



**REPORT ON THE LEGAL PLANNING
SITUATION REGARDING
THE CAMPOSOL ESTATE**

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1. AIM AND SCOPE OF THIS STUDY

The Central Liaison Committee of the Camposol Residents' Association has commissioned Garrigues, Abogados y Asesores Tributarios, to draft a legal report with the aim of examining the legal situation of the 'El Saladillo' development in Camposol (Mazarrón), governed by the Development Programme (PAU) for Sector A-05/07 of the General Development Regulation Plan (PGOU) for the town of Mazarrón, approved on 2 July 1992 by the Mazarrón Town Council. The said stage includes the Partial Plan for Sector A, for area A-05/07, and the Partial Plan for Sector BCDF, as well as the planning regulation instruments that implement it.

The aim of the study is merely descriptive and indicative of the legal situation in which the said development finds itself, without assessing the various questions of a technical, non-legal nature that may arise with regard to it, or the duties or civil liabilities which may, as the case may be, arise therefrom.

Specifically, the aspects to be examined are as follows:

- Legal situation of the El Saladillo development
- Conservation of the estate
- Transfer of the estate to Council control

Given the time that has elapsed between the events considered, this legal report has been drawn up on the basis of the sectoral legislation with regard to urban planning that was successively in force at each given time.

Verification of technical and factual aspects is excluded, as well as any considerations with regard to special regimes, the environment, or relating to the construction of buildings, and those with regard to non-administrative legislation (mainly civil or private law).

It is our understanding that all documents examined in order to draw up the report are complete, and that there are no other documents that contradict them or which amend their content in any way.

Due to the special nature of planning law and to the nature of the entity for which the legal report is drafted (a residents' association composed of persons who, for the most part, are citizens of other Member States of the European Union), we consider it appropriate to include a brief general introduction that will allow persons who are unfamiliar with the subject to understand the examination and the conclusions of this study.

2. BRIEF GENERAL INTRODUCTION TO SPANISH PLANNING LAW

The right to build on land rests, in principle, with the owner of the land. However, this power cannot be exercised freely or in an arbitrary fashion, in accordance with the private wishes of each owner, given that this would lead to cities growing in an irregular and disorderly way. If all owners could freely build on their land such buildings as they thought fit, the Authorities would find themselves with disorderly and irregular cities and with land either in disuse or being overused. In order to regulate the use of land, in accordance with the specific needs of each city, the Spanish legal system has provided for the existence of rules aimed at territorial and urban regulation, with the strong influence of others that regulate aspects that are directly related to the physical aspect (concerning the environment, the regulation of natural resources, water courses, infrastructures, etc.).

This power to regulate the distribution of land, to plan and design the growth of cities, vests with the Public Authorities, mainly the Councils and the regional governments, and is treated by the legal system as being a public activity, of general interest, without prejudice to the participation of private initiative.

Territorial planning, designing where and how cities are to grow or where new estates are to appear, the development activity (which manages and creates the city, materially-speaking, and is distinct from planning) does not necessarily have to be carried out by the Authorities, which shall, under all circumstances, always ensure that the law is complied with and that the general underlying interests are satisfied.

In this manner, private individuals may develop and build on their land, provided that they do so in accordance with the legal provisions and those approved by the relevant Public Authorities, with their activity being subject, under all circumstances, to administrative control. As a result, it is common – it is normal – for promotion and development activity in Spain to be in the hands of private agents, with the Authorities – and in particular, the towns – being responsible for the performance of such activities in accordance with the planning rules laid down.

In this regard, promotion activities, development activities, and building, are carried out in accordance with the table below, which summarizes in general terms the procedure which, according to legislation in force then, should have been followed for the development and construction activities of the Camposol estate.

The current regulations, which would be applicable were the development to be promoted now, has altered some of the said steps, although not in any really substantial way.

**General
Development
Regulation Plan
(PGOU)**

This is a municipal document that classifies the land into areas, in accordance with whether or not it has been developed or whether it is open to development, and the use to which the said land is (or could be) put.

In this manner, the land may be, according to its classification:

- Urban land
- Developable land: which may be **defined** (where the plan establishes, in addition to its status as developable, further details as to the manner in which this is to be carried out), or **undefined** (where the General Development Regulation Plan simply provided for its status as developable, but not the manner, as imminent development of this area is not envisaged)
- Non-developable land

The land on which the Camposol estate is being built was classified in the Mazarrón General Development Regulation Plan as undefined developable land. The General Development Regulation Plan designated the said zone as sector A 05-07, known as El Saladillo.

The land was shown, therefore, as being classified as developable land (capable of being developed), but there was no provision governing the type of development that was to be carried out in that sector, given that as it was an area that was removed from the town centre, its development was not envisaged on a short-term basis by the Local Authority, such that the General Development Regulation Plan did not directly include a programme to determine the future stages to be carried out in the El Saladillo zone.

Thus, as the land was classified as developable, the possibility of initiating its development was open, and the owner of the land, relying on the legal methods provided for this purpose, initiated the activities aimed at the development of sector A 05-07 before the Local Authority.

This promotion activity was performed by way of the following legal instruments:

Development Programme (PAU)

The Development Programme is (was) an instrument which governs land classified as undefined developable land, for the performance of integrated planning activities (which are normally on a considerable scale – new neighbourhoods or commercial or industrial areas – equipped with sufficient utilities and services for the performance of the activities or uses envisaged for that zone). Likewise, it should also specify what infrastructure works are necessary in order for the zone to be properly connected to the city.

Once the Development Programme has been approved, its provisions are specified and are implemented by way of a Partial Plan.

Partial Plan

The Partial Plan has the aim of implementing the provisions contained in the Development Programme, specifying the design of the territory that is being regulated (it states the place where the dwellings are to be located, the sports facilities, the land necessary for parks and public gardens, cultural and educational centres, as well as the public or private nature of these elements). The Partial Plan goes beyond the mere design of the development, by also assessing the costs of the development and the characteristics of the communications and utilities network (such as sewers, energy supplies, ...).

Well then, the Partial Plan constitutes the planning element that forms the basis of the implementation of the development, which is so because it is the instrument that plans in the greatest detail, and that most closely binds the concrete reality of the development it governs.

In the case of the Camposol estate, it was provided that the Development Programme would be split into two sectors, which would each be implemented by way of a Partial Plan.

Once the plan had been approved (General Development Regulation Plan + Development Programme + Partial Plan), the execution of the development commences, for which two big needs may be distinguished:

1. To distribute the profits and the costs of the development amongst those who have the right to build. Amongst the owners of the land.

At the same time, any pre-existing properties are extinguished, and are replaced by those provided for in the plan, and the ownership thereof is assigned, by replacement, to the previous owners, in accordance with the rights that they each hold.

2. Technical planning of the development of the area. The performance of the infrastructures both below ground and on the surface which transform the materially rustic land into developed land (streets, footpaths, infrastructures for the supply of water, electrical energy, telecommunications, green zones, etc.).

The first of these activities is carried out by way of the so-called Redistribution Project (or Project for the Redistribution of Plots).

**Redistribution
Project (Project
for the
Redistribution of
Plots)**

The Redistribution Project is carried out by the private developer. It is the document that redistributes the surface area that makes up the development unit, in accordance with the provisions of the Partial Plan, giving rise to new plots, their ownership is assigned to the interested parties, and the development charges and costs are shared out amongst them. This must be approved by the Council, and the said document establishes the compulsory and gratuitous assignments that the developer must make in favour of the Council, and the specific plots through which these assignments are to be materialized.

The second stage is carried out by way of the so-called Development Project, which is a technical project that defines how the provisions of the Partial Plan (on paper) are to be materially performed on the ground.

From this brief summary, the following basic ideas should be grasped:

1. The Camposol estate is developed in the zone that the Mazarrón General Development Regulation Plan includes under area A05-07, known as El Saladillo.
2. The El Saladillo development is divided into two sectors: sector A and sector BCDF. The planning of each one is carried out by way of a Partial Plan.
3. The planning activity is carried out by way of documents of a regulatory nature that successively establish, with greater precision each time, the characteristics of the development. For the El Saladillo area, these instruments are, successively: the General Development Regulation Plan, the Development Programme, and the two Partial Plans through which they are implemented. In this manner, the Mazarrón General Development Regulation Plan regulates the whole of the Mazarrón territory in a very general way, specifying the classification and the use of each sector that it defines. The Development Programme expands on the General Development Regulation Plan for the

El Saladillo area, with a higher degree of precision in its contents. And, finally, the Development Programme is divided into two Partial Plans which expand on it for each one of the sectors, A and BCDF, that make it up, such that the planning reaches its maximum level of precision and detail by way of this last instrument.

4. Subsequently, the Redistribution Project ‘executes’ the provisions laid down in the Partial Plan for each development unit, and therefore, the rules and provisions contained in the Partial Plan should be implemented, without being able to contravene them in any way whatsoever. It will specify the distribution of the land into the new plots, and the Council will be assigned those that correspond to it, on a compulsory and gratuitous basis, by statutory provision.
5. Lastly, the Development Project gives the technical design for the development, the provision of infrastructures for each development unit, as project for the execution of works.
6. It is important to bear in mind that in Spain, in theory, there are no ‘private’ estates. The general-use infrastructures (roads, footpaths, street lighting, water, energy supply networks, etc., green zones) must be built by the developer, at its cost, in order to be compulsorily and gratuitously assigned to the Council.

Once the development works have been completed (in stages, as the case may be), the developer transfers control over them to the Council, and as from that time they become public property and their conservation and maintenance become the responsibility of the Council, although the law allows, and it is commonplace, the for the said maintenance to be performed by associate bodies of the Council, known as urban conservation bodies, which are compulsorily composed all owners in the area and which take on the maintenance of the services and the conservation of the public infrastructures.

7. In theory, construction may take place once the estate is completed and control is transferred to the Council. However, it is allowed, and commonplace, for construction to take place at the same time as development (the buildings should be constructed at the same time as the roads are laid and the infrastructures are created).

8. Also in theory, the occupation of the dwellings and the opening of businesses and establishments should not be allowed prior to the completion of the estate and its transfer to the Council.
9. It is well known that in the case of the Camposol estate, this theory has not been put into practice. The estate has not been executed in accordance with what was planned, has not been finished according to plan, control has not been transferred to the Council, and despite all of this, the occupation of dwellings and the opening of businesses and establishments have been tolerated, contrary to law, and without the area being in possession of the adequate services.
10. Lastly, it should be borne in mind that the developer must assign to the Council, compulsorily and gratuitously, developed plots to be used for the installation of public amenities (schools, social centres, sports facilities, etc.). However, the developer is not under a duty to build or to maintain the said amenities. It is the Council that should do so, and likewise there is no specific legal duty to build and open public amenities within a specific time limit.

3. LEGAL SITUATION OF THE EL SALADILLO DEVELOPMENT

This section seeks to offer a global and approximate overview of the legal situation of the ‘El Saladillo’ planning development. For this purpose, the legal background is briefly set out, and the most disputed points of this background are formulated, for each one of the two sectors that make up the development.

3.1 PROCESSING OF THE PLANNING REGULATION INSTRUMENTS

3.1.1 Sector A

The processing of the planning regulation instruments that govern sector A was commenced in May 1992, and continued until 1995.

From amongst the background facts with regard to sector A, the following are the most relevant:

- The processing of the Planning Development Project and for the Partial Plan for Sector A were carried out simultaneously. Both were given initial approval on 2 July 1992 and provisional approval on 8 October 1992, by the Mazarrón Town Council.
- Final approval of the Development Programme and of the Partial Plan for sector A was obtained by way of an Order of the Territorial Policy and Public Works Department dated 12 March 1993, the validity of which was made conditional on the defects contained in its grounds being remedied, and the creation of a guaranty equivalent to eight per cent of the economic evaluation of the development costs of each block or unit.

In this regard, the most important defects contained in the Order of 12 March 1993 are, with regard to the Development Programme:

- the duty to implement the General Open Spaces Regime (parks and public gardens for general use) by way of a Special Plan drawn up by the Council in co-ordination with the Regional Environment and Nature Agency.

And with regard to the Partial Plan for sector A:

- it states that the bank guaranty corresponding to the development costs should be set up.

The developer company, Justo y Manoli, S.A., proceeded to remedy the defects referred to by way of the presentation of a bank guaranty in the sum of sixteen million, five hundred thousand pesetas, in favour of the Mazarrón Town Council, as security for the performance of the duties arising from the execution of the Development project of the Partial Plan, and by way of drawing up the Special Plan for Open Spaces.

- The Redistribution Project for sector A of area A05-07 of ‘El Saladillo’ was approved by way of a resolution of the Plenary Session of the Mazarrón Town Council held on 31 January 1995.
- The Development Project for the Partial Plan for Sector A05-07, drawn up by the Architect Mr. Juan Francisco Chumilla Valderas, was given final approval by the Plenary Session of the Council held on 31 January 1995.

3.1.2 Sector B

The processing of the planning regulation instruments that govern sector BCDF in implementation of the Development Programme took place from the end of 1998 to July 2001.

- The Partial Plan for Sector BCDF received initial approval on 11 December 1998, with provisional and final approval being obtained on 30 March 1999 and 21 January 2000, respectively.
- The Development Project was approved by the plenary session of the Mazarrón Town Council on 20 July 2000, and final approval was obtained on 27 November 2001, conditional on the drafting of a revised text thereof.

There is no record in the documentation that has been examined that the said revised text was ever drafted.

- The Redistribution Project for sector BCDF was initially approved by the Mazarrón Town Council at a plenary session held on 12 April 2001, and given final approval on 13 July 2001.

4. AMENITIES AND SERVICES, STATUTORY PROVISIONS, AND THEIR IMPLEMENTATION IN THE PLANNING

The transformation of the land (from rustic to urban) is carried out by way of its planning, first of all (design in plans), and the subsequent execution of the development works. This task may be initiated by the Local Authority or by a private agent. In any event, it should be carried out in accordance with the statutory requirements and with those of the General Plan, and performance shall be overseen by the Local Authority, by the Council, even where the promotion activity is being carried out by a private company, given that the regulation of the land, its planning and execution make up a sphere of development where the public interest plays a vitally important role, as it is the Public Authority (mainly the Council) that is in charge of safeguarding the general interest.

In this regard, as we have seen, the planning is carried out by way of different instruments, with different levels of detail that depend on to what level its provisions have been specified (the scale of the plans) with regard to the territorial scope that each one of them regulates.

The applicable legislation is basically regional. It depends, therefore, on each one of the 17 Autonomous Regions that exist in Spain. However, there is also national legislation that is applicable to this area, either of a supplementary nature (with regard to the planning side), or of a direct nature with regard to the regime governing the rights and duties of the owners of the land.

Thus, it is the national legislation that determines the charges and assignments that the owners of the land must bear, which take the form of the duty to allocate a particular percentage of the building volume of the development to the Council free of charge (along the lines of saying that 10% of the plots should go to the Council).

For its part, regional legislation determines what the minimum services for the planning developments ought to be, according to the overall use (residential, commercial, industrial), and in accordance with their size and location¹.

1. Although in the case of Camposol, the national rules were applied in this regard, on a supplementary basis, in default of the regional regulations of Murcia, which did not exist at the relevant time.

Therefore it would be necessary to inspect the provisions of the regulations applicable to each one of the sectors of the Development Programme and the implementation thereof in the partial plans and in the redistribution projects and development projects in order to ascertain whether or not the said provision with regard to minimum services and amenities have been complied with as required by law.

Specifically, the duties to assign developed land in favour of the Council are concentrated into the following for the El Saladillo development:

- Infrastructures and land for public amenities: The compulsory and gratuitous assignment in favour of the Council of the land to be used on a permanent basis for highways, parks and public gardens, public sports and leisure areas, cultural and educational centres, and other necessary public services.
- Profitable building volume: The compulsory and gratuitous assignment of 15% of the average planning potential of the sector on which the property is located. This percentage was altered to 10% by Law 6/1998.

The obligations that make up the first of these assignment duties are set forth in detail in the Annex to the Urban Planning Regulations, where they deal with land reserves for amenities in partial plans.

4.1.1 Sector A

The total surface area governed by the El Saladillo Development Programme is 6,995,000 square metres.

The Development Programme provides that the El Saladillo development is required to have a General Open Spaces Regime (parks and public gardens, without prejudice to the green zones provided for in the partial plans) to cover a surface area of 30.16% of the total surface area regulated: 2,110,000 square metres. In this manner, the net surface area governed by the Development Programme (subtracting the land earmarked for the General Open Spaces Regime) is 4,885,000 square metres.

Sector A is composed of a surface area of 780,000 square metres, which are distributed in accordance with the following breakdown:

- Surface areas for compulsory assignment to amenities (roads, public car parks, footpaths, green zones, sites for public amenities): 263,259 square metres
- Surface area earmarked for General Open Spaces Regime: 114.000 square metres
- Surface area for compulsory assignment to private use (sites to be delivered free of charge to the Council): 62,433 square metres
- Surface area awarded to the developer (sites for the developer to make a profit): 353,787 square metres

These figures correspond to the following surface-area percentages in the sector:

- 33.75% of surface area for compulsory assignment to amenities
- 14.6% of surface areas earmarked for the General Open Spaces Regime
- 53.3% of surface areas earmarked for private use, of which
85% are awarded to the developer, and
the remaining 15% correspond to the Mazarrón Town Council

Such assignments are carried out on the plots specified in the Project for the Redistribution of Plots drawn up by the Architect Mr. Juan Francisco Chumilla Valderas, in the following manner:

AMENITY USE	SQ. M. SURFACE AREA
School	12,486 sq. m. surface area
Car Park	5,456 sq. m. surface area
Open Spaces	88,508 sq. m. surface area
Technical Services and Highways	156,809 sq. m. surface area
TOTAL	263,254 sq. m. surface area

USE FOR PROFIT (BUSINESS)	SQ. M. SURFACE AREA	SQ. M. AVAILABLE FOR CONSTRUCTION
Residential single-household	343,024 sq. m.	58,546.60 sq. m.
Residential multi-dwelling/tourist	42,607 sq. m.	29,824 sq. m.
Sports amenities	18,976 sq. m.	2,845 sq. m.
Social amenities	12,630 sq. m.	9,558 sq. m.
Commercial premises	3,236 sq. m.	2,883 sq. m.
TOTAL	420,473 sq. m.	103,656.6 sq. m.

From the estimated valuation in the Redistribution Project, there was an equivalence between the 15% of the value of the development works that was payable by the Council² (as assignee of 15% of the land), and the 30% of the value of the resulting properties to be assigned. Thus the equivalent of this value in construction (5%) was subtracted, and so the Mazarrón Town Council is due 10% net of the plots on which construction is allowed in each case, free from all costs and developed.

As a result, the total assignment was materialized in the Redistribution Project chargeable to the following plots:

-
2. Therefore, given that the Council was entitled to receive 15% of the surface area on which construction is allowed and available for profit-making uses from the developer free of charge, it had to meet 15% of the respective development costs. Currently, this is no longer the case. The said volume has to be supplied (which is now 10% in Murcia) free from development charges.

Plots for amenities:

Amenities	12,486 sq. m.
P1	1,526 sq. m.
P2	1,978 sq. m.
P3	1,952 sq. m.
Open Spaces 1- 2	4,286 sq. m.
EL3	39,491 sq. m.
EL4	2,672 sq. m.
EL5-6	9,683 sq. m.
EL7	2,583 sq. m.
EL8	2,588 sq. m.
EL9	27,205 sq. m.
TOTAL	106,450 sq. m.

General Open Spaces Regime 111,508 sq. m.

Plots for private use

RU4	9,768 sq. m.
RU5	9,941 sq. m.
RU21	7,474 sq. m.
RU22	7,483 sq. m.
RE3	4,261 sq. m.
EL1-2	4,286 sq. m.
ED	1,897 sq. m.

The said plots are envisaged in the Redistribution Project as *'properties to be assigned to the Council free from charges and with development completed without cost for the Council'*, and this assignment was made effective by way of a public deed to notarize the Redistribution Project for the Partial Plan for 'El Saladillo', Sector S05-07, executed on 29 October 1996 before the Notary Ms. María Isabel Fitera García, at an act that complies with the legal requirement pertaining to the development aimed at discharging the assignment right that the legislation in force at that time allowed in favour of the Mazarrón Town Council.

In this manner, sector A should have, at least, a plot of 12,486 sq. m., developed by the developer, and delivered free of charge to the Council, earmarked for amenities (buildings) for public use (education, social, cultural, welfare, etc., as considered fit by the Council). The developer was under no duty to construct the plot, only to develop it and to deliver it. The Council ought to locate there such installations that it considers necessary in order to meet residents' needs for public services (thus, for example, a social centre or a health clinic).

4.1.2 Sector BCDF

For their part, the land regulated by the Partial Plan for Sector BCDF comprise a surface area of 4,340,750 square metres, of which 851,750 square metres make up the local General Open Spaces Regime, which is complemented by a further 701,723 square metres assigned under Sector F.

Therefore the total surface area is 5,042,473 square metres, of which 1,553,473 square metres (corresponding to 30% of the surface area of the Sector) are allocated to the General Open Spaces Regime, of which 701,723 square metres are included under Sector F.

The net surface area regulated by the Partial Plan, without the surface areas allocated to the General Open Spaces Regime, is 3,489,000 square metres.

However, when examining the documentation supplied, a fairly significant incident has been detected in this regard, given that the regulation envisaged for this surface area in

the Partial Plan does not coincide with that contained in the Redistribution Project approved by the Council for this Sector on 13 July 2001:

Total surface according to Partial Plan (including the surface area of the General Open Spaces Regime): 5,042,473 sq. m.

Total surface area according to Redistribution Project (including the surface area of the General Open Spaces Regime): 4,671,527.90 sq. m.

As such, the surface areas assigned to each use differ in the Redistribution Project from those envisaged in the Partial Plan, without there being any record of the existence of any amendment to the Partial Plan justifying this change to the distribution of the surface areas (even taking into account the sector-E land which in principal formed a part of this planning development were later excluded).

In this regard, the Partial Plan should prevail over the Redistribution Project, given that the former is a planning instrument, and as such, is of a regulatory nature, whereas the latter is a mere execution mechanism which is not binding on the Partial Plan.

However, given the informative nature of this study, and in accordance with the facts of the situation, as Sector BCDF was executed in accordance with the Redistribution Project, this part of the study is going to proceed on the basis of the surface areas regulated by the Redistribution Project for Sector BCDF, in order to determine whether or not these at least comply with the amenity and assignment reservations laid down by the legislation in force at the time of the approval of the Redistribution Project.

In accordance with the approved Redistribution Project, the total surface area of the sector is 4,671,527.90 square metres, and the total net surface area is 4,387,250 square metres, which are distributed in accordance with the following breakdown:

Surface areas for compulsory assignment to amenities: 1,424,024.9 square metres

Surface area allocated to General Open Spaces Regime in sector F: 701,733 square metres

Surface area for compulsory assignment to private use: 121,719.15 square metres

Surface area awarded to the developer: 1,791,010.3 square metres

These figures correspond to the following percentages of the surface area of the sector:

32.46% of surface areas for compulsory assignment to amenities.

16% of surface area allocated to General Open Spaces Regime in sector F

43.6% of surface area of private planning potential, of which

6.3% of the surface area for compulsory assignment to private use (the Council having turned down 30% of the assignment of private planning potential land in exchange for the 10% of the development costs that it had to pay)

93.6% of the surface area awarded to the developer.

The above percentages make up 92% of the total net surface area of sector BCDF, and the 8% of surface area remaining equivalent to 350,980 sq. m. does not appear in the general breakdown of the Redistribution Project, and yet it is included in the total of the surface areas awarded (given that the sum of the surface areas of the resulting plots awarded by the Redistribution Project does coincide with the net surface area of the sector).

The above surface areas were distributed in the Redistribution Project amongst the various uses applicable to this planning development in the following manner:

AMENITY USE	SQ. M. SURFACE AREA
Schools	32,897.89 sq. m. surface area
Car Park	5,898.58 sq. m. surface area
Open Spaces	872,806.87 sq. m. surface area
Technical Services	49,656.59 sq. m. surface area
Highways	462,764.98 sq. m. surface area
TOTAL	2,125,757.91 sq. m. surface area

FOR-PROFIT USE	SQ. M. SURFACE AREA:	SQ. M. AVAILABLE FOR CONSTRUCTION
Residential single-household	1,250,632 sq. m.	250,126.4 sq. m.
Residential multi-dwelling/tourist	351,902 sq. m.	126,684.7 sq. m.
Hotels	50,618 sq. m.	25,309 sq. m.
Sports amenities	31,091 sq. m.	3,109 sq. m.
Social amenities	30,164 sq. m.	30,164 sq. m.
Commercial premises	24,438 sq. m.	17,106 sq. m.
TOTAL	1,738,845 sq. m.	452,450 sq. m.

From the estimated valuation in the Redistribution Project, an equivalence was apparent between the 10% of the value of the development works that the Council was obliged to pay (as owner of 10% of the land that it would be allocated³), and the 30% of the value of the resulting properties to be awarded. Thus, the equivalent of this value in building volume (30% of the assignment that it was due pursuant to law) was subtracted, and so the actual assignment to the Mazarrón Town Council was carried out chargeable to the 7% net of the plots with planning permission in each case, free from all costs, and developed.

The assignment in favour of the Mazarrón Town Council was made chargeable to the following resulting plots:

Plots for private use:

H1A	3,543.26 sq. m.
D10	25,882.39 sq. m.
D36A	17,620.24 sq. m.
D37A	22,742.00 sq. m.
D38A	24,633.14 sq. m.
C6	15,849.00 sq. m.

3. That was the applicable percentage at that time, not 15% as before.

C10	14,495.00 sq. m.
DP3A	2,176.37
CM2A	1,710.66 sq. m.
S1A	2,111.48 sq. m.
TOTAL	121,719.15 sq. m.

Plots for amenity use:

open spaces-1	11,973.51 sq. m.
ST1	49,656.59 sq. m.
EE2	26,634.72 sq. m.
EL3	35,660.11 sq. m.
P3	5,898.58 sq. m.
EL4	17,543.32 sq. m.
EL5	36,767.45 sq. m.
EL6	44,875.00 sq. m.
ZV1	316,991 sq. m.
EE3	6,263.17
ZV2	281,104.4 sq. m.
ZV3	127,892 sq. m.
HIGHWAYS	462,765 sq. m.
TOTAL	2,125,757.91 sq. m.

General Open 701,733
Spaces Regime

These assignments were made effective in favour of the Mazarrón Town Council by way of the notarization of the Redistribution Project and the remedy of the defects on which final approval thereof was conditional, which took place at the ordinary Plenary session of the Council held on 17 August 2001.

In this manner, it may be seen that in sector BCDF there should exist developed municipally-owned land allocated to use for public amenities in an area of more than 30,000 sq. m.

4.1.3 Incidents in the assignment of surface areas

➤ It is the case in sector A that, in the Redistribution Project, the sum total of the surface areas for amenities is 106,450 sq. m., and the surface area allocated to the General Open Spaces Regime is 111,508 square metres, whereas the Partial Plan specifies as follows:

- *Surface areas for compulsory assignment to amenities: 249,780 square metres*
- *Surface area allocated to the General Open Spaces Regime: 114,000 square metres in sector A*

These allocations do not meet the amounts envisaged in the Partial Plan and are in this sense insufficient. In order to be able to determine whether or not they comply with the statutory minimums, it would be necessary to verify whether or not they comply with the minimum provisions laid down at ANNEX 1 of the Urban Planning Regulations.

➤ In the case of sector BCDF, as has been stated already, there is a significant disparity, such that the provisions of the Partial Plan are not complied with in the Redistribution Project, which practically ‘rounds off’ the surface areas without taking into account the provisions of the Partial Plan.

5. TRANSFER OF CONTROL OF THE ESTATE TO THE MAZARRÓN TOWN COUNCIL

Transfer of control of the estate is the starting point for the completion of the development tasks carried out by the developer. Once the works have been completed according to plan, the transfer process begins. In this regard, the transfer of the works to the Council presupposes that they have been performed in accordance with the provisions of the plan.

However, it might be the case that this process leading up to transfer of the works is subject to undue delays, either because the execution of the works is behind schedule, or because they have not been executed properly.

In this specific case, both circumstances arise. On the one hand, the development works have not been finished, or have not been executed, and on the other hand, there are zones in which the works that have been executed differ from those envisaged in the planning regulation instruments. This second circumstance has led to the need to propose an amendment to the Development Programme, so that the works envisaged in the plan and those actually executed coincide, and the Council can proceed to take control over them.

Currently, this alignment process is suspended, pending the publication of a report for the determination of boundaries concerning the public watercourse land of the path of the rambla de Los Aznares, on the part of the Segura Hydrographic Board.

In order to avoid these situations from persisting indefinitely, the planning regulation instruments should establish the time limits for the development works and for those buildings with a for-profit planning potential (dwellings, businesses), as well as those pertaining to the amenities provided for in the said instruments.

The determination of these time limits is fundamental for the Local Authority, given that they act as limits that allow the Council certain control over the performance of the plan (thus avoiding a situation where execution is suspended indefinitely). Once the execution time limits have elapsed without the works having been adequately completed, the Council may execute the guaranties provided by the developer (precisely for the purpose of guarantying the proper execution of the works), and carry out the works that remain unfinished, as well as any corrections necessary to those that have already been executed by the developer.

To the extent that the budget for such works carried out by the Local Authority in compliance with the plan (in lieu of the developer, which has failed to comply with its planning commitments) exceeds the amount of the guaranty, the Council (or the acting Local Authority) shall meet the said cost from its coffers, given that it is the fault of the Local Authority for not having properly covered the necessary guaranties.

There follows below an examination of the term allowed in the plan for each one of the El Saladillo sectors, so that it may be determined whether or not the said terms have been exceeded, and whether or not the appropriate procedures for the transfer of control have been commenced.

5.1 SECTOR A

The execution provisions for the El Saladillo development unit in its planning regulation instruments are as follows:

According to the stage-by-stage plan of the Revised Text of the Development Programme for A05-07, El Saladillo:

‘The first stage shall have a duration of eight years. This stage comprises the performance and execution of the following works and services:

- *The whole of sector A*
- *Roundabout for access to the MU-603 road.*
- *M.V.O.L. power line from the electrical substation to the connection point of the estate’s underground network.*
- *Doubling or reinforcement of the municipal supply network from the Taibilla connection point to the estate.*
- *Assignment of the proportional part of the General Open Spaces Regime for sector F which is assigned to sector A.’*

In the Partial Plan, the stages envisaged for the implementation and execution of the development of sector A are: two stages to be implemented in two four-year periods, which correspond with the total term of eight years envisaged in the Development Programme. The provisions for these stages are as follows:

- *At the first stage, all the development works for the execution unit located to the north of the Gran Vía Principal shall be executed, which includes, amongst others, the water-treatment plant, the reservoir, and a transformer centre, as well as the medium-voltage underground network, which supplies the T.C. and the branch for pumping drinking water to the reservoir.*
- *At the second stage, simultaneous to the execution unit located to the south of the Gran Vía Principal, the rest of the development works shall be executed.*

Simultaneous to the stages described, the redistribution projects and the compulsory assignments, equal distribution and development referred to in the 1990 Land Act Reform shall be executed.

The two stages described may be combined into one single stage to be performed over eight years should the owners of the land so request.

Simultaneous to the development stages, construction work shall be carried out in parallel, with a two-year interim period being established with regard to the completion of the development works in order to allow, upon the completion of the development works, the commencement of the construction works, which should be carried out over an eight-year period at least 75% of the construction works.

5.2 SECTOR BCDF

The second stage envisaged in the Development Programme has a duration of eight years as from commencement and includes the performance and execution of:

- *The whole of sector B.*
- *The assignment of the proportional part of the General Open Spaces Regime of sector F which is assigned to sector B.*

The third stage of the Development Programme coincides upon commencement with the halfway point of the term of the second stage and is carried out over eight years, performing the execution of:

- *The whole of sector C.*
- *The assignment of the proportional part of the General Open Spaces Regime of sector F which is assigned to C.*
- *Golf course, which should be brought forward to the previous stage should the necessary water allocation be available.*
- *Roundabout for access to the MU-3315 road.*
- *M.V.O.L. power line from the electrical substation to the connection point of the estate's underground network.*

The fourth and last stage of the Development Programme is also implemented over eight years and its commencement coincides with the completion of the second stage and the halfway point of the third. This stage comprises:

- *The execution of the whole of sector D.*
- *The assignment of the proportional part of the General Open Spaces Regime of sector F which is assigned to D.*

These three last stages envisaged in the Development Programme are implemented in the Partial Plan for sector BCDF, together (as with the regulation of the said sectors). The provisions of the Partial Plan with regard to its execution are broken down into the following phases:

The first phase is to commence as from the final approval of the Partial Plan and shall have a duration of four years:

- *First year: creation of the Redistribution Panel.*

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- *Second year: presentation of the projects for the re-drawing of plot boundaries, development, and redistribution.*

As from final approval of the development project, the exterior works for the connection of the drinking water, water-treatment plant, telephone lines, and electrification shall be carried out. The entire estate shall be carried out at this stage.

The golf course must necessarily be carried out at this stage and irrespective of whether the Redistribution Panel has been set up or whether the Project for the Redistribution of Plots has been processed, given that the golf course does not generate building volume. The golf course project may form a part of the project for the development of the sector or may be processed independently provided that its infrastructures and connection to the road network is resolved.

The second phase commences at the end of the first and has a duration of four years. The entire estate shall be carried out at this stage.

The third phase commences at the end of the second and has a duration of four years, during which the following shall be performed:

- *The complete development of that stage*
- *Final access to the MU-3315 road.*

Simultaneous to the development stages it shall be carried out in parallel, with a two-year interim period being established with regard to the completion of the development works in order to allow the commencement of the construction works, which should be carried out over an eight-year period at least 75% of the construction works.

Therefore, the implementation of the Partial Plan for sector BCDF has an expected duration of twelve years, which starts to run as from receipt of final approval, which took place on 13 July 2001. It should be deemed, therefore, that the term expires on 13 July 2013. These new terms are a notable reduction on the initial provision in the Development Programme for sectors B, C, D, and F, which was of twenty-four years (eight years for each of the three stages into which it was divided).

This new term covers not just development, but also the construction of the buildings and the amenities envisaged in the Partial Plan, such that it is possible (and convenient), in accordance with the implementation phases envisaged, for the development works to be completed and for an application to be made for their transfer to the Mazarrón Town Council prior to the complete expiry of the execution term set in the Partial Plan.

In view of the terms envisaged in the plan for the execution of the works in both sectors, it is convenient, given the variety of different times at which transfer of the works to the Mazarrón Town Council should take place as and when the plan is implemented, and prior to being able to tackle the situation in which transfer of the El Saladillo development finds itself, to provide a brief synthesis of the background facts that make up the said situation:

5.3 TRANSFER OF THE WATER, SEWERS, AND WATER-TREATMENT NETWORKS FOR SECTOR A

On 7 February 2001 Mr. Justo Antonio Quesada, on behalf of the developer, applied for the Mazarrón Town Council to take control of the water, sewers, and water-treatment networks for sector A, for the purpose of the procurement of the said services by the residents of the estate, with the added undertaking to *'remedy any technical or administrative anomalies that may be necessary or that may be indicated to us by the Mazarrón Municipal Water Board, even after transfer of the said services.'*

The Council agreed to provisional transfer of control *'for the sole purpose of the procurement of the drinking-water, sewers, and water-treatment services for sector A by private individuals'*. The minutes for provisional assignment were executed on 28 September 2001, and contained the following conditions:

Justo y Manoli, S.L. undertakes to remedy the defects in the aforementioned works, which are contained in the report by the concessionaire company of the water service, Sogesur, S.A., dated 2 May 2001, prior to 28 February 2002.

Should the works not be fully completed by the said date, the Mazarrón Town Council was to execute the bank guaranty supplied by the company to the value of six million, two hundred and ninety pesetas, and would carry out the outstanding works.

There is no record in the file of any documentation to the effect that the said defects were remedied by the developer, and likewise there is no document to the effect that the appropriate administrative activity has been commenced for the execution of the bank guaranty for the purpose of carrying out the relevant remedial works.

5.4 TRANSFER OF THE DEVELOPMENT WORKS FOR SECTOR A

On 4 December 2002, a submission was filed at the Mazarrón Town Council reporting on the completion of the development works for sector A and applying to the Council to proceed to the performance of the steps necessary in order to take control of the said works.

In this regard, the Mazarrón Town Council requests a technical report on whether or not it is proper to take control of the development works for sector A of El Saladillo.

On 5 March 2003, the developer is served with a copy of the technical report issued by the municipal technician for the remedying of defects prior to the execution of the minutes for the assignment of sector A.

The defects pending being remedied identified in the report are:

- *The following are pending execution: green zones, paving, street lamps, street furniture (benches, bins), pergolas, children's play areas (clay flooring).*
- *The hut for mailboxes has not been installed.*
- *Vertical and horizontal signs on the highways.*
- *The car-parking zones have not been executed.*
- *Documentation pending submission:*
 - a Certificate of completion of works by the head architect of the works.*
 - b Report by Sogesur on the transfer of control of the drinking-water and water-treatment networks.*
 - c Technical report on the transfer of control to Iberdrola of the medium and low-voltage installations.*
 - d Plans of the final state of the development works, given that they do not coincide with those of the project.*
 - e Various tests concerning quality controls and compacting.*

On 19 April 2005, the Mazarrón Town Council once again served a copy of the reports on the defects in sector A of El Saladillo, after a visit made to the estate:

Defects to be remedied according to Report by the Public Works Technical Engineer dated 7 April 2005:

- *The majority of the green zones have not been executed and others which have been executed are in a poor state of repair. Lamp posts, street furniture, footpaths, vegetation are all missing...*
- *Some slopes have to be set back and levelled out.*
- *The traffic in Avenida Saladillo needs to be sorted out, avoiding the U-turn that vehicles need to perform by way of roundabouts and the extension of the central reservation.*
- *The rainwater outlet located in the inside of the tunnel needs to be channelled.*
- *The paving is broken or unfinished at various locations in the works.*
- *The inspection covers for services in the footpaths must be levelled with the existing paving, avoiding any raised covers.*
- *All inspection covers for existing services must have their corresponding cover.*
- *The inspection covers for sewers and the gutters in the road must be raised to the level of the finished tarmac surface.*
- *There are various pot holes in the roads where the surface has sunk.*
- *The tarmac in calle del Saladillo is in a very poor condition, the street must be repaired and re-surfaced.*
- *There are paved footpaths in places where there should be a tarmacked road, making access impossible for motor vehicles.*
- *There are currently footpaths covered in rubble and weeds and these must be executed.*
- *In the shopping centre the ramp for disabled access must be executed, and the stairs, pavement, kerbs, etc. must be repaired.*
- *The corners of the kerbs in the access to the car-parking zone must be rounded off.*
- *The following documents must be supplied:*
 - *Transfer to Aqualia of control of the following services: sewers, drinking-water, water-pumping, water-treatment plant, rainwater gutters.*
 - *Environmental health certificate for the drinking-water reservoir.*
 - *Report on telecommunications infrastructures.*
 - *Roads Report.*
 - *Certificate of completion of building works by the head architect of the works.*

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- *Report on the transfer of control of the installations to Iberdrola.*
 - *Industry Report.*
 - *Final works project containing all the amendments and stamped by the College.*
 - *Plans of the completed works in digital format.*
 - *Tests carried out at the works.*
 - *Quality certificates for the materials used in the works.*

Defects contained in the Report by the Municipal Industrial Engineer:

Having carried out a prior inspection visit to the installations, these are not in compliance with the documentation held by the Council (year 1994), the following should be supplied:

- *Final certificate of installations with regard to the technical documentation filed with this Council.*
- *Authorizations for the corresponding installations on the part of the Industry Directorate-General.*

On 16 June 2006, Mr. Daniel Bascuñana Galiano, on behalf of the company Justo y Manoli, S.L., developer of the estate, appeared before the Mazarrón Town Council applying for final transfer of the development works for sector A, on the grounds that there had arisen, on the part of the Council, *'de facto takeover of control and acceptance, both valid and effective, which binds the Local Authority where the works have been duly carried out, and there are acts performed by the said Local Authority which are conclusive of such takeover of control having taken place'*.

In answer to the said document, on 15 September 2006, the Mazarrón Town Council informed the developer, by way of an official recorded facsimile [burofax], that none of the defects stated for the purpose of being able to proceed to the provisional transfer of the development of sector A had been remedied, and nor had any of the documents requested for the same purpose been filed. In this regard, the Council states in its document that, as at that date, no actions whatsoever had taken place with regard to the development works, and it decides to reject the application for final transfer of the works for the development of sector A.

On 1 February 2007, the Mazarrón Town Council requested the developer to immediately proceed to remedy the defects found at the development works, as well as to supply the documentation that it had previously been requested to supply.

There is no record in the file that the defects have been remedied by the developer, and the documentation requested has not been supplied.

5.5 TRANSFER OF THE WORKS FOR SECTOR BCDF

There is no record in the file of any procedure being commenced with the aim of transferring control of the development works for sector BCDF. However, and despite the fact that the time limits laid down in the plan for this sector have not elapsed, there are people living in the dwellings, which circumstance is known to the Mazarrón Town Council and to which it has consented. It is precisely this consent by the Mazarrón Town Council that should necessarily entail a more onerous duty on the said Council to oversee the situation of the development (given that the occupation of sector BCDF determines that its task as guarantor of social wellbeing and of the general interest extends to this zone – with such effects as are pertinent thereto – and it is the vulnerable situation of the said sector that requires an extraordinary duty of care on the part of the Council).

5.6 INCIDENTS DETECTED IN THE CURRENT STATE OF THE PROCESSING OF THE TRANSFER OF THE WORKS AND CONCLUSIONS

The situation of sector A of the Camposol estate is, as may be concluded from the foregoing extracts, that following various applications made by the developer seeking the transfer of control thereof to the Mazarrón Town Council, this has only arisen in provisional form for the water, sewers, and water-treatment network (for practical reasons that would allow private individuals to procure the service), and it is still pending the remedying of the defects which, at the time the said provisional transfer took place, were duly notified by way of the report by the company Sogesur.

As a result of the above applications, the Mazarrón Town Council issued a number of technical reports stating the defects affecting the development of sector A, one of which resulting from omission or lack of execution, whereas others are a result of poor execution of the project.

The Mazarrón Town Council, in exercise of its power to oversee, direct, carry out, award, and supervise the execution of development works (article 3.3 of Royal Decree 1346/1976), has notified the developer on various occasions of the defects that need to be remedied in order to be able to proceed to take over control of the works. However, this power should not be interpreted as a mere possibility to act conferred on Local Authorities, but it becomes a duty where it is not exercised in accordance with the urban planning and the legal mandate of supervision because, in the end, it is not sufficient to carry out the development works, but rather it is necessary for the development that is carried out should be projected and executed in a manner that serves to comply with its duty to supply the necessary services that convert land into a plot and the Local Authority that has powers to regulate and plan the land should not shy away from carrying out its duty to supervise and oversee the proper execution of the plan, given that, at the end of the day, the Local Authority, by way of the exercise of this power, is the guarantor (and the interested party) of the coincidence between the planning regulation instruments and the development that is executed.

The Local Authority, as an Authority, is the defender of the general interest, and the fact that it is the main body with powers over regulation of land is precisely due to the fact that it is deemed to be ideal for the performance of the planning function, within which area the general interest is even more important than in the normal activities of the Local Authorities.

The exercise of this power is accompanied, as one would expect, by powers that allow the relevant administrative body to ensure that the private agent actually executes the works in accordance with the provisions of the planning regulation instruments which were approved at the relevant time. Therefore, the non-performance of this duty converts the powers of control into an undischarged duty, given that, ultimately, a plan that has been defectively executed – even if it is brilliant in theory – does not best protect the general interest that the Authority defends.

Therefore the proper performance of the works is also the responsibility of the Local Authority, and should the developer persist in its breach, the Mazarrón Town Council has powers and is under a duty to ensure the execution of such complementary works and the proper execution of those that are required in order for transfer of control to take place.

In this regard, the developer should be allowed a period of time within which to remedy all defects, in both sectors, and should this new request not be complied with, the guaranties given as security for the proper execution of the said works should be used to allow the execution to take place, such that any excess costs in the execution of the works over and above the amounts secured by the guaranties shall be met by the Council, for not having made provisions capable of providing sufficient security for the proper completion of the sector.

Failure to act on the part of the Council would amount to, as has been said, negligence by omission which would give rise to liabilities for which the Council would be liable, given that they would amount to a derogation of the duty to ensure lawfulness and the general interest on the part of the Local Authority.

Likewise, the legalization of the real situation in which the planning development currently finds itself is also the responsibility of the Council. No other interpretation is possible, because it is the responsibility of the Council to ensure the proper execution of the planning regulation instruments and the derogation of this duty is precisely what has led to the irregularity which is still pending being remedied as at today's date (the failure of the works that have been executed to coincide with the works envisaged in the plan). In this manner, the intrusion into the course of the rambla de Los Aznares could have been avoided had the Council been supervising properly (notwithstanding the penalties that may be imposed on the developer).

It is therefore the responsibility of the Council, as against the administered party, and given its fundamental status as guarantor of the general interest, to re-establish the legality of this planning development as soon as possible, in particular taking into account that partial occupation of the estate has taken place by some of the seasonal and permanent residents (occupation which the Council is aware of and has consented to

despite the reality – also known – of the situation of the estate), irrespective of the responsibilities that the developer may have incurred in.

Therefore, it should be ensured that this re-establishment of legality takes place as quickly as possible, and in order for this to take place, the following conditions must (undoubtedly) be met:

- Restoration of the course of the rambla de Los Aznares to its original state or the implementation of any other legally-viable solution, and essentially, one that is acceptable to the Segura Hydrographic Board.
- Final approval of the amendment of the Development Programme.
- Execution of the development works pending execution, and remedying of the works that have not been properly executed, for which purpose the developer should be requested with a time limit, upon the expiry of which, the Council should execute the said works chargeable to the guaranties given by the developer, and where these costs should exceed the said guaranties, chargeable to the municipal coffers.

What has been set forth is applicable to both sectors. Mainly for sector BCDF. In this sector, despite the time limits laid down in the Development Programme and in the Partial Plan, the construction, sale, and occupation of dwellings and of business establishments makes it clear that the developer and the Council have agreed that the stages plan (up to 2013) has been brought forward. The said occupation should not be consented without the estate being duly completed and without control thereof being transferred to the Council.

Meanwhile, together with the actions which, where appropriate, may be open to the residents as against the Council, based on public law, there will be greater reasons for private actions that may arise as against the developer, given that they purchased dwellings, which implies that they have been finished, both internally and externally, and that control of the estate has been transferred to the Council.

In this manner, the possibility of pursuing legal action is proposed:

1. As against the developer and before the civil courts, so that they may order that the estate be completed in performance of the existing sale and purchase agreements.
2. As against the Mazarrón Town Council, so that this body may exercise its public powers and proceeds to impose the completion of the estate on the developer, or executes it itself, after having gone through the pertinent procedures.

Such actions may be carried out through the CRA, in its capacity as a residents' association, although before the civil courts, it would be necessary to examine in greater detail the need to accompany this with individual actions brought by private owners (even if carried out at the same time).

6. THE DUTY TO CONSERVE THE ESTATE

One of the points of controversy, given the position that has arisen as a result of the situation of the estate, is that of determining who is under a duty to conserve the estate, and the nature of that duty. On the one hand, control of the estate has not been transferred to the Council; and on the other hand, the owners do not wish to take on the conservation of works that have yet to be completed, and finally, the developer does not wish to bear indefinitely the cost of the said maintenance.

In this regard, planning law requires this duty to be met by the owners. This has been acknowledged and imposed by both Royal Decree 1346/1976, at article 181, and Royal Legislative Decree 1/1992 at articles 245 and 21, and also the text of article 19 of Law 6/1998. At a more specific level, the very wording of the Development Programme, at clause 0.2, provides that *'the owners shall be under a duty to conserve the estate.'*

Well then, it is impossible to deny the duty incumbent on the owners to bear the cost of the conservation and maintenance of the development works. Now then, the question that arises is: Should the owners bear the cost of maintaining development works that have not been completed yet? And if the answer is yes, what aspects would be covered within this duty?

The answer to the first question must under all circumstances be yes. This theory is accepted and defended by learned opinion as well as by the caselaw of the Supreme Court (judgements of 22 October 1982, 17 February 1986, 28 September 1987, 21 November 1989, and 14 June 1997, *inter alia*). Also the caselaw of the High Courts of Justice is uncontroversial on this point (Judgement of the High Court of Justice of La Rioja no. 66/1999, of 8 February, Judgement of the High Court of Justice Madrid no. 123/2001, of 6 February).

However, this does not release the developer from its duty to complete the development works in accordance with the qualities and technical characteristics that it are required pursuant to the plan, not just as against the owners, but also as against the Local Authority, just as the Local Authority is not released from the supervisory role. Thus, it is indisputable that the duty to bear the weight of the charges for the maintenance and the conservation of the development rests with the owners. However, there are other duties with regard to them that should be unavoidably borne by the developer and by the Mazarrón Town Council.

It is a different matter with regard to the civil or private relations between the developer and the purchasers of dwellings and other buildings. It is therefore proposed to examine the exercise of private actions against the developer, so that the developer may ensure the maintenance and the conservation of the estate until such time as control thereof is transferred to the Council, bearing, as the case may be, the costs arising from the provision of services such as street lighting.

Conservation Bodies are ‘*associated planning bodies*’ (article 24.2 of the General Planning Regulations) and are governed by their By-laws and by the provisions of Section Six (‘Associated Planning Bodies’) of Chapter One of Title One of the General Planning Regulations, ‘*without prejudice to the application of the provisions laid down at Chapter IV of Title II for the conservation of the development works*’.

The purpose of Conservation Bodies is the ‘*conservation of the development works*’ (article 25.2 of the General Planning Regulations), or more precisely, ‘*the conservation of the development works and the maintenance of the amenities and installations of the public services*’ (articles 67 and 69.1 of the General Planning Regulations).

However, this is only the case for sector A, given that for sector BCDF, the Redistribution Project approved states at section I) that: ‘*The developers shall conserve the estate until control is transferred to the Mazarrón Town Council. Once this transfer has taken place, the owners shall become a part of the Urban Conservation Body created in Sector A of this same estate for the conservation of the installations, green zones, and other aspects envisaged in the by-laws definitively approved by the Mazarrón Town Council*’

With regard to the second question, it is not possible to include under the heading of conservation activities that go beyond the ordinary proper conditions of public safety, health, and decoration, i.e. maintenance of the building in a safe, healthy, and decent condition; everything that goes beyond this measure cannot be imposed upon the owners as a consequence of the duty of conservation. The duty of conservation therefore extends to the entire estate with the purpose of the conservation and assurance of the qualities of the building or the estate, such that it may run and be inhabited under acceptable conditions despite the passage of time.

However this duty may be extended where this is envisaged in the by-laws of the Conservation Body or the planning regulation instruments to go further than the mere upkeep and preservation of the works, and extend to other duties. This occurs where, together with the Body's duty of conservation, it is also under a duty to perform maintenance.

The two duties are different and have their own meaning and scope, the High Court of Justice of the Murcia Region, in its Judgement no. 325/2004 of 7 July 2004 examines them in the following terms:

'As may be seen, the debate revolves around the meaning and scope that is to be given to the term "maintenance", rather than to that of "conservation". According to the Dictionary of the Royal Academy of the Spanish Language, to conserve is to maintain something or to look after its permanence, whereas maintenance is the collection of activities and care necessary so that installations, building, industries, etc. may continue to function properly. The word maintain, according to the said Dictionary, entails the conservation of something in its being; to give it vigour and permanence.'

It is to the actual meaning of the words (article 3.1 of the Civil Code) that the Supreme Court refers in its judgement of 3 April 1990 in order to interpret article 68 of the General Planning Regulations with regard to article 67 of the same Regulations.'

Such that there is nothing to preclude a Conservation Body from undertaking to pay the electricity supply for the street lighting given that the duty of the Local Authority in this case is none other than to ensure *'that street-lighting services are effectively provided (...) in urban centres and estates, whatever the origin thereof might be: an activity to be executed directly by the Local Authority, or through private initiative, in which case the Local Authority may make the establishment of the population centre conditional on the developers and owners providing these services without prejudice to municipal ownership'* (judgement of the Supreme Court of 3 April 1990).

This has been the interpretation of the Supreme Court, which opinion it has not only stated, but it has maintained in its caselaw, (judgements of 22 October 1975, 12 April 1985, 14 March 1989), specifically, at the second legal ground of its judgement of 13 March 1990, the Court states that *'the conservation of the development works and the maintenance of the amenities and installations of the public services shall be chargeable to the owners of the blocks or*

development units where this is imposed by the Plan pursuant to which the development has taken place by way of private initiative pursuant to the provisions of article 52 of the Land Act, without any distinction being made between the costs arising from the conservation of the works and installations of the public services, and those arising from the provision of those services, where as in this case, the “Hacienda 2 Mares” Partial Plan provided that the conservation and maintenance would be chargeable to the owners, and in the By-laws of the Body, article 5, a duty was established to contribute in accordance with their participation share in the conservation and maintenance costs; given that maintenance includes items relating to the conservation of the installations as well as the cost of their operation in accordance with the grammatical interpretation that it is appropriate to give to that term, which implies maintaining and keeping something in its current state and therefore its functioning; actual meaning of the word that ought to determine the interpretation of the said article 68 with regard to article 67 of the General Planning Regulations pursuant to article 3 of the Civil Code, provided that given the statutory-planning law nature of the plans and projects for private-initiative developments should require that the incidence thereof with the Local Authority should not make it impossible for the said Local Authority to meet the costs of its conservation and maintenance, or should upset the administrative activities and their financing, and so when the Local Authority takes on the duty to meet the costs this cannot be the subject of an interpretation which, contrary to the provision of the plan, would transfer the said charge to the Local Authority which was not envisaged thereby, but rather specifically in accordance therewith it was agreed that this would be chargeable to the interested private individuals; with the approval of the development being conditional on the performance of the duties laid down in the plan.’

Therefore the only restriction on the activity of conservation is not understood in view of the learned opinion and the caselaw as being anything other than ruin, given that as these concepts are mutually incompatible, both are excluded. Ruin exempts the owners from the duty of conservation that is imposed on them, in so far as this entails the impossibility of the conservation or repair option.

It is therefore the case that, pursuant to article 68.2 of the General Planning Regulations, all owners of land included within the block or development unit should become members of a Conservation Body, and this body, pursuant to the said line of legal thinking, should take on the conservation of the development works and the maintenance of the amenities and installations for the services where this latter is expressly imposed either by the planning regulation

instruments or by the by-laws of the Conservation Body, with a requirement to undertake all activities in order to ensure the performance of the said duty (with conservation and maintenance only being excluded from this duty where these refer to works or buildings in a state of ruin).

Now then, the duty of maintenance may only be deemed to be applicable to the Conservation Body in the two foregoing circumstances, such that, unless this duty is expressly imposed, it may not be considered that the said Body should take on the said duty, and this has been held by the Supreme Court in the fourth legal ground of its judgement no. 75/2002 of 4 February, where it states that *'neither in the judgement quoted for the purpose of contrast nor in the judgement that is the subject of this appeal, do the by-laws of the respective associated conservation planning bodies contain a specific acceptance of the duty to take responsibility for the cost of the electrical energy used by the street lighting of the estate, but rather the duty was defined, in the same terms as stated at article 67 of the General Planning Regulations, with reference to the conservation and maintenance of the development works, amenities, and installations for the public services. From this wording it does not follow that the appellant conservation body in this case should have accepted the duty to conserve and maintain at its cost the street-lighting public service within its sphere of activities, but rather the amenities and installations of this public service, which concept includes the infrastructure necessary for the provision of this service but not the cost of the energy consumed in its normal functioning.'*

As has been stated already, the Development Programme provides for the El Saladillo development that 'the owners shall be under a duty to conserve the estate' (clause 0.2), such that it will be necessary, at this point, to refer to the provisions contained in the By-laws of the Conservation Body of the development unit that is the subject of this report in order to be able to define the content of its duties in this specific case, given that there has been no access to such documentation in the drafting of this study. Should the duty of maintenance not be expressly contained there, the charge for the provision of this service must be shared between the Mazarrón Town Council and the developer of the development unit in accordance with the control theory, which postulates that the Local Authority shall bear the costs of the conservation and maintenance of the development works and of the public services once these have been accepted and the corresponding transfer minutes have been drawn up, and up until that time the said costs shall be borne by the developer.

However, the Local Authority continues to exercise powers of control over the proper performance of this conservation and maintenance activity. Therefore the derogation of this duty of supervision with regard to the performance of the said duties amounts to a breach of a public duty (which extends to both the provision of the service as such, and the performance of the supervisory role) for which it has responsibility. Citizens should be protected at all times by administrative activities, given that the Local Authority is, ultimately, the provider and the guarantor of the said services, and may not relinquish the said conditions that it holds by law, although it does have the power to delegate the actual provision of the said services.

Therefore, pursuant to this legal provision, the Local Authority continues to be responsible as against the administered party for the provision of the public services that are attributed by way of statutory provision, and in this regard, it is under a duty to ensure the proper performance of the activities that have as their object the provision of this service to the citizens, even where this has been delegated to another body, whether of a public or private nature.

The judgement of the High Court of Justice of Murcia (Contentious-Administrative Chamber, sec. 2, S 19-7-2000, no. 705/2000, rec. 3102/1997. Leading Judgement: Moreno Grau, Joaquín) states that *‘As is stated in the caselaw (Judgement of the Supreme Court of 14 April 1992), Urban Conservation Bodies have as their aim, in harmony with the moment at which they arise, the “conservation and maintenance of the development works, amenities, and installations of the public services” – art. 69.1 of the General Planning Regulations – such that Conservation Bodies entail the prior execution of the estate and their aim is precisely to conserve and maintain an estate that has already been executed.*

Given that the estate has not been concluded, the basic premise that make the creation of the Conservation Body possible is lacking.’

In summary:

1. It is questionable that it should be proper to set up the conservation body prior to transfer of control of the development works, even though control of those of sector A has been partially and provisionally transferred to the Council.
2. There is no question, as against the Council, that maintenance is chargeable to the owners until transfer of control takes place. The question arises with regard to the private relations between the residents and the developer that sold them the buildings, given that the contracts may be being breached by the developer, which should take responsibility for the conservation and maintenance of the estate until control thereof is transferred to the Council.

7. CONCLUSIONS

From this study the following conclusions may be reached with regard to the legal situation of the Camposol estate:

Transfer of the control of the development works for sector A and sector BCDF should take place in phases, as and when the terms set in the plan for its conclusion are met. Once the said terms have all elapsed, the developer shall be granted an extension within which to remedy any technical defects that may be found in the works with regard to the approved projects.

Once this new term has elapsed, if the works should still not meet the qualities and technical characteristics that are sufficient to allow transfer of control to the Council, the Council has the power (compulsory, in order to defend the general interest and the legality that it protects) to execute the bank guaranties and security provided by the developer in order to ensure the proper execution of the works. It shall proceed to execute the works, chargeable to the said guaranties, in proper manner and to take over control of the said works once they have been executed and the legality of the planning development has been re-established.

This power held by the Council becomes a duty as against the citizens, who should address themselves to the Council to demand that these powers be exercised in order to defend their interests and the legality of the plan.

These time limits have been generously exceeded in the case of sector A. But even in the case of sector BCDF (where they have not been fully exceeded) it would be possible for the interested citizens to seek the protection they are owed from the Council (by statutory provision), making use of the powers that have been granted for this purpose. This is so because although formally the time limits have not been exceeded in sector BCDF, the fact is that likewise the dwellings and establishments should not have been occupied. Therefore the situation of this sector is particularly special, given that, as has been stated before, even though the time limits have not been formally exceeded, the Council is under a duty to intervene in order to ensure the proper provision of the services to those citizens who occupy the sector (with its consent).

In any event, it is noted that the development of sector BCDF has not been executed in accordance with the provisions of the applicable plan, which is in the course of being amended.

The Council should ensure the conclusion of the estate in accordance with what has been projected.

For its part, the duty of conservation of the estate pertains in sector A to the owners of the area, without prejudice to the duties that may correspond to the developer pursuant to the private sale and purchase agreements. For this purpose, given the provisional transfer of control that occurred years ago, the urban conservation body was set up, and there is no record that it carries out any activities whatsoever.

Likewise, with regard to the material content covered by this duty of conservation, the provisions of the by-laws of the Conservation Body that has been set up should be complied with, where they state the exact scope of the duties undertaken by the owners.

The situation is quite different for sector BCDF, for which the planning regulation instruments (having legal effect) expressly provide that the developer shall be responsible for the conservation thereof until such time as the control of the works is transferred to the Council, at which time the owners shall become a part of the Conservation Body set up for sector A.

It is convenient that the owners should consider that the commencement of legal proceedings is a suitable option in the event of breach of the duties and responsibilities taken on both by the developer (demanding performance of the existing sale and purchase agreements through the civil courts), and by the Council (so that it may exercise its powers), in order to avoid further delays and losses.

As has been stated before, the actions could be commenced by the CRA, in its capacity as a residents' association, although it might be advisable to accompany this exercise of individual actions by the private owners before the civil courts. This question should be examined properly where appropriate.

Murcia, 17th November, 2008