

RESPONSE TO JDC REPORT (PROVIDED IN RESPONSE TO THE COURT SENTENCE)

**OPEN CABRERA
12 April 2023**

1. CONTEXT

1. The Proyecto de Compensacion for Cortijo Cabrera Poligono 1 was established in the late 90's and eventually provided a 24 month timescale for completion by **November 30, 2002**.
2. The Urbanisation has not been completed. It is still under Development 30 years later because the Developers have been delinquent in meeting their obligations. Therefore, it operates in legal terms as a Junta de Compensacion.
3. The purchasers of homes (homeowners) have paid the penalty for this because they are obliged to pay IBI to the Town Hall and also are obliged to pay Junta Fees for Maintenance & Conservation because the Delinquent Developers have not completed the urbanisation.
4. For over 30 years (since 1993), the Homeowners have paid all the Maintenance & Conservation fees because the Developers created the "1993 Agreement" which is null and void according to the Court Judgement.
5. In addition to making the Homeowners pay all the Maintenance & Conservation costs, the Developers have forced Homeowners, using their **BLOCK VOTE**, to pay for infrastructure costs for a new upgraded transformer, a new water deposit, Medium Voltage cable ducting and more. They have even passed on the costs of their Bank Guarantee to complete the development (AVAL) to the Homeowners to pay. They have attempted to charge the Homeowners more than €250,000 for two new transformers. The Junta Treasurer –Developer has forced the Homeowners to pay him an "Office Administration fee" each year which currently stands at €15,600 per year after he awarded himself an increase of €3,600 in 2021. All these costs (and much more) have been taken from the Maintenance & Conservation fees paid by the Homeowners. The Homeowners have been **held captive** and exploited by the Developers in this way for over 30 years. The Developers have paid no Maintenance & Conservation fees at all.
6. The Developers have been taking Homeowner Maintenance and Conservation fees to pay for their own legal advice and their efforts to obstruct the Court Sentence.
7. No infrastructure development has taken place in Cabrera since around 2008. There is no published programme to complete the works which were assessed by the Town Hall in 2008 to be only 39% complete.

< SEE ATTACHMENT 1 >

8. No timescale has been provided for completion of the works and there is no evidence of Developer funds to complete the works.
9. Homeowners asked for an independent auditor to assess the finances back to 1993. The JDC Developers refused to appoint an independent auditor and, instead, chose their own representatives.

10. The Author of the report did not consult with the Homeowners in any way. Their views were not taken into consideration.
11. The Author of the report admits that he has followed the instructions of the Developers in the formulation of the financial models (creation of two types of Maintenance and Conservation cost: “Homeowner Maintenance costs” and “Shared Maintenance Costs”, and the apportionment of costs between them).
12. The Author of the report has indicated that he was not given access to critical documents.
13. The author of the report has indicated that he has had to rely on the advice and direction provided to him by the Developers.
14. The Author of the report has, himself, indicated that the report is only ‘provisional’.
15. It is deeply concerning that the author (Salvador Cazorla **Ramirez**) of the Technical Report “INFORME PERICIAL” is thought to be the cousin-brother (primo hermano) of the Developer-President of the Junta de Compensacion, Segundo **Ramirez**. This needs to be confirmed.

If this is the case, there is surely a conflict of interest.
16. The Homeowners have begged the Almeria Court to appoint an Independent Auditor to carry out an expert assessment. There has been no response as yet.

2. MAINTENANCE COSTS ASSESSMENT

There are some fundamental flaws and errors in the report that has been published with regard to the treatment of Maintenance & Conservation costs.

1. The report is clear that Artículo 113 applies to the distribution of the costs of the Urbanisation. This is precisely what the Statutes state. This is correct.
2. The Calculations for Fee distribution between the members should **be based on land ownership** according to the Statutes, not buildability.
3. Junta calculations based on Land-Ownership are also subject to uncertainty. For 30 years, the Town Hall exercised a 29.73% vote based on its ownership of 29.73% of the land. Following the 2021 AGM the Junta Developers unilaterally decreased the Town Hall's land-share (voting rights) to 10%, thereby substantially increasing their BLOCK-VOTING vote share. This change was never discussed with the Homeowners or at any AGM prior to the change.

The Town Hall owns a total of 294 830 m2 of land as detailed below. Poligono 1 consists of a total of 991 529m2 of land. Therefore, for over 30 years, the Town Hall exercised a vote share of 29.73%.

PROYECTO DE COMPENSACION DEL POLIGONO 1 DEL PLAN PARCIAL 'CORTIJO CABRERA'

PM-1	121 a	AYUNTAMIENTO DE TURRE	10934	72.800,00	0,00	8.885,00
EP. PU	121 b	AYUNTAMIENTO DE TURRE	9741 UNO	11.820,00	0,00	200,00
E.L.	121 c	AYUNTAMIENTO DE TURRE	10936	73.905,00	0,00	0,00
E.G.B.	121 d	AYUNTAMIENTO DE TURRE	9741 UNO	15.000,00	0,00	1.600,00
GUARD.	121 e	AYUNTAMIENTO DE TURRE	9741 UNO	3.000,00	0,00	800,00
VIARIO	121 f	AYUNTAMIENTO DE TURRE	VIARIO	118.305,00	0,00	0,00

Should the 29.73% number that has been used for 30 years be applied? Or, should the new number of 10% that was provided by the Developers after the 2021 AGM be applied?

4. The calculations based on land ownership have used a total of 773,800m2 whereas Cabrera Poligono 1 is a total of 991,529m2 in size. The Developers have removed 217,729m2 from the calculation by classing it as "suelo no imputable (viales, zonas verdes....)". The legality of this modification is highly questionable.
5. The author has based his calculations on selected budgets and accounts for the past 5 years. This takes no account of the fact that the Developers were responsible for a much higher percentage of the costs in the early years and this reduced over time as more houses were purchased.
6. Furthermore, the report does not take into consideration the infrastructure costs that were **illegally** passed onto Homeowners (transformer upgrade, new water deposit, HV cable ducts, etc, etc). This is illegal under the Statutes and even contrary to the null and void "1993 Agreement" which the Developers said they were working to.
7. 'Buildability' is not even mentioned in the Statutes so the calculations provided in the report do not conform with the Statutes or Artículo 113. The use of 'buildability' for the fee calculations

has been adopted by the Developers and will result in more costs being passed on to Homeowners.

8. The true position regarding buildability is not clear and transparent to all Junta Members in Cabrera for the following reasons:

At the AGM in 2008, the Developers engineered the following:

AGENDA ITEM 5 (EXTRACT)

Approval of the modification to the Plan Parcial of the 5 May 2008.

The Junta explained that this is to allow the transfer of allowable buildability between building plots. The transfer will be from those plots where building is impossible or undesirable. It does not increase the total square meters of build stipulated for Plan Parcial polígono 1. Previously this type of modification did not require the general assembly's approval, however new regulations State that the Assembly must approve this before it can go ahead. Transfer of buildability from one plot to another can only be passed if it does not conflict with the interests of the owners.

AGENDA ITEM 6 (EXTRACT)

Delegate the Junta de Delegados to approve any future modifications to the urbanisation without prejudice to the General Assembly. Approval of this item on the agenda will negate the need for the Town Hall to send notifications out to all the proprietors or to the General Assembly each time there has been a modification to the Plan Parcial as outlined in the Agenda item number 5 above.

Therefore, the Developers have engineered conditions whereby they can transfer buildability and modify the Plan Parcial without notifying the General Assembly. Homeowners can therefore have no confidence in the buildability figures provided by the Developers. Buildability transfers may not have been recorded in official Bolletin notifications.

We therefore reject the use of "Buildability" for any calculations. Maintenance and Conservation fees are due whether or not a house has been built on a plot.

9. The Developers have created two types of Maintenance & Conservation Costs. This invention is, again, **a vehicle to pass substantial costs onto the homeowners. ALL** the costs in the so-called need to be distributed amongst **ALL** Junta Members (Developers and Homeowners) according to land ownership in accordance with the Statutes. This must continue for as long as the urbanisation is in Development.

It is very important to understand that, by creating this new (77% | 23%) formula, the Developers have completely exonerated themselves from participation in 77% of the Maintenance & Conservation fees since 1993.

The concept of separating Maintenance & Conservation costs into two types of cost ("Homeowner Maintenance costs" and "Shared Maintenance Costs") is deeply flawed. **ALL** the costs relate to the maintenance and conservation of shared infrastructure (road infrastructure, water infrastructure, electrical infrastructure, common areas).

The Developers, through their negligence, cannot be permitted to hand over the vast majority the maintenance & conservation costs to the Homeowners while they continue to use the roads, water and electrical infrastructure to develop, build and sell houses. Furthermore, it would be grossly unfair in that it would provide a free warranty on all the developers work – paid for by the Homeowners until handover to the Town Hall. It must be born in mind that the condition of

the water infrastructure is very poor – some houses are even fed by water pipes running over the ground. Some houses have their supply cables hanging from trees using cargo straps and some cables are visible on the ground.

The Author argues, on behalf of the Developers, that the Junta de Compensation is operating as an “Entidad de Conservación”. This is not the case - **We are not an Entidad de Conservación..** This is an Urbanisation that is incomplete and still in Development because the Developers have been delinquent. The Developers have brought these circumstances upon themselves, with the largest Developer (Junta Treasurer) boasting as follows (17/12/20): “I can say that I am one of three partners in the Development Huerta Nueva, Los Gallardos, where in the past 20 years we have built over 450 houses”.

It seems that the largest Developer had the means to complete the Cabrera Urbanisation, but chose to invest elsewhere while abandoning and neglecting Cabrera.

The Developers managed to shirk their obligation to pay Maintenance and Conservation fees for over 30 years by fabricating the illegal “1993 Agreement”. Now the Developers wish to create a second version of the 1993 Agreement which will enable them to avoid 77% of the Maintenance and Conservation costs.

We reject the concept of separating Maintenance & Conservation costs into two types of cost (“Homeowner Maintenance costs” and “Shared Maintenance Costs”). It is not in keeping with the Statutes.

It is very important to understand that, by creating this new (77% | 23%) formula, the Developers have completely exonerated themselves from participation in 77% of the Maintenance & Conservation fees since 1993.

Article 33 of the Statutes states how the Maintenance & Conservation costs are apportioned:

The distribution of contributions among the members will be made in proportion to the right or financial interest of each member, determined by the participation quotas which each holds as decided according to the rules of conduct.

10. As the Developers have not followed the Statutes when calculating the fee obligations in the Technical Report, this will obviously have many consequences.

Some of the more recent purchasers of properties are finding that unpaid Maintenance & Conservation fees running into €10k to €20k are being passed onto them, dating back to 1993. So, the Developers illegally avoided paying the M&C fees between 1993 to date and the ‘new formula’ that they have invented simply passes 77% of the historical unpaid fees, which the Developers should have paid, onto Homeowners who have purchased in more recent years.

So, the biggest bills for the maladministration and avoidance of fees by the Developers seem to be allocated to the newest Home purchasers in Cabrera. These bills should have been paid by the Developers. This is a travesty which underlines the inherent and deep-seated flaws in the Technical Report put forward by the Developers and their Advisors. **The proposals are against the Law, potentially fraudulent in nature and unworkable.**

3. INFRASTRUCTURE COSTS ASSESSMENT

1. **We reject the concept that alleged historical infrastructure costs can be re- charged to Homeowners.**
2. The President of the Junta de Compensacion sought clarity from the Town Hall as to who was responsible for the Urbanisation Costs. The Town hall reply clearly stated that the Compensacion Project identified the Owners that are obliged to pay for the works of Urbanisation ie. The Promoter-Developers :

< SEE ATTACHMENT 2 >

The obligation of the Promoter-Developers to pay for the infrastructure is clearly set out in the Proyecto de Compensacion, and strengthened by the listing of those existing Homeowners who were exonerated from any future costs of urbanisation.

Rule 10 of the Statutes states:

The total costs of urbanisation and of evaluation and indemnities will be met by the Compensation Plan worked out in the course of the present Rules, and in the application of the criteria established in them, by means of the setting of individualised and concrete quotas which each member is required to pay.

3. Homeowners acknowledge that they are required to make contributions towards the infrastructure in accordance with the Statutes. The Statutes state that fixed 'concrete contributions' must be made. These contributions are calculated according to land area and against the approved Urbanisation Budget. The contributions are collected by the Developers from new Homeowners in the purchase price of their homes. If this is not the case, then any liability for future infrastructure costs need to be made explicit in the Escritura of each purchaser according to the Statutes.

Homeowners have therefore made their required infrastructure contributions when they purchase a house from a Promoter-Developer.

It is inconceivable that Homeowners should be forced to pay for infrastructure for a second time. It is surely illegal to sell a house to a buyer without providing the required infrastructure.

4. Many homeowners have contract documents detailing the fact that the infrastructure is included. In fact, a Developer-Promoter Brochure states that the infrastructure is included in the purchase:

< SEE ATTACHMENT 3, Page 4 >

5. The Auditors have identified that the Promoter- Developers have not kept records of Developer investment in infrastructure. They have been negligent in this regard, and have not fulfilled their duties as President and Treasurer of the Junta de Compensacion as set out in the Statutes. This is such a serious dereliction of duty that the Town Hall should really remove them (The Treasurer and President) from the Junta Board with immediate effect.

6. In the absence of any financial records, the Author has provided an estimate of the cost of the infrastructure that has been provided in Cabrera using 2023 prices. This is likely to be flawed even if this assessment is not required because (but not limited to):
- It is dependent in many respects upon the word of the Developers , one of whom admitted to falsifying social services records in 2016, according to the Mayor of Turre.
 - The Author of the 'Expert Report' is understood to be a cousin of the Junta President (TBC)
 - Some infrastructure was provided prior to the formation of the JDC
 - There is a dispute over one of the transformers listed. It is located in P1 but may only supply P2. It was not paid for by the Junta President or Treasurer.
 - Many infrastructure costs were passed onto the Homeowners and taken from their maintenance and conservation fees.
 - A 21% IVA rate has been applied. When these works were carried out, the standard IVA rate was probably between 16-18%, not 21%. However, much of these works may have carried a reduced IVA rate which is currently set at 10%. So the infrastructure costs may be highly inflated.

Nevertheless, we believe that the Developers have no legitimate claim against existing Homeowners for any of these historical costs so the calculation should be irrelevant.

Homeowners reject the notion that they should be required to pay infrastructure costs ('concrete quotas') for a second time.

In theory, all the Cabrera infrastructure should have been completed by November 30, 2002. The Developers would have owned the vast majority of the land at that time and would have been expected to pay the urbanisation costs, collecting only the concrete quotas from the sales of the first home-buyers.

There would have been a quite reasonable expectation that the Developers would fund the Cabrera infrastructure as the Home Purchasers \ new Owners would not have existed immediately.

4. DEVELOPER CLAIMS THAT EXISTING HOMEOWNERS MUST FUND THE COMPLETION OF THE URBANISATION

The President himself asked the Town Hall who is responsible for paying for the infrastructure in Cabrera. The Town Hall Architect replied in a letter to the President on 22 June 2021 as follows:

El proyecto de Compensacion establecio los propietarios obligados a costear las obras de urbanizacion y que son según consta en el Proyecto de Operaciones Juridicas Complementarias al Proyecto de Compensacion del Poligono 1 los siguientes:

Sierra Leysure S.L.	44,87 %
Active Retirement Villages LTD	35,05 %
Fortview Properties LTD	1,17 %
Promociones Vera Mojacar y Garrucha.	2,52 %
Promociones Mataix S.A.	4,30 %
Promociones Mataix S.A (Banco Andalucia)	3,55 %
Segundo Ramirez Perez	8,55 %

The Town Hall has made it quite clear that the entities that are responsible for the urbanisation costs are the Promoter-Developers which are listed in the Proyecto de Compensacion.

Why do the Treasurer and President persist in trying to claim these historical costs from the Homeowners? This appears to be a deliberate act of misrepresentation which could be viewed as deeply fraudulent.

It is inconceivable that existing Homeowners would be expected to contribute towards the infrastructure costs of the plots which have not been sold, so that the Developers can sell off urbanised plots and retain all the profits of the sale.

Where, in the world, can Developers appropriate Homeowner financial contributions to enhance and urbanise the Developer-owned plots without any return on investment? Where, in the world, would Homeowners be coerced into providing free money to enrich Promoter-Developers?

The Developer-Promoters must complete the Urbanisation at their own expense because this is what they committed to do in the Urbanisation Project. In theory, they should recover all their costs by the sale of Urbanised Plots and Homes with each home or urbanised plot purchaser contributing their fair 'concrete quota' to the Urbanisation Plan budget in the purchase price.

At present, there is no updated Urbanisation Plan. There is no programme of works to complete the Urbanisation. There is no approved budget or set timescale to complete the works.

Developer Demands:

Instead, the Developers make 'single sentence' demands for payments towards infrastructure costs. For example, they have demanded €250,000 to purchase two transformers. They approve this demand themselves, using their block vote at the AGM.

The 'Expert Report' itself states that the costs for two transformers should be approximately as follows:

7.4 CENTRO TRANSFORMACION 7	45.881,16 €
7.5 CENTRO TRANSFORMACION 1	40.354,70 €

Yet, these Developers demand €250,000 from the Homeowners for transformer infrastructure which they should have provided by 2002. They refuse to clarify the scope of supply. They refuse to confirm their Developer Contributions. They award contracts to themselves.

They are treating the Homeowners as 'free money' machines.

5. FUTURE DEVELOPMENT

IF the Promoter-Developers **CANNOT** provide:

- a) A fully costed scope of work to complete the Urbanisation according to the Urbanisation Plan
- b) A programme to complete the works in a reasonable timescale (say 24 months)
- c) A Demonstration of sufficient financial resources to complete the works

THEN, here is a proposal:

- a) There is no reason for the existence of the Junta de Compensacion as its primary function is to OVERSEE the urbanisation works.
- b) The Junta de Compensacion should be dissolved by legal decree as provided for in the Statutes as there is no realistic prospect that the Delinquent Developers will complete the Urbanisation Works.
- c) The Cabrera development should be frozen as it stands with all further new residential development planning permissions removed.
- d) The existing Homeowners should be enabled to work with the Town Hall to bring the 'frozen' urbanisation up to a level where it could be handed over to the Town Hall.

Article 39 of the Statutes provides for this: Dissolution

The Junta will be forcibly dissolved, with no need for municipal approval, when it may be so laid down by judicial mandate or legal prescription.

6. THE CURRENT SITUATION

- a) The quotas of participation are not clear because the Developers changed the voting percentage of the Town Hall from 29.73% to 10%. This, possibly illegal change, has significant consequences.
- b) By re-distributing the 19.73% removed from Town Hall, the Developers have increased their vote share considerably. This means that they think that they can modify the Statutes in their favour by using their BLOCK VOTE. The Developers are incorrect.
- c) The 'buildability' figures are not clear because the Developers have awarded themselves the ability to do any buildability transfers that they wish. (2008 AGM Minutes)
- d) The land ownership position is not necessarily clear because the Developers have previously mentioned that some of the land is 'unaccounted for'. The records are hidden from the Homeowners.
- e) The Developers have not kept financial records of the amounts spent on infrastructure.

Article 33 - Accountancy

The Junta will keep accounts of the financial management in adequate books, so that at any moment it may give information about the operations carried out and derive therefrom the accounts to be submitted. It is obligatory that the accountancy should consist of books showing, at least, income, expenditure and cash, which will be in charge of the Treasurer.

- f) There is no programme of work to complete the infrastructure. There is no budget. There are no agreed 'individualised and concrete quotas' for the appropriate members to pay.

The 'appropriate members' are the owners of those plots that have not already paid their 'individualised and concrete quotas' to the Developers and stand to benefit from the planned Urbanisation works.

Instead, drip fed ad-hoc demands are made for all existing homeowners to pay for whatever the Developers decide.

Rule 10 – Financing the Urbanisation

The total costs of urbanisation and of evaluation and indemnities will be met by the Compensation Plan worked out in the course of the present Rules, and in the application of the criteria established in them, by means of the setting of individualised and concrete quotas which each member is required to pay.

- g) The Developers, together with the Town Hall, divided the Urbanisation into 19 "Development Zones" with the flawed notion of granting First Occupation Licences" on the basis of "parcial urbanisation".

This was a flawed approach because each Zone would have to be fully self-sufficient to operate on the basis of 'parcial urbanisation'. This is not possible in Cabrera as there are insufficient

services (transformers, roads, sewage works, water supplies) for the Zones to be able to be classed as self-sufficient.

Nevertheless, the Town Hall has provided First Occupation Licences to select Homeowners (including Junta President Segundo Ramirez) in only 2 Zones that have been deemed to be “complete”. This has been the subject of investigation by the Vera Court since 2016 but there have been no further developments.

Attachment 1 shows only 2 Zones which have been deemed to be complete by the Town hall.

- h) Almost 2 years after the Court Order, a deficient and unacceptable report was produced by the Junta de Compensacion. The Junta President refused to circulate it electronically saying that it was ‘too big’. The Junta de Compensacion did not post the report to the Junta members.

Instead, each Junta member that wished to obtain the report, had to arrange an appointment at the Junta Office to personally visit and make a photocopy.

- i) For the past two years, the Homeowners have been presented with requests for Donations instead of official fee invoices created according to the Statutes. There have been multiple re-calculations of proforma invoices to avoid full compliance with the Statutes and the Court Order. Incorrect calculations have been put forward by the Junta Developers in an effort to avoid their financial obligations. The Developers have even gone so far as to say that the Homeowners must create a separate “Services Company”.

The Developers have simply done whatever they want in an effort to avoid their obligations while playing ‘lip-service’ to the Court Order and quoting extracts of the law to suggest that they are complying with the Court Order.

The Developers are not complying with the Court Order.

The Developers are exercising **coercive control by threatening the existing Homeowners** with historical infrastructure costs, and future infrastructure costs.

They are **trying to intimidate** the Homeowners with the EGM agenda item:

“Approval of the start of the enforcement process for the collection of debts from delinquent owners”

This, when the only “delinquent owners” in Cabrera are the Developers themselves.

They implement this by inventing new fee calculation methods and illegally using their **BLOCK VOTE** to approve any decisions that they wish to make.