder group representing the public interest (CLT NL) must be able to serve as a system of checks and balances that can thwart potential favouritism. Moreover, we argue that legal design – in this case, the association's statutes – can equally imbue the governance design with checks and balances. The statutes of the CLT H-neighbourhood association can also set out the measures to be taken to ensure that community participation is inclusive. To facilitate community participation, it helps people feel included when they are free and have the opportunity to speak the same language and, hence, be comfortable with speaking up on matters that are of importance to them. CLTs are not by design so inclusive as to account for language diversity, introversion/extroversion and preferred communication styles.

In addition, community participation and collaborative decision-making is a time-consuming and labour-intensive process. Especially the lower-income households that the CLT aims to serve cannot afford to spend their time deliberating neighbourhood development. Hence, the CLT must reflect on how to fairly distribute efforts to be invested, so that the burden of neighbourhood development is shared. This can be done based on trust or by integrating something that resembles a credit system, with which credits the members of the neighbourhood can enjoy neighbourhood services such as vegetables from the community's garden or assistance in the maintenance of their home by skilled fellow neighbours.

Local Environment

It is not a design feature of the CLT model to care for the local environment, planetary boundaries and circularity. However, the CLT H-neighbourhood's approach to

40 CLT-H Members Platform, 'FAQ', <https://clt.community/FAQ-2b42acf787854417b68458357552b875> (last visited 8 December 2022).

CLT has integrated concern for the natural habitat as one of the guiding principles in their operations. To illustrate this, the CLT frontrunners in the Netherlands – And the People, New Economy and Space&Matter – have developed a vision on ‘a neighbourhood for seven generations’ for the CLT H-neighbourhood in the Bijlmer, related to a specific area called the H-midden neighbourhood. In their vision, which builds on input from the residents of that neighbourhood, the CLT must develop and manage a place where ecological value is created by residents and nature-based solutions are the first choice. Energy should come from renewable sources, and the carbon and ecological footprint should be drastically lowered by extending the lifespan of buildings through adaptability.⁴¹

These CLT frontrunners tried to apply the Doughnut principles at the neighbourhood scale, where they were then confronted with existing processes of area development.⁴² They observe that in traditional area development processes, the site is usually maximised for economic return. Applying the doughnut model, they developed a methodology that balances social and environmental with spatial and economic value. First, they identified opportunities for circularity in the built environment and then filtered those opportunities down based on maximising the positive spatial, social and environmental impact of those opportunities.

A material flow analysis identified what turns out to be problematic from an environmental perspective. For this community in this location that turned out to be: the building materials (concrete and stone) used for the new housing and infrastructure; the current energy mix being based mainly on non-renewable energy sources such as gas and fossil fuels; non-recycled residual, construction and renovation waste; emissions; the relatively high beverage intake in this neighbourhood; and grey and black water due to residual, construction and renovation waste.⁴³

They identified important interventions to have a positive environmental impact in the neighbourhood. The most impactful intervention would be replacing structural concrete with cross-laminated timber, in addition to bio-based interior walls, facade panels and insulation materials that would greatly reduce CO2 emissions from new construction.⁴⁴ Moreover, the roofs of the neighbourhood can provide for renewable energy, and bio-based thermal materials can be used for the insulation of houses. The CLT members who have time and skills can join the energy group within the CLT to maintain renewable energy sources. Other impactful interventions include harvesting rainwater, introducing wastewater purification to reduce freshwater consumption and allow for the extraction of nutrients, and turning parking places into green public spaces.⁴⁵ As caring for

the local environment, planetary boundaries and circularity is not a design feature of the CLT model, the statutes of the CLT association could legally anchor these principles in the purpose description of the CLT.

Global Environment

What does it mean for the CLT model to respect the planet? The foregoing section demonstrated that area development can be conducted in ways in which social, ecological and economic sustainability are balanced and made central to area design. When it comes to respecting the planet, buildings and other community facilities can be designed in such a way that energy consumption and CO2 emissions are reduced. When it comes to global impacts, developers should source their materials responsibly, such as by making sure that the timber it relies on was not illegally logged. Local practices have a global impact and help reduce pressures on ecological boundaries. As noted earlier, the CLT model does not by design respect planetary boundaries; however, lawyers can assist the CLT community by legally embedding the principle of ecological protection in the purpose description of the CLT H-neighbourhood association.

People Elsewhere

The CLT model has become a tool for the empowerment of locally disadvantaged people. Attention to the impact of a CLT model on people globally is absent in the design of CLTs generally and the CLT H-neighbourhood in the Bijlmer. There are three ways in which the CLT model may impact people elsewhere: adverse impact on people’s health and well-being worldwide by unsustainable energy consumption and CO2 emissions of the buildings that the CLT develops and manages; adverse impact on the human rights of those affected in the value chain of the materials relied on in construction; but, the positive impact here is that the a CLT model can be used as the basis to further the ultimate goal of redesigning the business model behind the built environment in a way that ensures our planet remains liveable for current and future generations.

In its different forms – homes, work places, schools, hospitals, libraries or other public buildings – the built environment is the single largest energy consumer and one of the largest CO2 emitters in the EU.⁴⁶ Collectively, buildings in the EU are responsible for 40% of our energy consumption and 36% of greenhouse gas emissions, which mainly arise from construction, usage, renovation and demolition. Improving energy efficiency in buildings therefore has a key role to play in achieving the ambitious goal of carbon-neutrality by 2050 as set out in the EU Green Deal.⁴⁷ By embracing circularity as a guiding principle in the development and maintenance of

41 And The People, above n. 39, side 55.

42 *Ibid.*, slide 24.

43 *Ibid.*, slide 30.

44 *Ibid.*, slide 32.

45 *Ibid.*, slide 31.

46 European Commission, ‘In Focus: Energy Efficiency in Buildings’ (17 February 2020), https://ec.europa.eu/info/news/focus-energy-efficiency-buildings-2020-lut-17_en#:~:text=Collectively%2C%20buildings%20in%20the%20EU,%2C%20usage%2C%20renovation%20and%20demolition.

47 European Commission, ‘Delivering the European Green Deal’, https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal/delivering-european-green-deal_en (last visited 5 December 2022).

buildings, a reduction in energy consumption and emissions can be achieved therewith, respecting the health and well-being of all people and the planet.

In the CLT literature and practice, concern for the impact on people elsewhere is not systematically addressed. In constructing buildings and other community facilities, developers rely on materials that must be sourced and transported in line with respect for the human rights of those affected by these activities. To date, this has been a blind spot. CLTs could consider contractually requiring developers to demonstrate that they have conducted adequate due diligence to ensure that the materials they rely on are sourced and transported in line with international human rights standards. The Zoöp model set out in the following provides inspiration for ways in which the interests of people elsewhere can be taken into account in the CLT's governance model. The third stakeholder group that represents the public interest in the CLT's governance model (CLT NL) could explicitly reserve a seat for a representative of the interests of people elsewhere.

Last but not least, pressure on the social, economic and ecological sustainability of the city due to the combination of a housing affordability crises as well as climate and ecological crises are not unique to Amsterdam. Climate change will disproportionately impact the already marginalized groups, young people and those not yet born. There is a need to shake up our collective imagination on how to design and manage our living environment in a way that is inclusive and respects planetary boundaries. The CLT model makes local people the stewards of their own living environment while it builds in a legal obligation to take decisions that benefit future generations. The model has the potential to help rekindle our imagination so as to rethink and ensure that the business model behind the built environment in service of people around the globe and the planet.

2.2 Concluding Remarks

The legal coding of land, buildings and other facilities holds the promise that it might be used for purposes other than optimization of economic value at the expense of other social and ecological place-based values. As Pistor notes, property rights can take many shapes and forms, and they might just as well be used to protect collective use rights and sustainable practices.⁴⁸ The CLT model thus provides a challenge to our understanding of property rights and the responsibilities that come with it.

Interestingly, the CLT is able to imbue the notion of property and ownership with new meanings without requiring laws and regulations to change first. The model can work with existing legal forms and can legally embed its governance model in statutes and contracts. Barriers to the flourishing of CLTs are therefore more financial or political in nature. CLTs need start capital, a reduced rate on ground lease, or land to be gifted to them. This requires political willingness at the national and

local levels to support such efforts of collective ownership as well as willingness by financiers to grant loans to such a socially beneficial collective against reasonable conditions.

Importantly, the CLT is no holy grail. By applying Raworth's four glocal lenses to the CLT model, we investigated the potential of the CLT model to contribute to a sustainable city. This article demonstrates that the needs of *local people now and in the future* are at the heart of the CLT model – hence one of the four glocal lenses – while concern for people elsewhere (geographically), the local natural habitat and planetary boundaries are not integrated in the CLT model by design. We argue that this is an important limitation of the contemporary CLT model. This limitation, however, can be overcome by rethinking the understanding of the community to be served in the concept of Community Land Trust. The community to be served by the CLT can be understood as serving the whole community of life, beyond mere human interests. This understanding better reflects the interconnectedness of the natural and social environment and therewith grant the nonhuman living world the position of primacy needed to protect and enhance ecological systems for the common good. Our environmental predicament is sufficiently severe to call for a reassessment of the place of the environment in our understanding of the common good and in the objectives pursued through the legal instruments we employ.

Let us now move on from legal innovation in the domain of *property* to the domain of *representation* to investigate the limits and potential of the Zoöp model for a sustainable city. In the concluding section, Section 4, the potential cross-fertilization between the CLT and Zoöp model is further discussed.

3 Representation of People and Planet in a Sustainable City

This section starts with general reflections on how the legal module of representation impacts sustainability issues and how the rising movement of the rights of nature is aiming to alter such representation in the domain of law. Current representation models are contrasted with the Zoöp model, which is further described and analysed against our analytical framework in Section 3.1. The section finishes with some concluding remarks (Section 3.2), after which the article moves to an integrated analysis of both CLT and Zoöp in the last section that will conclude the article.

We know for a fact that the legal-political system so far has not been able to effectively prevent the economy from moving into a direction that will not respect planetary boundaries, that is, the ecological ceiling of the

doughnut model.⁴⁹ Political theorists have argued that this is due to a one-sided focus of law and politics on people in the here and now. In other words, the interests of people elsewhere, of future generations and of non-human beings are systematically overlooked. Thus, the question is asked whether we can redesign our legal-political system so as to include representation of these groups. If we would make such procedural changes in our legal-political decision-making, the thought goes, also the outcomes will be more transnationally oriented, more future-oriented and more oriented to ‘nonhumans’, that is, animals, plants and ecosystems.⁵⁰

It is important to note that in a city like Amsterdam, there is some representation of these groups but that this representation is limited. The municipal council and mayor are in principle representing the current human inhabitants of the city. The municipal council is elected every four years, the mayor is appointed for a period of six years, with the possibility of reappointment for six years. These relatively short cycles do not *by design* stimulate the municipal government to think long term. Of course, this is not to say that they are not thinking about the future. Quite to the contrary, the Amsterdam Circular Strategy calls the environmental crisis very concerning for future generations, and it insists Amsterdam’s ambitions to account for the future.⁵¹ But there is no institutional safeguard that municipal governance is future-proof. Such institutional safeguards do exist elsewhere by means of a special future representative; in Wales there is for instance a so-called future-generations commissioner at the national level of government. On every legislative proposal, a report has to be sent to this commissioner showing how it is accounting for the future.⁵²

As for people elsewhere, their representation is limited in Amsterdam. True, the city has a special *stedenband* (literally city bond) with other cities in the world, including Tangier, Tokyo and Beijing. These bonds with ‘twin’ or ‘sister’ cities are aimed at fostering cultural and knowledge exchange. However, there is no institution that guarantees that the views of people elsewhere are represented in the process of municipal decision-making. For nonhuman beings, this is a bit different, because both environmental laws and animal welfare laws require the municipality to think through at least the local environmental impacts of its policies. Moreover, green political parties take seats in the municipal board of Amsterdam. Nevertheless, in the case of nonhumans as well, representation is not anywhere near that of currently living Amsterdam citizens.

In other countries, there are interesting developments when speaking of the *legal* representation of nonhu-

mans. In the transnational rights of nature or Earth Jurisprudence movement, an increasing number of natural entities, like rivers, forests, mountains or even Mother Earth, are recognised as rights-holders.⁵³ The motivation for doing so is – generally speaking – twofold. First, there is a moral dimension: it is thought that because nature has intrinsic value, this should be recognised in law. The rights of nature signal a paradigm shift, because nature is no longer seen as an *object of property* but as a *subject of rights*. Second, there is a practical dimension: only when humans institutionalise the representation of nature, they force themselves to take nature’s interests properly into account in their political-legal decision-making processes. In short, the presumption is that representation as nature qua subject will lead to more effective environmental protection.⁵⁴ There are more and more jurisdictions worldwide recognising the rights of nature. Ecuador was famously the first in adopting constitutional provisions in 2008, recognising the ‘right to integral respect for its existence’ of PachaMama, or Mother Earth.⁵⁵ Bolivia followed in 2010 with a national law also recognising the rights of Mother Earth.⁵⁶ Famous as well are New Zealand’s Te Urewera forest and the Whanganui river, which were recognised as legal persons in acts from 2014 and 2017, respectively.⁵⁷ Rights of nature are often recognised by way of legislation but, occasionally, also by the judiciary. In Colombia, for instance, there is case law of the highest courts recognising rights of the Colombian Amazon rainforest and the Atrato River.⁵⁸ Moreover, recognition of rights of nature is not limited to the national level; to the contrary, many local communities have recognised the rights of nature in one way or another.⁵⁹

Because nature does not speak human language, it needs to be represented by humans in order to participate in the legal system. Representation is heterogeneously regulated across the various examples cited. The Ecuador Constitution allows anyone standing to sue on

49 For example, each year ‘Earth Overshoot Day’ is earlier: the day in which the whole carbon budget for that year has already been used. In 2022, this day fell on 28 July. See: www.overshootday.org/.

50 See, for example: J.S. Dryzek and J. Pickering, *The Politics of the Anthropocene* (2018).

51 Gemeente Amsterdam, ‘Amsterdam Circular Strategy’ (2020), 10, www.amsterdam.nl/en/policy/sustainability/circular-economy/.

52 More information is available on www.futuregenerations.wales/.

53 For an overview of the movement, see: D.R. Boyd, *The Rights of Nature: A Legal Revolution That Could Save the World* (2017); L. Burgers & J. den Outer, *Compendium Rights of Nature – Case-Studies from Six Continents* (2021); A. Putzer, T. Lambooy, R. Jeurissen & E. Kim, ‘Putting the Rights of Nature on the Map. A Quantitative Analysis of Rights of Nature Initiatives across the World’, 8 *Journal of Maps* 1-8 (2022).

54 See also: C.M. Kauffman and P.L. Martin, *The Politics of Rights of Nature: Strategies for Building a More Sustainable Future* (2021), at 7.

55 Title II, chapter 7 of the Constitution of Ecuador. Citation comes from Art. 71.

56 Ley 71 de 21 Diciembre 2010: Ley de derechos de la madre tierra, full text available at www.fao.org/faolex/results/details/es/c/LEX-FAOC144985/.

57 Te Urewera Act 2014, Public Act, 2014, No. 51, Date of assent, 27 July 2014, available at www.legislation.govt.nz/act/public/2014/0051/latest/whole.html; Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, Public Act 2017, No. 7, Date of assent, 20 March 2017, available at www.legislation.govt.nz/act/public/2017/0007/latest/whole.html.

58 Supreme Court of Colombia, 5 April 2018, available at www.cortesuprema.gov.co/corte/wp-content/uploads/2018/04/STC4360-2018-2018-00319-011.pdf; Constitutional Court of Colombia 10 November 2016, Judgment T-622/16 (Atrato River case), English translation by the Dignity Rights Project, Delaware Law School, available at <http://files.harmonywithnatureun.org/uploads/upload838.pdf>.

59 See, for example: the discussion of local ordinances adopted in the US in Kauffman and P.L. Martin, above n. 54, at 163 e.s.

behalf of nature, whereas the New Zealand Acts are mostly dedicated to constituting sophisticated representative bodies for the forest and the river, respectively. In these representative bodies, there are various organs and representatives from the indigenous Māori people as well as ‘the Crown’, that is, the government that took power in New Zealand since it was colonised by the British.⁶⁰ Also the Colombian Constitutional Court appoints special representatives for the Atrato River in its ground-breaking decision.⁶¹

Now it is important to note two things. First, rights of nature aim primarily at legal representation and not at political representation. This means that they will often be used in litigation against harms that are already done, or of which the threat is immanent. Their preventive effect could therefore be seen as limited. Nevertheless, even if the rights of nature do not result in ‘a parliament of things’,⁶² they can institutionally impact political decision-making and thus have some preventive effects. After all, in principle legislatures and executives intend to draft policies that do not violate any rights of individuals.

Second, rights of nature are mostly being recognised outside Europe.⁶³ It goes beyond the scope of this article to deeply delve into the question why this would be the case. Presumably, politicians with non-European worldviews find it easier to accept the idea that nature can be a (legal) person, and non-continental judges are more willing to engage in what many in continental European legal traditions would see as *judicial activism* in the pejorative sense of the word. For example, the Colombian Supreme Court recognised the rights of the Colombian Amazon *without* a request of the plaintiffs to do so.⁶⁴ Such judicial creativity seems impossible in the Dutch legal system. So far, in Europe, there have been a lot of activists pleading for rights of nature, but only the Spanish lagune the Mar Menor has actually been recognised as a rights-holder,⁶⁵ and only very recently, since the fall of 2022.⁶⁶ Otherwise, the potential for rights of nature within Europe and the Netherlands is limited, at least in the short term.

These two factors make it extra interesting to explore the potential of the Zoöp model to transform current models of representation. We will turn to the technical details of this model shortly, in Section 3.1. It aims to represent nonhumans within all kinds of organisations:

both for profits and non-profits. First, this model is building on the ideas of the rights of nature. It is driven by its moral intention – that nature has intrinsic value and therefore merits institutionalised representation. It is also driven by the practical dimension, that is, by the belief that such representation will lead to better environmental protection, at least within the premises of a Zoöp organisation. Because the model is aimed at representing nonhumans within organisation’s decision-making process, its effects are by design more preventive and less reparative in character than recognition of legal rights only.

Second, the Zoöp model is of Dutch (i.e. European) origin, but even though in the Netherlands the rights of nature are not recognised, this does not impede the Zoöp’s immediate effectiveness. It is a bottom-up initiative, working with existing legal instruments and is not dependent on top-down adoption of new laws or legal rulings. Thus, the Zoöp model allows organisations to be frontrunners: they operationalise the ideas of the rights of nature without the need to wait for governmental institutions to do so.

This bottom-up aspect of the Zoöp is interesting in light of existing initiatives to create for-profit corporations that respect environmental and social standards. The so-called Public Benefit Corporation, is a legal entity enabled by the legislatures of various States of the US, which allows a corporation to integrate public aims in its objectives.⁶⁷ Hence, the public benefit corporation is not a bottom-up initiative in the sense that it depends on the top-down implementation by the legislature. In that sense, the Zoöp model is closer to the ‘B-corp’, a private certification for profit-driven companies that integrate environmental and social standards in their business. What is truly unique about the Zoöp model is how it radically changes those whose voices are represented in organisational decision-making: Zoöp is not only about realising environmental standards; the model also enables deliberating with the nonhuman world on what those standards should be.

3.1 The Zoöp Model

The Zoöp model was officially launched on 22 April 2022. It is so recent, that to our knowledge, no academic literature on it has yet been produced.

60 Indeed, the colonial history of this particular case is extremely interesting, but it has been extensively discussed elsewhere and falls outside the scope of this article.

61 *Ibid.*

62 B. Latour, *We Have Never Been Modern* (2012).

63 See also: A. Putzer & L. Burgers, ‘European Rights of Nature Initiatives’, *IA-CL-IADC Blog* (2022).

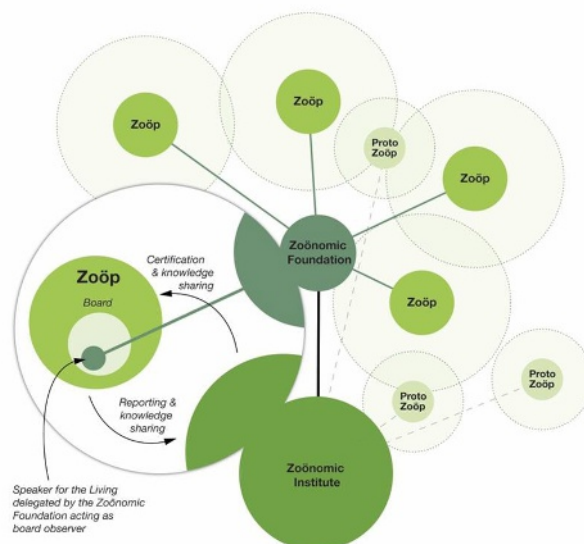
64 Supreme Court of Colombia, above n. 58.

65 *Ley 19/2022, de 30 de septiembre, para el reconocimiento de personalidad jurídica a la laguna del Mar Menor y su cuenca* (‘Law 19/2022 of 30 September 2022 recognising the legal personality of the Mar Menor lagune and its basin’), available at www.boe.es/diario_boe/txt.php?id=BOE-A-2022-16019.

66 For more information and the full text of the law, see: J. García Badía, ‘Así es el texto del Congreso que aprueba al Mar Menor como “sujeto de derechos”: 1.600 km blindados’, *El Español* (2022).

67 See also: J.H. Murray, ‘Social Enterprise Innovation: Delaware’s Public Benefit Corporation Law’, 4(2) *Harvard Business Law Review* 345-72 (2014).

Figure 3 The Zoöp model of the Nieuwe Instituut



In what follows, we base ourselves mostly on non-academic sources and on legal documents provided to us by the designers of the model.⁶⁸

Zoöp stands for cooperation on the one hand, and the Greek word for life, *zoe*, on the other. The model was developed by the Rotterdam-based museum *Het Nieuwe Instituut* (The New Institute), supported pro bono by lawyers from one of the most prestigious corporate firms in the Netherlands, De Brauw Blackstone Westbroek. The Zoöp model provides an organisational form in which nonhumans are represented. It works with existing company and contract law to create a new legal structure.

Figure 3 illustrates the design of the Zoöp model. Key players are the Zoönomic Institute, a Zoönomic Foundation and the various zoöps and proto-zoöps. The Zoönomic Institute maintains this complicated network and does all kind of organisational work.⁶⁹ This institute has in turn set up a so-called Zoönomic Foundation.⁷⁰ Any organization can become a zoöp, and those on their way to become one are called 'proto-zoöp'. In each zoöp's board, nonhumans are represented by someone working for the Zoönomic Foundation. This way, nonhumans get a voice in the decision-making process of the zoöps. Nonhumans are not (only) on the menu; they are at the table in the zoöps.

68 Full disclaimer: in the last couple of years, author [1] of this article has attended various brainstorming sessions with the lawyers developing the Zoöp model. There, she has also personally met some of the people who aim to transform their organisation in to a 'Zoöp' in the coming years, for example, the couple who started the farm *Bodemzicht* that is discussed in the following.

69 On the Zoönomic Institute's managerial board are an entrepreneur, an artist and a lawyer at the time of writing this article (respectively, Ernestien Idenburg (president), Merel Willemsen, and Margaret Sattya-Rose), but there are no formal prerequisites for becoming a member of this board.

70 On the board of this foundation Ernestien Idenburg and Merel Willemsen are also sitting right now, together with Sander Turnhout, a biologist. No formal requirements apply here either. It is the intention of these members to find replacement in 2023.

'Zoöp' is a certified trademark.⁷¹ Any organization significantly influencing at least 243 m³ of a biosphere is eligible to become a zoöp, that is, 9 × 9 × 3 meters, or the size of a small apartment.⁷² When an organisation wants to become a zoöp, it should conclude a three-party contract with the Zoönomic Institute and the Zoönomic Foundation.⁷³ Through this contract, the Zoönomic Institute conditionally commits to license the organisation to become a zoöp, and the Zoönomic Foundation acquires an observer seat in the board of the organisation. This Zoönomic Foundation employs 'speakers for the living', that is, human experts in regeneration who can voice the nonhuman interests in the executive board of the organisation that wants to be a zoöp.⁷⁴ It is also necessary for this organisation to subscribe to the Zoöp Manifesto and to publish it and make it easily accessible on its website.⁷⁵ Once these conditions are met, the Zoönomic Institute will license the organisation as a zoöp.⁷⁶ From then on, the new zoöp pays an annual fee to the Zoönomic Institute, the amount of which depends on inter alia the type and size of the organisation and its annual turnover.⁷⁷ The money thus collected is being used for administrative purposes and to compensate the speakers of the living for their work.

Through the mentioned contract, the newly established Zoöp commits to carry out a baseline assessment, mapping 'the ecological system within its special and operational domain', including economic relations, social dimensions and legal aspects.⁷⁸ Thereafter, the Zoöp can

71 The certification document (hereafter: Zoöp Certification) is not made public, but it is available with the authors of this article.

72 Art. 5.1 Zoöp Certification.

73 *Ibid.*, Art. 5.3.

74 *Ibid.*, Art. 5.5.

75 *Ibid.*, Art. 5.13. The Zoöp Manifesto is available at <https://zoop.hetnieuweinstituut.nl/zoop-manifesto>.

76 *Ibid.*, Art. 6.1.

77 *Ibid.*, Art. 6.3.

78 Citation taken from <https://zoop.hetnieuweinstituut.nl/zoop-model> (last visited 18 August 2022), the website to which the Zoöp Certification re-

set out yearly goals for ecological regeneration, following a ‘zoöconomic annual cycle’, in which listening to sentient nonhuman beings plays a central role.⁷⁹ These yearly goals are laid down in a ‘Zoöconomic Annual Plan’ that is to be approved annually by the Zoöconomic Foundation.⁸⁰ Interventions laid down in this plan should aim at ‘ecological regeneration in the spatial and operational sphere of the Zoöp’.⁸¹ Several instruments and methods to this end can be chosen, but at least one ‘must provide qualitative insight into the ecological integrity of the Zoöp’.⁸² These instruments and methods can be chosen from a list that is accepted by the Zoöconomic Institute, or the Zoöp has to propose one to the institute for approval.

As said, the Zoöp model can be used for any type of organisation, whether for profit or non-profit. Existing ‘proto-zoöps’ include a farm, a university campus and a holiday resort. Within Amsterdam, there is an art platform and community garden called *Zone2Source*. In the direct surroundings of Amsterdam, there are a hotel – Fort Abcoude – and a holiday resort, Sumowala. Moreover, De Ceugel, mentioned in Section 2.1, is considering to adopt not only the CLT but also the Zoöp model. Because the Amsterdam-based proto-zoöps are very much at the early stages of their development, this section will draw on the examples of other (proto-)zoöps in the Netherlands as well. Since 22 April 2022, the Nieuwe Instituut itself is the first full-fledged zoöp.

Let us now turn to the four questions of the glocal lens to further assess the potential of this promising-looking model. What is the potential of the Zoöp model to contribute to a city like Amsterdam being a home to thriving people in a thriving place, while respecting the well-being of all people and the health of the whole planet?

• 3.1.1 The Zoöp Model through the Four Glocal Lenses Local People

Zoöp stresses being embedded in a local community, as apparent in Figure 3. Also, the Zoöp Manifesto declares: ‘Together with other Zoöps we work towards the transformation of our economy into a regenerative *human-inclusive* ecosystem, a network of exchange of matter, energy and meaning that supports all bodies in their existence’.⁸³ The word ‘human-inclusive’ signals that there is attention for the well-being of (local) people – next to of that of other ‘bodies’.

This is confirmed when looking at the practice of various proto-zoöps. For example, *Ecovrededaard* is a non-profit food forest that is open for all.⁸⁴ One of its main aims is to fight poverty within the Netherlands and

fers numerous times.

79 Art. 5.8 Zoöp Certification. See also: <https://zoop.hetnieuweinstituut.nl/zoonomische-jaarcyclus>.

80 *Ibid.*, Art. 5.12.

81 *Ibid.*, Art. 5.9.

82 *Ibid.*, Art. 5.10.

83 Available at <https://zoop.hetnieuweinstituut.nl/zoop-manifesto>. Emphasis added.

84 The website of this organisation is <https://sites.google.com/view/ecovrededaard-central-website>.

to provide poor people with free and healthy food that is grown in the forest. It thus has a clear orientation towards to the social well-being of local people. As a second example, the art platform *Zone2Source* is inherently oriented towards the local community: it offers freely accessible indoor and outdoor art exhibitions.⁸⁵ This creates space for members of the local community to meet and relax. And as a last example, the for-profit farm *Bodemzicht* works closely together with local chefs and local consumers, to whom it sells its re-generatively produced vegetables, herbs and eggs. Moreover, the farm is open for visitors.

In the baseline assessment that is to be carried out by every zoöp, the social dimension must also be mapped. This institutionally forces any zoöp to think about social aspects. At the same time, how this works out in practice depends on the type of organisation; for instance, local communities do not always like a hotel being built close to them. After all, hotels attract tourists, which makes the neighbourhood busier and which can cause other nuisances. Thus, the social dimension can prove to be challenging to the proto-zoöp *Fort Abcoude*, a for-profit hotel that is to be situated in an old fortress near Amsterdam. Now of course, this hotel can also bring benefits to its neighbourhood, like improved employment and social safety, and the preservation of the monumental fort. Moreover, it is likely that, because of the institutional requirements that are applicable to zoöps but not necessarily to other for-profit hotels, zoöp hotels may at the very least have *less* negative impact on a local community than a business-as-usual hotel.

Local Environment

By design, the Zoöp model fully integrates the local environment. After all, it is primarily the local environment – that is, a living world that encompasses both human and nonhuman lives within the premises of a certain zoöp represented by the speakers who are there to function as the voice of both humans and nonhumans in the local environment. These speakers are delegated by the Zoöconomic Foundation which has ‘laid down in its statutes that its sole task is to represent the voice of non-human life in the operational sphere of Zoöp’.⁸⁶

The concentration at the *local* environment can be seen as well in the first phase of the zoöconomic annual cycle that is to be carried out by every zoöp on an annual basis. That is, this first phase is one of ‘demarcation’: the zoöp must clearly set out *inter alia* which physical structures demarcate the zoöp, like fences, watercourses or roads.⁸⁷ In the annual cycle, it should also be determining which interventions the zoöp should aim for; for instance, to improve the quality and biodiversity of the soil.⁸⁸ Moreover, a zoöp should be ‘committed to strive

85 See: <https://zone2source.net/en/about-zone2source/>.

86 As per the description at <https://zoop.hetnieuweinstituut.nl/zoop-model>.

87 See: Art. 5.6 Zoöp Certification, referring also to <https://zoop.hetnieuweinstituut.nl/zoonomische-jaarcyclus>.

88 *Ibid.*

towards ecological regeneration with the whole of its being and in all its actions'.⁸⁹

To do so, the regenerative farm *Bodemzicht* engages in a project with the Dutch Radboud University, developing a biodiversity monitoring tool.⁹⁰ With this tool, the local biodiversity can be assessed and measures for improvement can be taken. The Radboud University researchers study effectiveness of environmental measures in various local contexts⁹¹ and stress that it is not enough to create nature reserves but that agriculture should also be redesigned to restore biodiversity.⁹²

The improvement of biodiversity is also a key goal of the food forest *Ecovredegaard*. This proto-zoöp creates a forest, which should function as a small, localised ecosystem. Thus, it is very low-maintenance – in principle, the plants and trees and the fauna should maintain each other. Special about this small, local ecosystem is that most of the plants are edible, thus meeting the other key goal of *Ecovredegaard*, namely providing healthy food for local people (see 'local people' above).

Artist Debra Solomon is the owner of another proto-zoöp, *Urbaniahoeve*, a food forest in Amsterdam Noord (north Amsterdam). She developed a methodology to further engage with nonhuman world that can be used by the speakers of the living. She called it 'Radical observation'.⁹³ Radical observation consists of rather spiritual exercises, through which humans can understand their direct environment better and experience how they form part of it. It is clear that this tool – like many practices and interests of proto-zoöps – is 'glocal' in the true sense of the world. The aim is to recognise the interconnectedness between local and global and between social and environmental dimensions.

Global Environment

The motivation for zoöp is very much for local organisations to do their bit in tackling global problems like climate change. In this vein, it is stated on the website:

The zoöp is based on the premise that the global climate crisis and ecological devastation are the effects of an economic system that has systematically put human interests above non-human interests: zoöps strengthen the position of non-humans within human societies, stimulate ecological regeneration or quality of life for multispecies communities (that include humans) and counter extractivist dynamics.⁹⁴

Thus, the Zoöp model is clearly inspired by Anthropocene thinking – it is motivated by the interconnectedness of local and global environment. As one of the ad-

vantages of the model, the website also – we believe rightly – mentions that it is *empowering* people to 'channel concerns about the climate catastrophe into action'.⁹⁵

This can be recognised in the practice of proto-zoöps. For instance, the NGO *Milieufederatie Zeeland* aims to protect the environment in the Dutch region Zeeland and beyond. The couple who started the farm *Bodemzicht* state on their website that they are 'climate farmers for life' and that their farm 'starts from 21st century challenges such as climate change, biodiversity loss and the farmers crisis and translates this into CO2-positive, bio-diverse and profitable agriculture'.⁹⁶ This emphasis on the climate signals how they stress the global dimension of their practice – their care stretches beyond care for a local healthy environment, precisely because of an awareness of the interconnectedness between the two.

People Elsewhere

The Zoöp model is inspired by the transnational rights of nature movement, and a substantive part of its background research consists of exchange and learning from people from around the world.⁹⁷ Zoöp is clearly motivated by the wish to minimise environmental impact for the benefit of every human and more-than-human beings around the world (see also 'the global environment' below). Still, zoöp is primarily a localised and environmentally sustainable model. By design, there is no particular attention to people from communities faraway. Some zoöps have an international orientation – the museum *Het nieuwe instituut* hosts expositions with non-Dutch artists, for example, and the university campus of *University College Utrecht* hosts international students. The regional environmental NGO *Milieufederatie Zeeland* stresses on its website that it is member of a national network and that it is therefore 'part in a larger whole', across provincial as well as national boundaries.⁹⁸ Thus, the Zoöp model does not *prevent* an international orientation. However, to our knowledge, no (proto-)zoöp so far is focused on social justice issues of people abroad.

The design of the Zoöp model does integrate care for the environment with a focus on regeneration. This goal is clearly future-oriented and can thus benefit future generations, by design. Thus, to the extent that one interprets 'people elsewhere' as 'people elsewhere in time', there is attention for them. We can see this also in the practice of the proto-zoöps; for instance, *Milieufederatie Zeeland* explicitly mentions care for future generations as one of its strategic goals.⁹⁹ Usually, however, future generations refer to the future generations of local people.

89 *Ibid.*

90 See: www.ru.nl/onderzoek/over/vm/healthy-landscape/ for more information.

91 See: www.ru.nl/onderzoek/over/vm/healthy-landscape/onderzoek/individueleherstelmaatregelen/.

92 See: www.ru.nl/onderzoek/over/vm/healthy-landscape/onderzoek/landschapsinitiatieven/.

93 See: D. Solomon, J. Da Mosto, S. Young Han & R. Nollen 'Chapter 16: Radical Observation', in C. Nevejan, J. Da Mosto & H. AbiFarès (eds) *Cahier 2: Values for Survival, the Venice Exploratorium* (2020) 165-79.

94 <https://zoop.hetnieuweinstituut.nl/zoop-model>.

95 <https://zoop.hetnieuweinstituut.nl/>.

96 www.bodemzicht.nl/.

97 As clear from its media library: <https://zoop.hetnieuweinstituut.nl/media-library>.

98 See also: <https://zmf.nl/over-zmf/over-zmf/>.

99 <https://zmf.nl/dit-doen-wij/#doelen>.

3.2 Concluding Remarks

Having carried out the above assessment, it becomes manifest that the innovations in representation brought about by the Zoöp model are present mostly when considering the local and global environmental dimensions. Its design is geared to include the local nonhuman community, with a strong motivation to *thereby* improve the global environment. Moreover, this improvement of the global environment can help in preventing people elsewhere to become deprived of basic needs, such as water, food and safe shelter. Anthropocene thinking, deeply engrained in the Zoöp model and mission, shows that while the four glocal lenses are analytically useful, they should not be used as a vehicle to artificially separate something that is so deeply interconnected. After all, taking care of local ecological conditions can indeed contribute to a globally better (or at least, less worse off) environment and thereby mitigate the adverse impacts of climate change and degrading biodiversity on humans here as well as abroad.

Perhaps it might be a nice challenge for those working with the Zoöp model to think through further about the kind of impact their activities may have on the social situation of people elsewhere. The university campus of UCU could do its best to make housing affordable for students from all nations, for example. At the same time, taking the small regenerative farm *Bodemzicht* as an example, it is hard to imagine what more it could do, except for *not harming* people from other places. Indeed, like the CLT, the zoöp is a bottom-up, private initiative. Hence, zoöps arguably only carry the private obligation to not harm others rather than actively protect others, similar to how multinational obligations are primarily responsible not to harm human rights, rather than to actively protect them, according to the United Nations' Guiding Principles on Business and Human Rights.¹⁰⁰ Indeed, an important limitation of the Zoöp model – and one that is actually inherent in CLT as well – is exactly its nature as a private initiative. Surely, this is one of the strengths of both models, because it allows people to take action before the legislature – they can be frontrunners. At the same time, in the end, what is needed is *everyone* to work together against the global environmental crises and against growing inequalities worldwide. Private initiatives are necessary but not sufficient to achieve that goal.

Necessary indeed, because representing the nonhuman beings in an organisation remains highly innovative and promising. In our anthropocentric times, the nonhuman living world has been seen an object of use in our society and legal thinking. This is revisited by a legal governance tool like zoöp. This goes to show how the laws have long empowered some (i.e. mostly Western and wealthy people) at the expense of others (less wealthy people as

well as nonhumans); it also demonstrates how relatively easily we can at least partly fix such defects through constructions like zoöp.

4 Concluding Remarks: Legal Innovation in Service of a Sustainable City

This article started from Katharina Pistor's observation that our current form of capitalism is *enabled* by private law, which selectively 'codes' certain assets, endowing them with the capacity to protect and produce private wealth.¹⁰¹ Crucially, this means that the law can equally be a potential site for change. Law can be changed by the legislature, but legal concepts can equally be imbued with new meanings due to changing ways of seeing in society, which can translate in renewed (judicial) interpretations or usages of existing law. Moreover, the article was built on the presumption that Kate Raworth's model of Doughnut Economics comes close to where society at large should be heading in the coming century. This is true at the very least for Amsterdam, where this economic model is integrated in democratically accepted policymaking. Hence, the article analysed the potential and the limitations of the bottom-up legal innovations – the CLT and the Zoöp – for the transition towards socially just and ecologically sustainable cities. In doing so, we have paid particular attention to what these innovations do to our understanding of private law categories and how they use conventional private legal tools to alter whose voices get heard and whose interests get to count.

Based on this analysis, we conclude that the CLT and Zoöp models demonstrate that the legal modules of *property* and *representation* indeed can be adjusted such that the legal system can better accommodate an economic system in which neither planetary boundaries nor social foundations are transgressed. Importantly, they are able to do so by utilizing private legal tools of company law, corporate governance and contract law without having to wait for governmental institutions to adopt legal reform.¹⁰²

In our analysis, we reconsidered the mainstream conceptualization of *property* and *representation* in legal and cultural discourses. Property and representation are not only legal structures but also expressions of socio-political values that connect with embedded social practices. To illustrate this, the appeal of individual autonomy as a goal of classical liberal political ideology is closely associated with a model of private ownership in which individual owners can exclude others from their property as well as exercise power over the thing itself.¹⁰³ Moreover, in dominant legal-political systems, (adult

100 Office of the UN High Commissioner for Human Rights, *United Nations Guiding Principles on Business and Human Rights – Implementing the United Nations' Protect, Respect and Remedy' Framework* (2011), available at www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf.

101 Pistor, above n. 2.

102 See also: Davies, Godden & Graham, above n. 15.

103 Graham, Davies & Godden, above n. 10.

human beings are seen as the only truly relevant political actors meriting representation in public and private decision-making. The CLT and Zoöp models demonstrate that through committed action on the basis of alternative interpretations, one can remake legal meaning, imbue property relationships with place-based responsibilities and feelings of belonging, and incorporate ecology in models of representation. Hence, our analysis confirms that meanings of legal structures such as property and representation depend upon their social, material and temporal contexts that are not fixed but rather to be negotiated over time.¹⁰⁴

What is interesting about the CLT and Zoöp models is that they transcend the tendency to address environmental harms one issue at a time, as is prevalent in existing sustainable development practices.¹⁰⁵ Nevertheless, both the CLT and Zoöp models are designed in reaction to a socio-political reality to empower a certain underprivileged and disadvantaged stakeholder group, namely local people in the CLT and local ecology in the Zoöp model. Hence, both do *not* by design holistically account for all the four glocal lenses of the Amsterdam City doughnut map that we used as our analytical framework: interests in relation to local people, local environment, global environment and people elsewhere.

Thus, we hold that there is room for cross-fertilization between the CLT and Zoöp models to help overcome the pitfalls of both models. As the environment is underrepresented in the CLT model, the Zoöp model can lend its expertise to build in representation for the local natural habitat and the planet in the governance design of the CLT. The CLT's expertise on the use of ownership to nurture a sense of stewardship for inclusive and empowered local communities can inspire the designers of the Zoöp model to maximize its potential for social inclusion. Moreover, both models would benefit from exploring how people elsewhere could be represented in their governance designs, inspired by the way in which zoöps enable representation of voiceless nonhuman actors already now.

Moreover, we find it important to point out that the CLT and Zoöp models demonstrate the fundamental importance of legal and non-legal support to make legal innovation in service of a sustainable city happen. The development of the Zoöp model was supported pro bono by lawyers from De Brauw Blackstone Westbroek. The CLT H-neighbourhood is constantly supported by a coalition of experts from the advisory firm – And The People; the advisory firm – Common City; housing-related advisory services provider – !Woon; and the design studio – Space&Matter. This coalition of experts assist the community with the engagement with local government and working through the legal and regulatory complexities of making a CLT initiative come to life. A lack of

understanding of relevant processes, or even an absence of such processes, can make it very difficult for community members to participate in remaking the city in more democratic or sustainable ways.¹⁰⁶ This highlights the importance of hands-on legal support by lawyers to assist in shaping the interpretation of law in service of a new economy that is sustainable, just and democratic.¹⁰⁷ Furthermore, the CLT makes painfully clear how important the support of local government is for communities to participate in remaking the city. While the CLT H-neighbourhood has been building their community from 2018 onward, the municipality keeps postponing the tender for the actual land on which the community hopes to build its houses and neighbourhood facilities. It is not unlikely that that tender will come out six years after the CLT H-neighbourhood started their efforts. It is difficult for the CLT to keep people engaged if there is no clear plan that they will be able to remake their neighbourhood. Moreover, due to electoral cycles, the people with whom they engage at the municipality come and go and the community must start from the scratch, engaging with the municipality over and over again.

In its vision for 2050, the Amsterdam municipality expresses its support for bottom-up initiatives, including the CLT H-neighbourhood.¹⁰⁸ It is yet to be seen whether this is mere lip service. The support required is not merely about making available plots of land for CLTs; what is critical here is the recognition and understanding that law and regulation frequently operate as barriers to community engagement in remaking the city and accordingly build the design to circumvent such barriers. The process of taking ownership for their neighbourhood is at times such an uphill battle that disincorporated people to develop feelings of ownership of their neighbourhood or their city. Municipalities must learn from this experience and assist people hands-on in taking responsibility for shaping their neighbourhoods in a collaborative manner. Municipalities must learn to nurture people's feelings of belonging and normalize community agency and empowerment for shaping their neighbourhoods.¹⁰⁹ Moreover, cities like Amsterdam could itself consider to either recognise the rights of the local environment or restructure some of its key agencies such as zoöps in which nonhuman interests (and, by extension, the interests of people elsewhere) are represented.

Indeed, we observed that the bottom-up nature of both the CLT and the zoöp is their strength as well as weakness. Whereas the strength lies in their unique potential for values-based legal innovation, the weakness lies in their limited sphere of influence of any private initiative and their dependence on support from public parties. Hence, if the municipality of Amsterdam takes its own

104 See also: Davies, Godden & Graham, above n. 15; Amelia Thorpe, "This Land Is Yours": Ownership and Agency in the Sharing City, 45(1) *Journal of Law and Society* 112 (March 2018).

105 Bronwen Morgan and Amelia Thorpe, 'Introduction: Law for a New Economy: Enterprise, Sharing, Regulation', 45(1) *Journal of Law and Society* 1 (March 2018).

106 See also: Thorpe, above n. 104, at 115.

107 Indeed, Pistor calls lawyers 'the true masters of the code of capital' because of their influential role in shaping the law that enables the formation of capital; Pistor, above n. 2, at 3, 158 e.s.

108 Municipality of Amsterdam, above n. 20.

109 See also: the wonderful example of Montreal, in Thorpe, above n. 104, at 108.

Doughnut Strategy seriously, it ought to recognise the innovative changes made by private parties, support them and spread their insights. That way, the city can also inspire those beyond its boundaries to adopt an ecologically sustainable and socially just way of living.

Annex 1: The organizational structure of the CLT H-neighbourhood (elaborate version)

