

JUNTA DE COMPENSACION STATUS REPORT

14 October 2022

Fellow Homeowners

In response to a Junta Developer request, five Homeowners recently volunteered to engage with the Junta to discuss the possibility of creating a separate Maintenance & Conservation Organisation – a separate company outside the Junta de Compensacion. This organisation was envisaged by the Developers to take over all the Maintenance & Conservation activity in Cabrera Poligono 1.

This Developer-led vision was set out by the Junta as early as 24 July 2021 as soon as the Court Judgement to obey the Statutes was **fully enacted**. ([jc_0049_carta_propietarios_resolucion.pdf](#))

According to the Junta Lawyer at the time:

Specifically, the judgment reads:

*"I declare the NULLITY of full of the Agreement of January 14, 1993 of the General Assembly of the Junta de Compensation of Cortijo Cabrera as well as that **the expenses of maintenance/conservation and expenses of urbanization, of the Junta de Compensation Cortijo Cabrera, must be paid according to the method contained in the Statutes**, protocolized in Public Deed of Constitution, granted before the Notary Don José M^º Calvo, on August 2, 1991, under the number 79 of its protocol, with sentence and costs to the defendant Turre City Council". These Statutes state (Article 32, called "Economic Means"): "The distribution of contributions among the partners will be **made in proportion to the right or economic interest of each associate, defined by the participation quotas of which he is the owner, determined according to the bases of action"***

The Junta has not obeyed the Court Order which has been in full effect since July 2021. The Town Hall has failed to control the Junta and seems to have washed its hands of any responsibility.

The costs of all the Maintenance and Conservation must be shared according to the Statutes.

The 'free-ride' that the Developers arranged for themselves in the "1993 Agreement" has come to an end although the Developers still refuse to contribute. The troubles that we face in Cabrera today were caused by a very small group of Homeowners who, against legal advice, were drawn into the so-called 1993 Agreement.

The 1993 Agreement was created by the Developers purely to enable them to avoid paying for their maintenance and conservation obligations **because the Developers had run into financial difficulties**.

This is why the Developers have now refused to raise legal invoices to all the Homeowners / Developers/ Landowners in proportion to their participation quota's.

The Developers don't want to pay their dues. They don't want to invoice themselves.

We advise the Homeowners not to give any credence to the term "services" which was invented by the Junta Developers as a vehicle to enable the Developers to avoid paying for 'maintenance and conservation'.

The **vast majority** our Homeowner money (99%) goes into “**maintenance and conservation**” of roads, water pipes, leak investigations, electricity network maintenance, landfall repairs, pothole repairs, upkeep of the common grounds, water testing, sewage pump repairs, plant repairs, landrover repairs. This “maintenance and conservation” has to take place for as long as the Developers fail to meet their commitments to complete the urbanisation.

The roads, water and sewage, and electricity networks simply cannot be handed over to the Town Hall and Utility Companies because the Developers have not completed them. This means that we are not getting the return that we should from our IBI payments – this is the fault of the Delinquent Developers.

We should only use the term “Maintenance & Conservation”.

The term “services” is a diversion tactic.

Instead, the Developers are repeatedly asking for Donations from Homeowners to fund the **maintenance and conservation**. They do not wish to pay towards the **maintenance and conservation** of the urban infrastructure that they are allegedly building. They just want to make use of it, free of charge, and they want the Homeowners to effectively give them a free warranty on everything they build.

If the Developers were to simply meet their obligations as set out in the Statutes, there would be no problems in Cabrera.

The Developers were therefore desperate to create a new mechanism to avoid paying for **Maintenance & Conservation**, just as they did in 1993.

The Developers therefore stated the following in July 2021 when the above Court Order was enacted:

*The **only two** possible alternatives we have, to separate services/maintenance.*

1) contracting an external management company, whose services will not be cheap. Also, the implication of the IVA will also have to be re-examined as a private or contracted company will have to include the 21% Iva on all invoices to owners.

*2) Or forming our own, something like “Cabrera Comunidad de Vecinos & Services S.L.”. It will require registering the service company with a fiscal person as director, legally responsible for the company. It will control the management of only the services, pay invoices, salaries/social security, issue and collect voluntary contribution service invoices, register with the health authorities being responsible for the quality control and health factors of our water supply as well as the two treatment plants discharge quality control, register to employ personnel and be responsible of the Social Security payment. It will be necessary for owners to sign a legal binding contract between any of the above 2 alternatives requiring these services. enforcement debt recovery will be between property owner and the service company. **It will be a nightmare.** Those who do not sign an agreement with any of the companies, may not get services like water, there is no legal way to force them to pay, we will have owners, some will pay because they want Cabrera to continue as best as possible, and others who will quite happily live free of service contribution.*

The Developers have very clearly indicated that they **have no intention at all of paying fees** into any separate **Maintenance & Conservation** company.

If we had created a separate Maintenance & Conservation company, it would effectively have been a Homeowner endorsed re-incarnation of the 1993 Agreement which the Court has declared to be “null & void”.

It must be pointed out that the 5 Homeowner Volunteers set out in good faith, and with open minds, to explore alternative ways with the Developers of ensuring the appropriate maintenance and conservation of Cabrera.

However, a separate **Maintenance & Conservation** company would have left the Developers with full control of the Junta without any obligation to conserve and maintain the Development. This would have left the Developers in entrenched positions on the Junta Board with no need to do anything – they have no intentions to complete Cabrera.

The Developers, themselves, stated above that ‘it will be a nightmare’ for the Homeowners. Yet, they have been trying to make this happen.

The fact that the Developers have been **trying to force this through** by running the bank account down to € 4,500 and threatening the continuity of the water and sewage network should have been a very good reason to reject the creation of this separate **Maintenance & Conservation** company.

Fortunately, there have been some very recent developments:

During the week commencing 26 September 2022, a “new” Junta lawyer **allegedly** instructed the Junta de Compensacion to cease discussions with the Homeowners about the creation of a separate **Maintenance & Conservation** company as it would not be legal for such a company to invoice Junta members.

A second Homeowner Lawyer also confirmed that it was inadvisable to create any body outside the umbrella of the Junta de Compensacion and the Statutes.

However, in reality negotiations had already stalled by this time because the Developers were unwilling to commit to basic pre-requisites for moving the talks forward.

The Developers said that there were only 2 possible alternatives in response to the Court Order.

However, there is a third alternative:

To obey the Court Judgement and to operate the Junta de Compensacion according to the Statutes which is the way it was set up.

A separate company is not required to manage the **Maintenance & Conservation** aspects. It can be done under the framework of the existing Junta de Compensacion. The Developers can simply remove themselves from the management of the **Maintenance & Conservation budget** and allow the Homeowners to govern the expenditure with integrity.

This would also remove the need for duplicated support services (accountants, lawyers etc). Under this arrangement, it would also be possible to engage a trusted external Company to carry out the **Maintenance & Conservation** activity.

The Developers have run down the bank account with the plan of forcing the Homeowners to take over all the **Maintenance & Conservation** for Cabrera. They were putting pressure on the Volunteers to take over all the **Maintenance and Conservation** by the 1 January 2023.

The Developers have spent money on self-serving projects and entered into undisclosed financial arrangements. Their plan was clearly to panic the Homeowners into creating a separate **Maintenance & Conservation** organisation, by threatening the continuity of water and sewage.

Open Cabrera recently provided a summary of the major items on which Homeowner Donations had been spent. This included improvements to land (drainage and walling) belonging to the Treasurer and other Landowners, repairs to the private vehicle of a Junta Employee and some €47k of electrical ducting (infrastructure for Developers).

When, as is inevitable, Cabrera falls under Court Administration we will be asking for clarity on whether this one-sided appropriation of Homeowner Funds (€47k) is fraudulent.

Very recently, Open Cabrera questioned how the Junta bank balance had suddenly been depleted from around €55k to only €4.5k when the Junta Developers first threatened the continuity of the water and sewage on 26 September 2022.

It seems that the answer is that the Bank called in a €60k loan which the JDC Developers had taken out for Homeowners in around 2020.

This loan was taken out by the Junta Developers in the name of the Homeowners who are now expected to pay it back.

So, this is where the Homeowner Donations have apparently gone.

The background to this Loan may lie in the proposals that the Developers made in 2019 to install two new transformers and connect up 12 homes which were not on Endesa supplies:

[CASE STUDY 005 ELECTRICAL INFRASTRUCTURE 2020.docx](#)

The fact that the Developers made this proposal and voted it in using their overwhelming vote does not make it a Legal action. The Developers are supposed to supply the infrastructure in the Urbanisation Plan – not the Homeowners.

To add insult to injury, the Developers themselves did not commit to paying a **SINGLE EURO** of the €276,580 they said it would cost.

When, as is inevitable, Cabrera falls under Court Administration we will be asking for clarity on whether this one-sided appropriation of Homeowner Funds is fraudulent.

Isn't it wonderful that two non-contributing Delinquent Developers have unfettered use of Homeowner Maintenance & Conservation funds and can actually sign us up to Bank Loans?

We were not told about this Bank Loan in 2020, 2021 or 2022, although we did specifically ask the Junta to declare if they had made any Loan commitments on behalf of the Homeowners.

Presumably, our Homeowner Delegados (“representatives”), John Bailey, Noeline Ramsay and Bob Hall were party to this information but also chose not to inform the Homeowners.

The Bank Loan does not seem to have been highlighted in the 2020 financial statements and the 2021 Financial Statements have yet to be disclosed by the Junta Developers. In the usual way, the disclosure of these 2021 financial statements will be withheld for as long as possible into 2022.

Ironically, these two Delinquent Developers have not purchased a single Transformer themselves. The only transformer supplying Cabrera P1 is located at the Arch bar. This was bought by the **Homeowners** in 2017:

[Case study 003 arch transformer upgrade 2017.pdf](#)

Again, it is worth asking for clarity on whether this on-sided appropriation of Homeowner Funds is fraudulent.

Let us remind ourselves of the threats that our Developers have made to Homeowners:

“First, some of the large landowners [They mean “Developers”] have already overpaid their share of maintenance of the urbanisation and will be issuing invoices to the Junta de Compensacion, to pass on to all owners, corresponding to their percentage towards the cost of the infrastructure built in the urbanisation since 1993. The debt is on the property not on the owner, thereby owners who have recently acquired a property will be legally liable to repay their previous owners’ percentage for the infrastructure liability”

Faced with the obligation to comply with the Law, the Developers have threatened the Homeowners with historical infrastructure costs.

We maintain that the Developers are owed nothing in arrears and that they are making one ‘last gasp’ effort to take advantage of Homeowners once again on a grand scale!

*And, now these Developers have threatened us yet again with the **continuity** of our essential services while they refuse to comply with the Law.*

This is the time for Homeowners to remain firmly resolute even if it is very uncomfortable.

We have the upper hand:

- We have a Court Order to comply with the Statutes which was fully enacted in July 2021.
- The Junta de Compensacion has not obeyed the Court Order.
- There is an Action in place already with the Court about the lack of compliance with the Court Order. The Court has already written to the Town Hall. The Town Hall has written to the Junta de Compensacion. The Town Hall has washed their hands of the matter so far but this will change in due course.
- We all pay IBI to the Town Hall. The Town Hall is responsible for issuing building licences in the full knowledge that the Urbanisation works were incomplete.

The Junta de Compensacion operates under the control and guidance of the Town Hall.

And, consequently, the Town Hall is responsible for ensuring the continuity of the essential water and sewage services.

- The pressure is steadily increasing on the Delinquent Developers. Time is running out.

More than ever, it is time for Homeowners to stand together.