Valencia, March 2021

GUIDELINES FOR TERRITORIAL IMPACT MINIMISATION:

REGULARISATION OF DWELLINGS BUILT ON GREEN BELT LANDE

GENERALITAT VALENCIANA
Conselleria de Política Territorial, Obres Públiques i Mobilitat

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The Director General of Urban Planning
Vicente J. García Nebot

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1.

FOREWORD

FOREWORD

Law 5/2014, of 25 July, on Spatial Planning, Urban Planning and Landscape, of the Valencian Community and subsequently elaborated in Law 1/2019, of 5 February, regulates in a novel way the procedure designed to minimise the environmental impact generated by dwellings built in an unregulated manner on Green Belt land.

The number of cases generated is immense and it has therefore been deemed necessary to provide help to interpret the law, so that the procedures can be put into operation.

These GUIDELINES FOR IMPACT MINIMISATION are intended to provide criteria that will guide and help administrations, affected property owners and professionals to adopt practical solutions that will drastically reduce the impact of these dwellings on our territory.

The 2019 Law on Spatial Planning, Urban Planning and Landscape (LOTUP) offers local councils and property owners an instrument that, in exchange for encouraging them to regularise their properties, will require them to stop illegal dumping into the subsoil via absorbent cesspits that pollute our aquifers, to integrate their properties into the rural landscape or to adopt measures to mitigate the dangers posed by the challenge of climate change, such as floods or fires.

However, the regularisation of these dwellings will undoubtedly also generate employment for professionals and small and medium-sized companies in the construction industry that will be needed to carry out the minimisation work.

The LOTUP also aims, through its 15th Transitory Provision, to regularise those industrial and productive activities that are irregularly located on Green Belt land. The use of an extraordinary Declaration of Community Interest is their final opportunity to obtain permits to regularise their situation: if they miss this train, there will not be another one.

This Regional Ministry urges all local councils and affected property owners to begin such regularisation processes by initiating the minimisation procedures, both on an individual and collective basis. This is a unique opportunity.

The Councillor for Territorial Policy, Public Works and Mobility
Arcadi España García

2.

PRELIMINARY CONSIDERATIONS

2.PRELIMINARY CONSIDERATIONS

This chapter defines the purpose of the Guidelines, delimiting their scope of application, frames the need for them on the basis of their regulatory background, and makes an initial assessment of the scope of the problems identified across the entire Valencian territory, in order to obtain a global overview of the areas where the Guidelines for Minimising Territorial Impacts on Green Belt land (SNU) could a priori be applicable in the Autonomous Community of Valencia.

Furthermore, in the last section of this chapter, a glossary has been drawn up to specify certain concepts in order to clarify and complement the terms used in the LOTUP, which will be subject to regulatory compilation.

2.1. PURPOSE

The purpose of the guide is to provide guidance on the processing of exceptional procedures, as provided for in articles 210 to 212 of Law 5/2014, of 25 July, on Spatial Planning, Urban Planning and Landscape (LOTUP), modified by Law 1/2019, of 5 February, for the processing of proceedings for the regularisation and minimisation of the territorial impact of dwellings irregularly erected on Green Belt land, outside planning and legal channels.

What is meant by territorial impactminimisation?

The reduction of the impacts on the rural environment caused by residential dwellings on Green Belt land, to which measures to restore urban planning legality cannot be applied due to statute of limitations criteria.

2.2. REGULATORY BACKGROUND

How to tackle the various environmental and urban planning problems posed by dwellings on Green Belt land, in particular, the provision of water supply and wastewater treatment services, given the environmental impact they generate, is one of the greatest urban planning challenges we face here in Valencia, given that we are talking about land that has been built on without the prior deployment of minimum services and without the necessary administrative authorisation to do so [1].

To address the regulation of unauthorised constructions on SNU and the magnitude of the problem, we must refer to the previous regulatory framework. Since **Law 4/1992, of June 5, 1992, of the Generalitat Valenciana, on Green Belt land** (LSNU´92), came into force, there have been several attempts to regulate, from the urban planning framework, the treatment of unauthorised buildings on which it is no longer possible to adopt measures to re-establish the legal order that has been breached and the exercise of the power to protect urban legality, given that the legally established deadlines have been exceeded.

This regulation provided two exceptional mechanisms to address the problem of buildings and housing developments on SNU, the reclassification of land in the urban area and the regularisation of housing developments, which in practice were rarely applied. The regulation warned about the proliferation of isolated family dwellings which took advantage of their classification as a complementary use linked to agricultural activities and which did not lead to the formation of population centres. However, the construction of dwellings on all medium-sized agricultural land was widespread, given that, historically, property in the Autonomous Community of Valencia is highly fragmented, not so much for agricultural producers but for second home users and even for tourist demand.

In short, extended use was made of this legal channel, leading to the development of quasi-urban residential uses, devoid of planning and lacking

minimum infrastructures. This has had negative environmental and territorial effects and has even had an indirect effect in that it has discouraged residential developments subject to regulated urban planning.

Subsequently, **Law 10/2004, of December 9, 2004, of the Generalitat, on Green Belt land (LSNU'04)**, focused on the problem of existing clusters of dwellings on Green Belt land, consolidated outside urban planning legality, albeit from a different perspective, that of guaranteeing their minimum territorial impact in a broad sense, without prejudice to the fact that planning could also establish an urban development regularisation in accordance with current legislation.

The LSNU'04 made the Local Councils responsible for processing the files for the identification of such clusters of dwellings, with the approval of the regional government, which were consolidated prior to the entry into force of this law, in order to minimise their territorial impact. The reality was that the local councils' lack of means and the cost to be borne by the property owners made this regulatory provision practically unenforceable.

Finally, **Law 16/2005, of 30 December, of the Generalitat, Valencian Urban Planning (LUV)** established a dissuasive regime for semi-consolidated areas that provided for the possibility of reclassifying as SNU those buildings that did not have urban land services and minimising their impact by means of a Special Plan.

This new attempt to regularise the urban planning situation of buildings on SNU did not work at all well, as the difficult task of imposing drastic measures on the neighbours of the municipality fell on the local councils.

Why is it necessary to minimise territorial impact?

In spite of the lengthy regulations in the Valencian Community in this area, the problems associated with irregular buildings have continued to increase, largely due to the fact that the previous legal regime proved to be unenforceable, which generated a scenario of permissiveness and legal laxity.

The lack of regulatory enforcement and administrative intervention have perpetuated the problem of irregular dwellings on Green Belt land with deficient services. The existence of serious sanitary risks caused by uncontrolled dumping due to the lack of sanitation, the impact on land with any type of environmental protection, and construction in critical areas, especially those where there is a risk of flooding or forest fires, justify priority action on the part of the public administrations.

2.3. SCOPE OF THE PROBLEM

Most of the dwellings that have been erected on Green Belt land pose various environmental and urban planning problems, particularly serious in the case of the lack of drinking water, sewerage and, above all, wastewater treatment services, given the environmental impact they generate and the fact that the land has been built on without prior installation of the minimum services and without administrative authorisation in many cases, in clear breach of the urban planning obligations incumbent on the owners of the plots of land. The existence of these dwellings has an impact on the environment: the evident deterioration of the landscape that they generate, the dumping of wastewater into the subsoil without control or treatment, affecting underground aquifers, the elimination of plant species of greater or lesser value, the fragmentation of habitats... Furthermore, not only are the impacts environmental, they are also economic, above all in relation to the cost of the services mentioned above for the public administration[2] .

This problem constitutes an environmental and urban planning anomaly, derived from buildings that have been erected outside of planning

[1] ALMENAR-MUÑOZ, M. (2016), La reiterada infracción de la directiva de aguas residuales urbanas (The Repeated Infringement of the Urban Wastewater Directive). Actualidad Jurídica Ambiental. no. 63, available on line: http://www.actualidadjuridicaambiental.com/comentario-el-reciente-avance-en-la-proteccion-de-las-zonas-humedas-en-la-comunidad-valenciana/

[2] Gielen, E. (2017). Costes del 'Urban Sprawl' para la Administración local: El caso valenciano (The Cost of Urban Sprawl for Local Administrations. The Case of Valencia). Volume 19 of DESARROLLO TERRITORIAL. Serie Estudios y Documentos. University of Valencia, 2017.

regulations, to which successive urban planning laws have endeavoured but failed to provide a solution. Dwellings on Green Belt land is not a recent phenomenon; on the contrary, a large number of them were already consolidated several decades ago. Now, with renewed energy, Law 1/2019, of 5 February, of the Generalitat, amending Law 5/2014, of 25 July, on Spatial Planning, Urban Planning and Landscape of the Autonomous Community of Valencia, seeks to provide a decisive solution that allows such dwellings to be regularised in terms of urban planning, which is carried out within the framework of the powers attributed to the Generalitat in matters of urban planning and the protection of the environment.

It is difficult to quantify the exact number of existing buildings, precisely because many of them have been erected outside the law. Nevertheless, according to data from the Generalitat itself provided in the presentation of the modification of the LOTUP, it is estimated that in our territory there may be some 350,000 dwellings built on non-urbanised urban or urbanisable land and on Green Belt land without the basic urban planning services or without the necessary authorisations.

The magnitude of the problem on Green Belt land can be roughly estimated using information on land use available from the Valencian Cartographic Institute.

The volume of the surface area on which dwellings have been built on Green Belt land has been obtained from the Spanish Land Occupancy Information System (SIOSE) and the Urban Planning database, both of which belong to the Valencian Cartographic Institute. The 2015 SIOSE has been used, which fits quite well to the buildings subject to minimisation insofar as it makes it possible to locate residential usage and buildings finished before August 20, 2014, in accordance with point 3 of art. 210 LOTUP 2019.

Data source:

- Spanish Land Occupancy Information System for the Autonomous Community of Valencia. SIOSE 2015[3].
- Urban Planning in the Valencian Community. Planning in force in the Autonomous Community of Valencia, based on planning approved by the Territorial Urban Planning Commissions. The scales range from 1:5,000 to 1:25,000. Revision date: 26/03/2018[4].

The calculation of the built-up area with dwellings on Green Belt land follows the following methodological procedure (Figure 1):

1. *Selection of Green Belt land, both Common and Protected in Urban Planning.*
2. *Selection in the SIOSE of the Building ('simple artificial cover 101' on land with composite coverings: 600 - Not predefined; 811 - Town centre; 812 - Urban Expansion; 813 - Urban Discontinuous. As defined in the SIOSE interpretation manual, Building is defined as fixed constructions, made of resistant materials, intended to house people, animals, vehicles, machinery, materials, etc., for any purpose (residential, commercial, industrial, etc.).*

   Within 'simple artificial cover 101' there are several types of buildings. Of the buildings intended to house people, only the following have been selected:

   - *Attribute 23: "Semi-detached, single-family dwelling": Buildings intended to house people for use as a single family dwelling, bounded by party walls separating it from adjacent dwellings.*
   - *Attribute 24: "Detached, single-family dwelling": Detached buildings intended to house people for use as a single family dwelling.*

   Other types of buildings used to house animals, vehicles, machinery, materials, etc. for industrial or commercial use have been removed from the query.
3. *Intersection of built-up residential land with Green Belt land.*

3 http://www.icv.gva.es/auto/aplicaciones/icv_geocat/#/search?uuid=spaicvSIOSE2005CV_2015
4 http://www.icv.gva.es/auto/aplicaciones/icv_geocat/#/search?uuid=spaicvPlanemientoUrbanistico2016

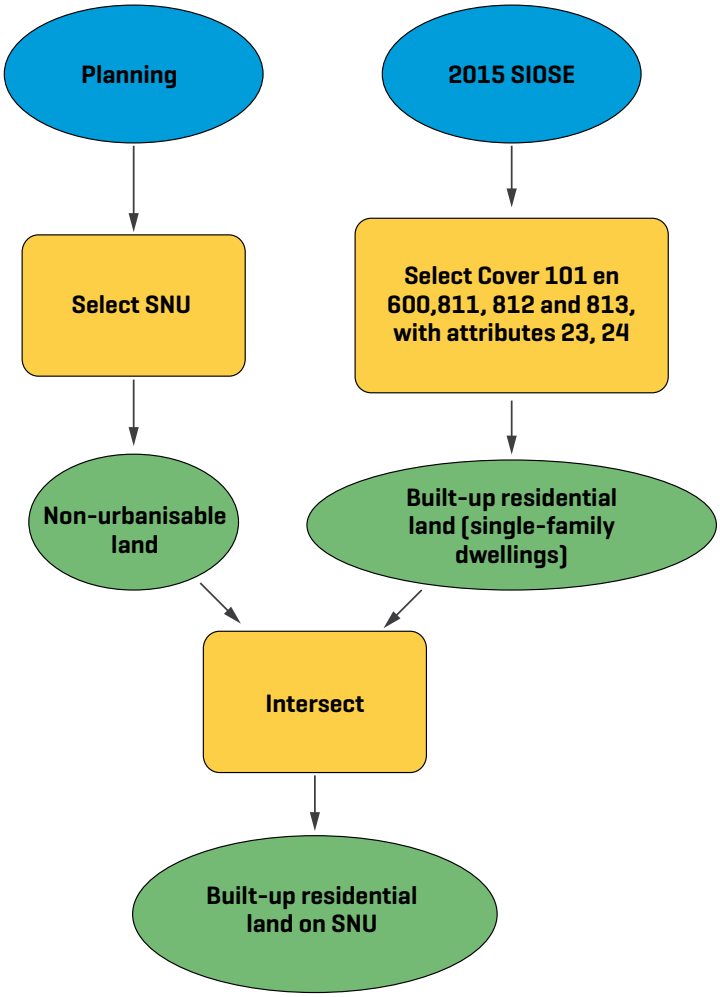


Figure 1. GIS Process
Source: Authors' own work

As a result of the above methodological process, the built-up area with dwellings on Green Belt land amounts to 6,141 hectares (15,175 acres), distributed differently among the three provinces (Table 1): 51% of the surface area is concentrated in Alicante, 35% in Valencia and 14% in Castellón.

Table 1. Built-up area with dwellings on Green Belt land

	Area (Hectares/Acres)
Province of Castellón	*859 / 2,123*
Province of Alicante	*3.134 / 7744*
Province of Valencia	*2.149 / 2,123*
Valencian Community	**6.141 / 2,123**

Assuming a land area of 200 m^2 per single-family dwelling, which seems reasonable considering that the SIOSE tends to overestimate built-up land, especially in the case of small areas or percentage of occupation, this means approximately 307,000 dwellings built on Green Belt land. In any case, this number would be higher than the actual number of buildings susceptible to minimisation since it would include dwellings erected prior to 1975 to which the minimisation of their territorial impact does not apply (provided that they comply with the provisions of LOTUP Final Provision 2).

Differentiating this area according to the type of Green Belt land, 70% of this area corresponds to common Green Belt land, while 30% belongs to protected Green Belt land. Within this protected Green Belt land (Table 2), most of it corresponds to municipal protected rural areas (1,203 hectares / 2,973 acres, i.e. 19.6% of the total built-up area with dwellings on Green Belt land). Finally, 81.4 hectares / 201 acres are located in rural areas protected by Natural Spaces or Territorial Action Plans (PATs), which represents 1.3% of the total.

Table 2. Built-up area with dwellings on protected Green Belt land open

Type of protection of Green Belt land	Hectares/Acres	Percentage
Protected rural area - agricultural	*0.3 / 0.7*	*0.0%*
Protected rural area - roads	*215.0 / 531*	*3.5%*
Protected rural area - watercourses	*170.4 / 421*	*2.8%*
Protected rural area - coasts	*15.8 / 39*	*0.3%*
Protected rural area - livestock domain	*0.5 / 1.2*	*0.0%*
Protected rural area - railways	*0.1 / 2.5*	*0.0%*
Protected rural area environmental legislation (Natural Spaces, PATs)	*81.4 / 201*	*1.3%*
Municipal protected rural area (forestry, landscaping, environmental)	*1,203.4 / 201*	*19.6%*
Protected rural area - miscellaneous (power lines, gas pipelines, etc.)	*109.1 / 201*	*1.8%*
Protected rural area - hazards	*2.2 / 201*	*0.0%*
Protected rural area - miscellaneous	*0.1 / 201*	*0.0%*

Its spatial distribution throughout the Valencian Community is shown in Figure 2. As already mentioned, the provinces of Valencia and Alicante account for the largest surface area. It can also be seen that most of the areas susceptible to impact minimisation are located in municipalities on the coast and in the intermediate strip.

Where are the biggest problems located?

By obtaining the total area per municipality of built-up residential land on Green Belt land, we can locate the main problems at the municipal level (Figure 3). The municipalities that have more dwellings with more than 100 hectares / 247 acres of surface area susceptible to impact minimisation are Elx / Elche, Alacant/ Alicante, Crevillent, Onda, Alzira and Llíria.

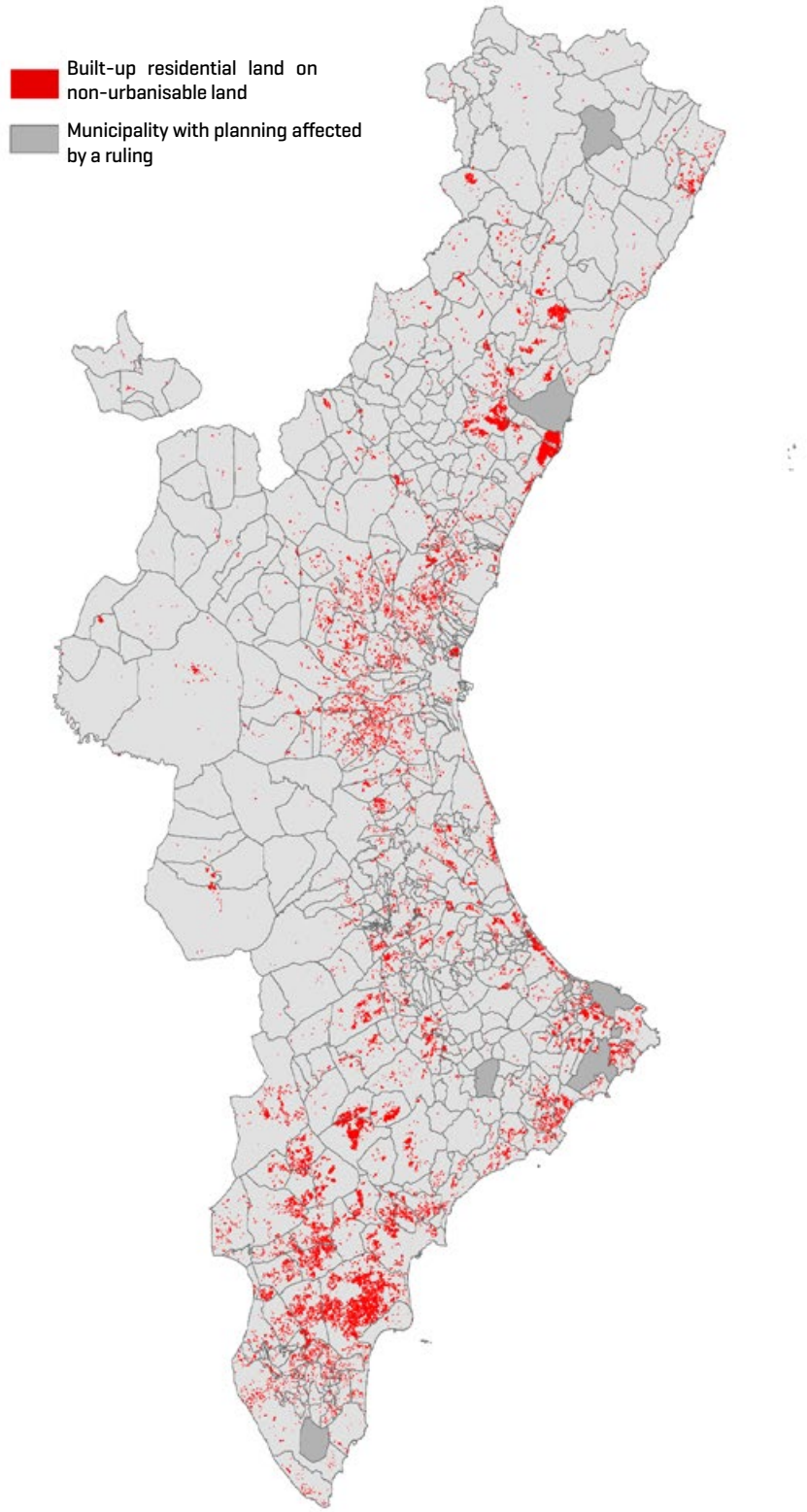


Figure 2. Built-up land with dwellings on Green Belt land
Source: Authors' own work based on the planning of the Valencian Cartographic Institute (ICV).

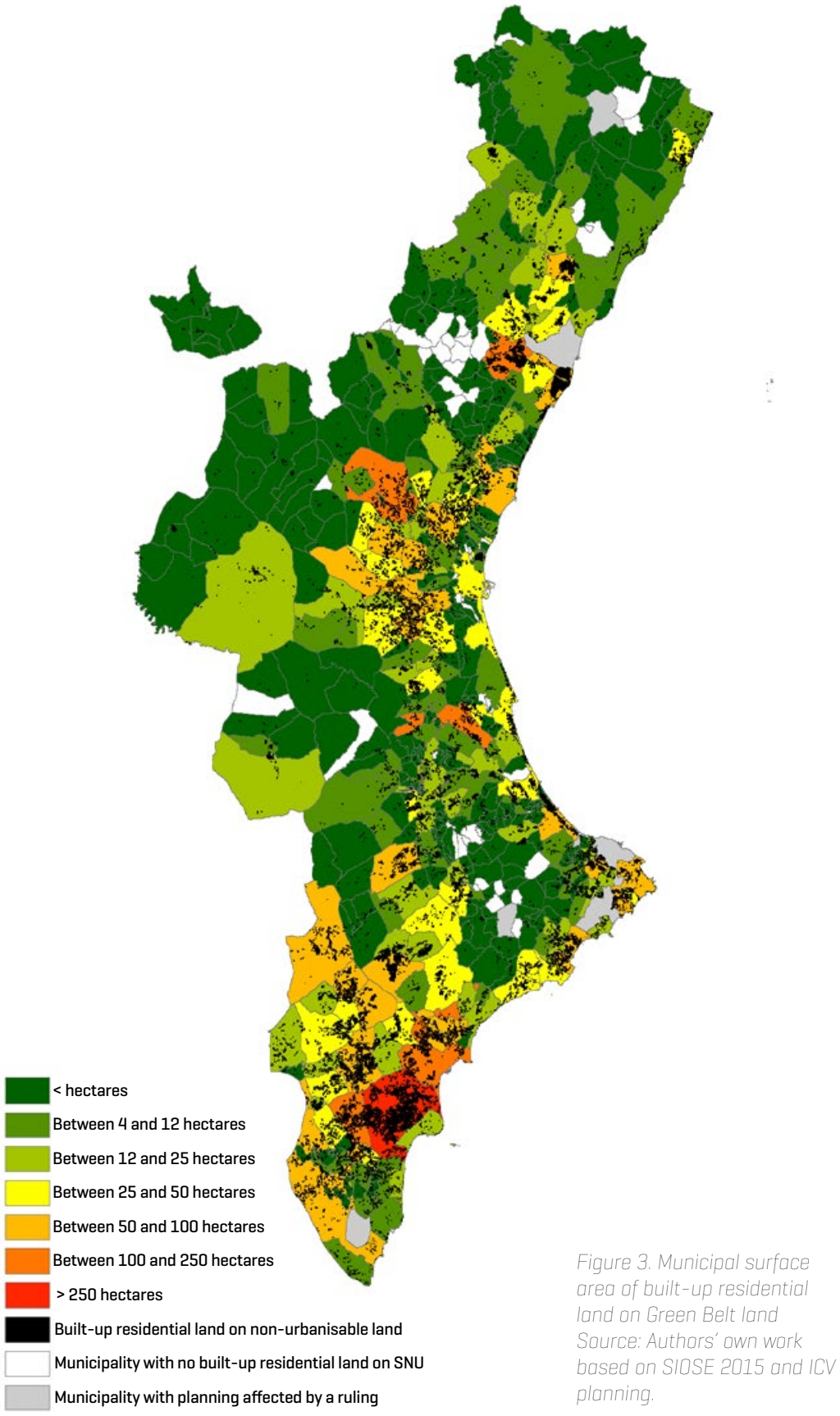


Figure 3. Municipal surface area of built-up residential land on Green Belt land Source: Authors' own work based on SIOSE 2015 and ICV planning.

2.4. GLOSSARY OF TERMS

Rural characteristics

A plot of land can be considered to have rural characteristics if it meets the following requirements:

- It has not been subdivided for urban development purposes.
- It has an area and shape similar to those of its rural surroundings within its municipal area (Figure 4 and Figure 5).
- Should any plot of land have an administrative authorisation for the segregation or division of a plot of land and the rural morphology has not been altered, it can be considered that the rural structure has been maintained.
- It does not have the urban planning characteristics required for legal status as a building plot (paved road access specific to the development, drinking water and electricity supply, sewage network, pedestrian access with pavements and street lighting, as per LOTUP art. 177).

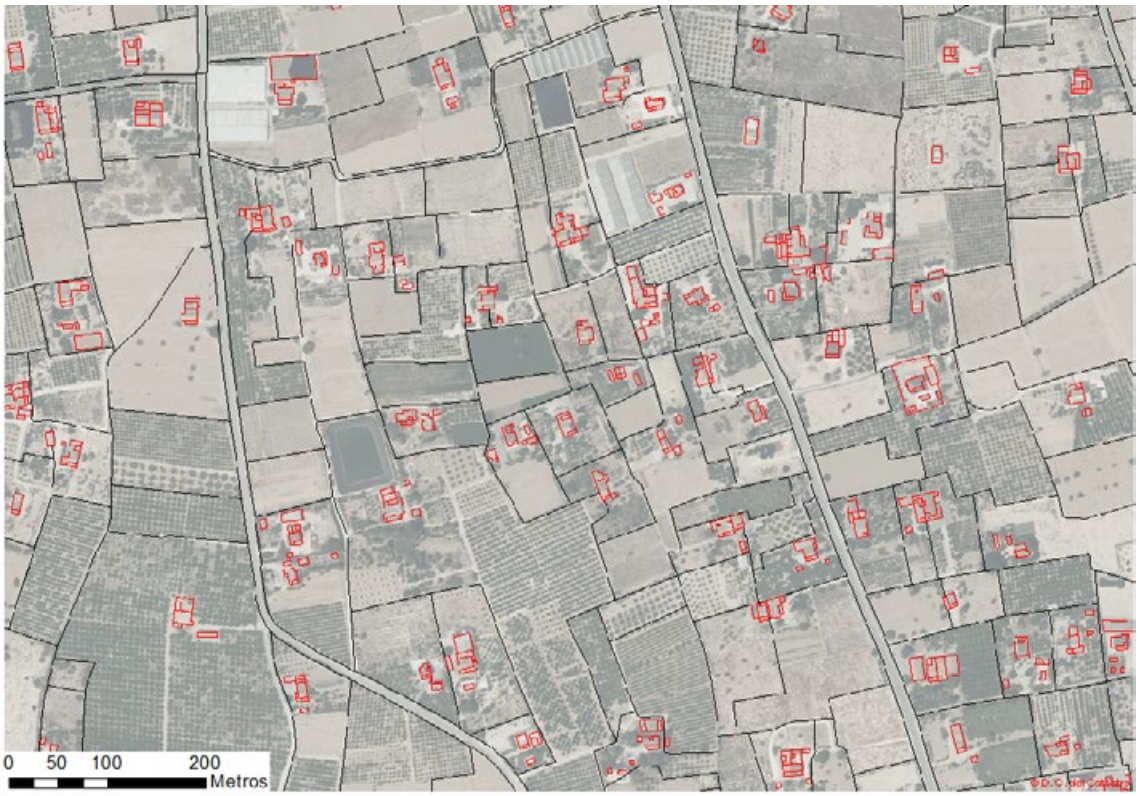


Figura 4. Parcelas con características rurales
Fuente: Elaboración propia a partir de Catastro y Ortofoto 2018 del Instituto Cartográfico Valenciano (ICV)

Figure 5. Plots of land with characteristics similar to urban land
Source: Authors' own work based on the 2018 Cadastre and Orthophoto of the ICV

Clusters of dwellings

A cluster formed by at least 10 dwellings that are a maximum of 100 metres apart, two by two, measured by the network of roads and paths from which access to all of them is shared.

Some examples of clusters of dwellings follow below (Figure 6, Figure 7, Figure 8 and Figure 9):

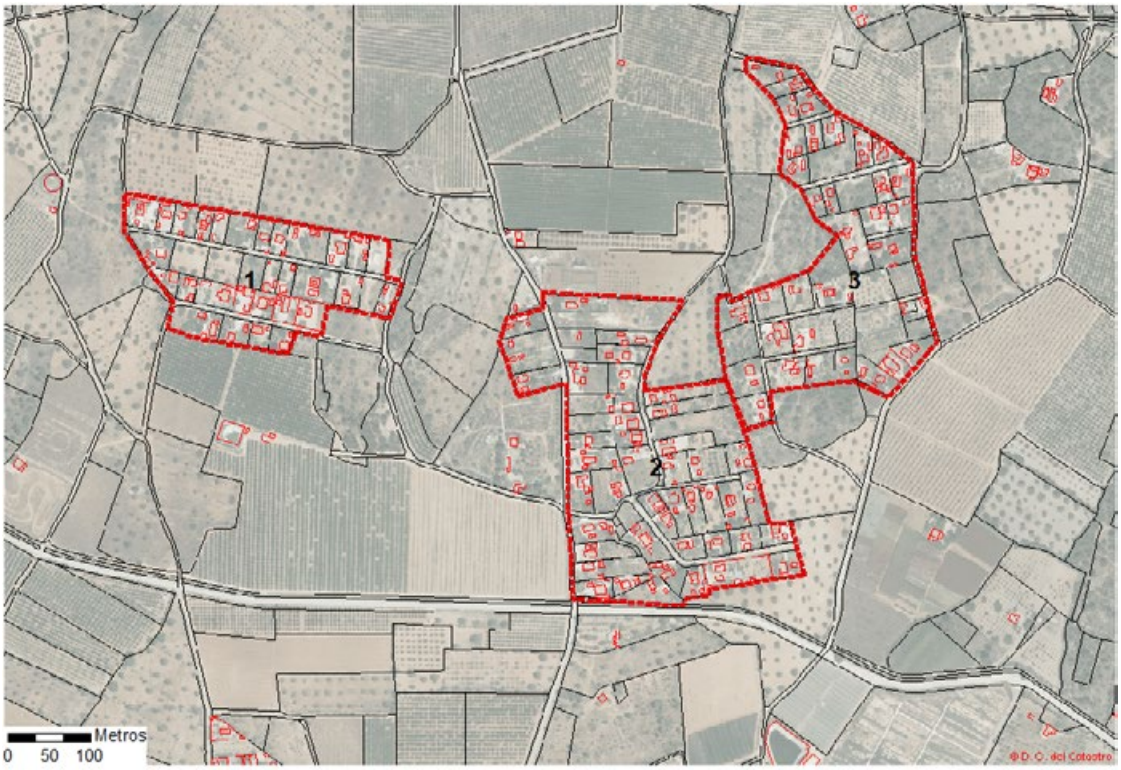


Figure 6. Three different clusters of more than 10 dwellings. Clusters 2 and 3 may be developed independently as they stand on existing roads and are more than 100 metres apart.
Source: Authors' own work based on the 2018 Cadastre and Orthophoto of the ICV

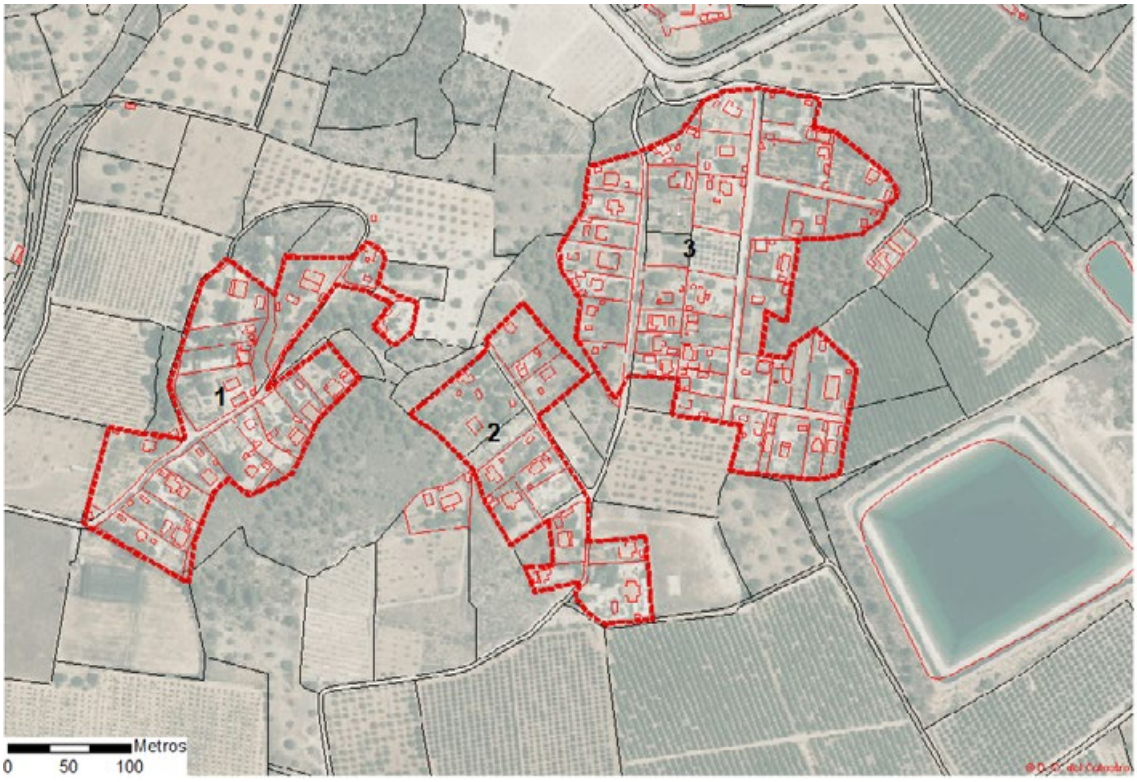


Figure 7. Three different clusters of more than 10 dwellings. The dwellings that remain outside the clusters stand on existing roads and are more than 100 meters away from each other
Source: Authors' own work based on the 2018 Cadastre and Orthophoto of the ICV

Figure 8. A single cluster of dwellings consisting of more than 10 dwellings. The rest of the dwellings are not included in the above cluster because although they stand on existing roads they are more than 100 metres apart. Moreover, they do not in any case form another cluster that can be individualised. Source: Authors' own work based on the 2018 Cadastre and Orthophoto of the ICV

Figure 9. Several examples of clusters of dwellings.
Example 1: 7 dwellings less than 100 meters apart. This does not constitute a cluster of dwellings because there are fewer than 10 dwellings.
Example 2: 8 dwellings less than 100 meters apart. This does not constitute a cluster of dwellings because there are fewer than 10 dwellings.
Example 3: Grouping of dwellings with 11 dwellings less than 100 meters apart (density 4 dwellings / hectare).
Source: Authors' own work based on the 2018 Cadastre and Orthophoto of the ICV

Density of the dwellings

Ratio between the number of dwellings and the continuous surface whose shape is determined by the Local Council, which at least consists of the built-up plots that form the cluster of dwellings, as well as undeveloped plots connected to the roads and paths that articulate the built-up plot (Figure 10, Figure 11 and Figure 12).

Figure 10. Density cluster 1: 32 dwellings on 3.3 hectares / 8.1 acres
Density: 9.7 dwellings/hectare
Source: Authors' own work based on the 2018 Cadastre and Orthophoto of the ICV

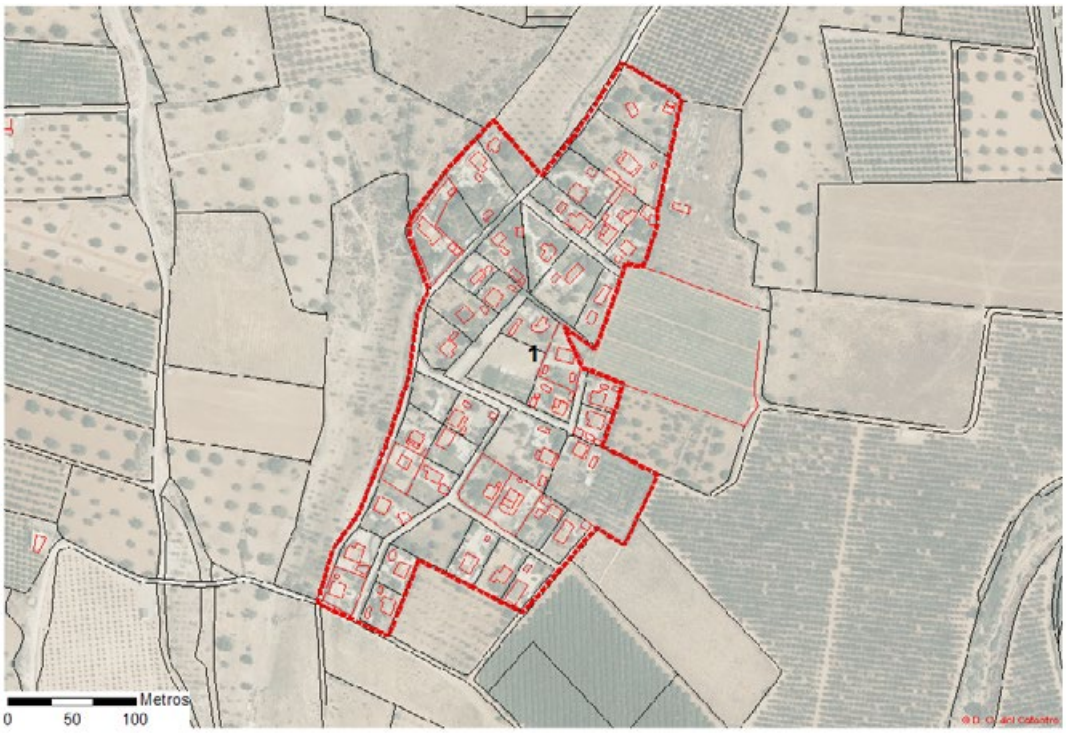


Figure 11. Density cluster 1: 42 dwellings on 6.6 hectares / 16.3 acres
Density: 6.4 dwellings/hectare
Source: Authors' own work based on the 2018 Cadastre and Orthophoto of the ICV

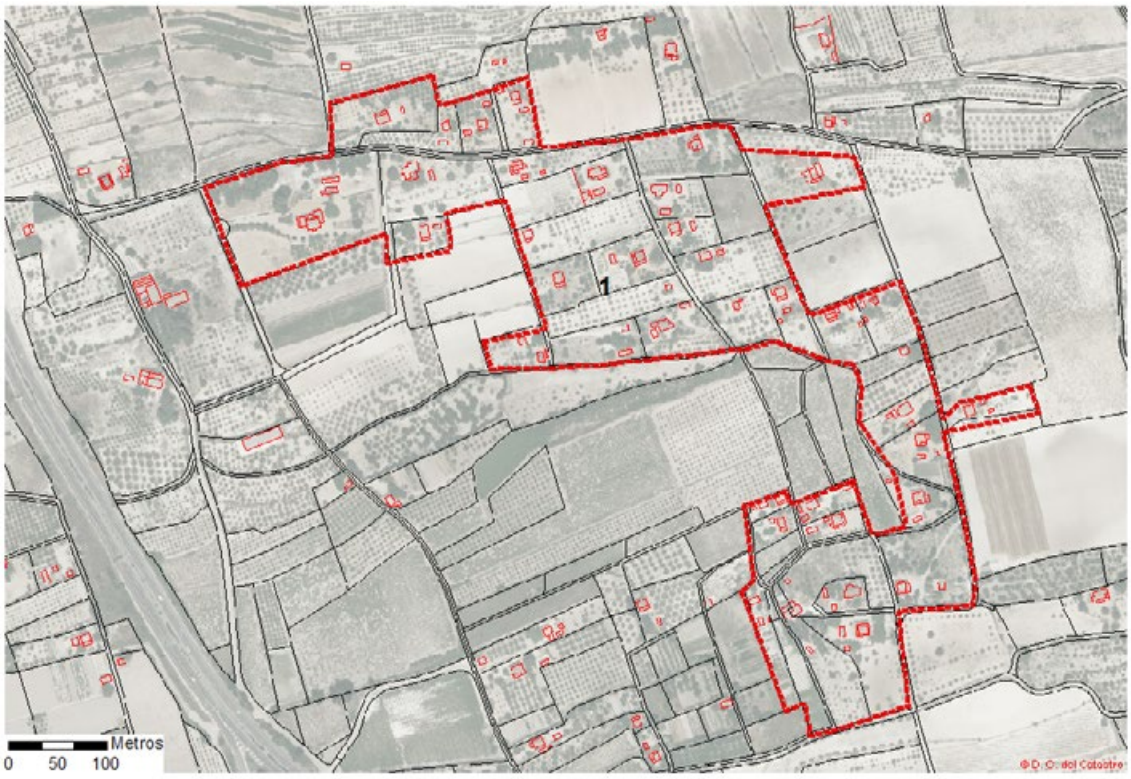


Figure 12. Density cluster 1: 38 dwellings on 16.7 hectares / 41.3 acres
Density: 2.3 dwellings / hectare
Source: Authors' own work based on the 2018 Cadastre and Orthophoto of the ICV

Minimum plot

Plot with the smallest surface area that forms a cluster of dwellings.

Related plot

Built-up plots included in the Special Plan that participate in the minimisation costs. Dwellings prior to Law 19/1975 of 2 May 1975 may be included or participate in order to provide them with a certain service, at the request of the owner concerned, given the cost opportunity. In addition, if any dwelling erected prior to 1975 were to benefit from minimisation works, they shall be required to pay the relevant share.

Works to provide services aimed at minimising impacts

Service provision works will be understood to be **minimisation works** and will be those actions that are strictly necessary to reduce the impacts that the dwelling has on Green Belt land, which, in summary, may include some of the following:

- Access and road improvements.
- Conditioning of sanitation and drinking water supply.
- Waste collection system.
- Power supply and lighting.
- Flood risk mitigation measures.
- Forest fire prevention measures.

Minimisation works cannot be equated with urban development works.

Ordinary public works project

An ordinary public works project defines those minimisation works that are strictly necessary to reduce the impacts that a dwelling has on Green Belt land, as described above.

Land for public services

Land for public services will be considered to be that which is strictly necessary to ensure that the basic services work properly and to incorporate measures to address any possible existing hazards.

- Roads and paths.
- Service infrastructures (waste, WWTP, reservoir, pumping, electrical transformer, solar plants, etc.).
- Flood risk conditioning and adaptation zones (flow accumulation zones, sacrifice zones, etc.).
- Areas for the prevention of forest fires (protection strips, fire-fighting cannons, etc.).

Open spaces

Greenfield plots allocated to uses linked to green infrastructure, including areas of conditioning and adaptation to flood risk and areas for the prevention of forest fires.

These open spaces shall not be equated with those provided for in LOTUP Annex 4, so there will be no need to comply with the standards set out in that annex.

3.

REGULATORY FRAMEWORK

3. REGULATORY FRAMEWORK

3.1. CURRENT REGULATIONS

Given the pressing need to address the problem of **irregular** constructions on SNU and to mitigate, as far as possible, their impact on the environment, **Law 5/2014, of 25 July, on Spatial Planning, Urban Planning and Landscape (LOTUP), amended by Law 1/2019, of 5 February, establishes an extraordinary regime for the regulation of such dwellings and the minimisation of their territorial impact (MIT)**, in accordance with the framework of the powers conferred on the Generalitat in matters of urban planning and environmental protection.

This is an outstanding issue stemming from buildings that have been erected outside planning regulations, perpetuated over time, for which the LOTUP aims to provide a decisive solution that will allow such buildings to be regularised in terms of urban planning and, at the same time, put a definitive stop to the proliferation of uncontrolled buildings in the Valencian Community.
Law 1/2019, of 5 February, of the Generalitat, amending the LOTUP, establishes in arts. 210, 211, 211 bis and 212 an exceptional legal regime applicable to dwellings on SNU in order to minimise their territorial impact.

3.2. REGULATORY AND FUNCTIONAL CRITERIA

LOTUP art. 210, in the wording of Law 1/2019, of 5 February, regulates the actions to minimise the territorial impact generated by clusters of irregular dwellings on SNU. The criteria for initiating MIT proceedings are:

- The buildings were completely finished before August 20, 2014, the date on which the LOTUP came into force.
- The buildings are located on SNU.
- They have a plot of land with rural characteristics, in accordance with agricultural and forestry legislation or its definition in this guide.
- They constitute consolidated clusters of dwellings (density equal to or greater than 3 dwellings/hectare) or dwellings in an individualised situation (density less than 3 dwellings/hectare).
- They are included in the scope of the procedures foreseen in the LOTUP: Special Territorial Impact Minimisation Plan (PEMIT) and Declaration of Individualised Situation (DSI).

The scope of the PEMIT will cover all the properties subject to regularisation in their entirety, the surface area being linked to the building. The plan will establish the minimum plot area with supporting evidence.

As far as possible, an attempt will be made to locate public urban services (sewage treatment plant, common services, roads, etc.) on the undeveloped plots included in the scope of the Special Plan, and their acquisition from the property owners in charge of the project.

3.3. REGIME OF PRE-1975 DWELLINGS

Isolated buildings on SNU constructed prior to the entry into force of Law 19/1975, of 2 May, on the reform of the Law on the Regime of Land and Urban Planning, and which do not have a municipal urban planning permit allowing them to be located on this type of land, will be equated in their regime to licensed buildings as long as they were finished by this date and as long as they still have today the same use and typological characteristics that they had when the aforementioned law came into force and are not in a legal situation of urban ruin, in accordance with the regime established in LOTUP Final Provision 2.

However, dwellings erected prior to 1975 that are located in or close to the PEMIT area may be included or participate so that they can be provided with some basic service and thereby

improve their environmental footprint, at the request of the property owner concerned, given the cost opportunity.

Therefore, if any dwelling erected prior to 1975 were to benefit from MIT works, they will be required to pay the relevant share.

3.4. EFFECTS OF THE INITIATION OF TERRITORIAL IMPACT MINIMISATION PROCEEDINGS

3.4.1. Suspension of enforcement orders, coercive fines and direct enforcement for the provision of services

Proceedings aimed at re-establishing legality and enforcing orders that have been issued, in the case of collective minimisation procedures through the PEMIT, are suspended when a request is made to initiate an environmental assessment process, and with the granting of a declaration in the case of individualised procedures.

In accordance with the application of LOTUP TP (Transitional Provision) 14 3 in the wording of Law 1/2019, of 5 February, as of 8 February 2019, the Regional Ministry with powers in matters of urban planning discipline will not impose any coercive fine or sanction on any offender, whose file corresponds to any one of the buildings that may be included in the MIT procedures of those regulated in the LOTUP, until such time as the Valencian Agency for the Protection of the Territory (AVPT) begins to carry out its duties (at the latest, by 31 December 2021).

Therefore, once the AVPT becomes operational, fines and penalties may be imposed on irregular dwellings on SNU completed as of 20 August 2014, which have not initiated the appropriate individual or collective MIT procedure.

3.4.2. Indivisibility of the plots included in the scope of the Special Plan

Once the special plan and the corresponding minimisation programme have been approved, the existing plots will be indivisible, save for the aggregation of the segregated part to another adjoining plot, if both comply with the minimum established plot limits. LOTUP Art. 212, 1.

3.4.3. Regime of permitted works

In accordance with the provisions of LOTUP art. 212.3, *"in these buildings, no permit may be granted for any work or use involving an extension of the building area, not even with provisional removable elements"*. Therefore, the works permitted in the dwellings that are covered by a PEMIT will be those established in the Special Plan itself, which, as the planning instrument that it is, shall determine the applicable ordinance. Such planning shall be specified for each dwelling, with the granting of a *"permit for legalisation works"* as per art. 212.1. The permitted works that will be determined by the PEMIT, as has been indicated, may not entail *"an increase in the buildability of the property*", in accordance with the transcribed precept. Apart from the exterior works permitted by the plan, interior works may be carried out. As is stated in art. 212.3: *"The plan and the minimisation licence may regulate the future authorisation of interior refurbishment works or the execution of small auxiliary elements that do not increase buildability, and do not entail a negative alteration of the landscape and environmental effects achieved through the minimisation".*

If an owner does not pay for the works in the voluntary period, the regime provided for in LOTUP art.149.5 shall be applied.

For dwellings subject to an individualised licence procedure, the regime of the works allowed therein shall be that which derives from the *"territorial impact minimisation licence"* (art. 211 bis.2), given that no planning instrument

that determines a prior ordinance exists for this case. Although art. 211 bis does not specifically establish a regime of permitted works, it must be inferred that this regime is the same as that permitted for dwellings included in a PEMIT, a regime explained in the previous paragraph.

3.4.4. Situation of undeveloped plots

Undeveloped plotsmust remain outside the scope of the PEMIT and, where appropriate, may be built on if they meet the requirements of LOTUP art. 197 b) (area 1 hectare / 2.5 acres; 2% occupancy; zoning by planning...). If a vacant plot is included, it shall remain undeveloped, maintaining its agricultural or forestry use, or be destined to public service and in any case will be exempt from the payment of the costs of any minimisation works, as provided for in LOTUP art. 212.4.

If they are intended for public service, they must be acquired at the expense of the plots benefited by the Special Plan.

3.4.5. Regularisation of the dwellings.

Existing dwellings, once the infrastructures programmed for the minimisation of the territorial impact have been completed, may be regularised by applying for a mandatory building permit in order to demonstrate that the property complies with the provisions of the PEMIT.

Regularised dwellings shall be subject to the regime established in the PEMIT and in the legalisation works permit (collective minimisation); or in the territorial impact minimisation licence (individualised minimisation), as explained in point 3.4.3.

3.5. APPLICABLE REGIME UNTIL THE VALENCIAN AGENCY FOR THE PROTECTION OF THE TERRITORY BECOMES OPERATIONAL

The 14th Transitional Provision of the LOTUP, in the wording given by Law 9/2019, of 23 December, of the Generalitat, establishes that once this provision comes into force (1 January 2020) no procedure for TERRITORIAL IMPACT MINIMISATION on SNU provided for in the LOTUP may be approved until the Valencian Agency for the Protection of the Territory (AVPT) begins to operate effectively, that is to say, until 31 December 2021 at the latest.

Therefore, MIT files may be processed, subject to their approval, if applicable, until the AVPT is up and running. However, they may be refused by a decision of the competent body.

4.

COMPLIANCE WITH THE ABOVE CRITERIA

4. COMPLIANCE WITH THE PREREQUISITE CRITERIA FOR THE INITIATION OF A PROCEDURE TO MINIMISE TERRITORIAL IMPACT

In order to regularise dwellings in the area of Green Belt land (SNU) using the Territorial Impact Minimisation procedure, three prior criteria must be met, which were considered regulatory in the previous chapter. These are as follows:

- Criterion 1: The buildings are located on common or protected SNU.
- Criterion 2: The properties retain a layout of rural characteristics.
- Criterion 3: The buildings were completely finished before August 20, 2014.

This chapter explains what documentation is required to demonstrate compliance with the above criteria, which are considered essential in order to initiate a territorial impact minimisation procedure.

In order to substantiate meeting the previous criterion referring to a plot with rural characteristics, please refer to the definition given in the Glossary of terms of these Guidelines.

CRITERION 1. How can to prove that the buildings are located on SNU?

This should be documented by means of cartography where the area to be minimised is represented on the classification and qualification of land corresponding to the municipal planning (This can be consulted through the following link: https://visor.gva.es/visor/?idioma=es).

CRITERION 2. How can I prove that a plot maintains its rural characteristics?

Whether or not a rural property has been subdivided into plots for urban development purposes can be documented by means of the following documentation:

» *This should be accredited by a historical record from the Land Registry for the plot being analysed or by means of a certificate issued by the Local Council stating that the plots of land subject to the initiation of a minimisation file have not been subjected to plot modifications of an urban planning nature.*

It is understood that rural morphology is maintained if:

» *This is reflected in the cartographic documentation of a situation before and after the administrative authorisation of the segregation or division of plot, as the case may be (This can be consulted through the following link: https://visor.gva.es/visor/?idioma=es).*

To demonstrate that the characteristics of an urban development are not complied with:

» *This may be documented by means of photographic material that demonstrates that the area has not been developed (LOTUP art. 177).*

CRITERION 3. How can I prove the age of the building?

This may be documented by any of the following means:

» *ICV orthophotos from different years may be submitted, showing that the building footprint is still present today. A sworn statement by a competent technician or by the property owner attesting to the age of the construction or stating that it is prior to the date of 20/08/2014 must be attached to these orthophotos.*

» *A certificate of completion of work issued by a competent technician.*

» *Contracts and invoices for the work carried out that cover the entire construction process; for example, contracts relating only to the roof or the kitchen will not be accepted.*

» *Any other document that duly accredits the date of completion of the dwelling.*

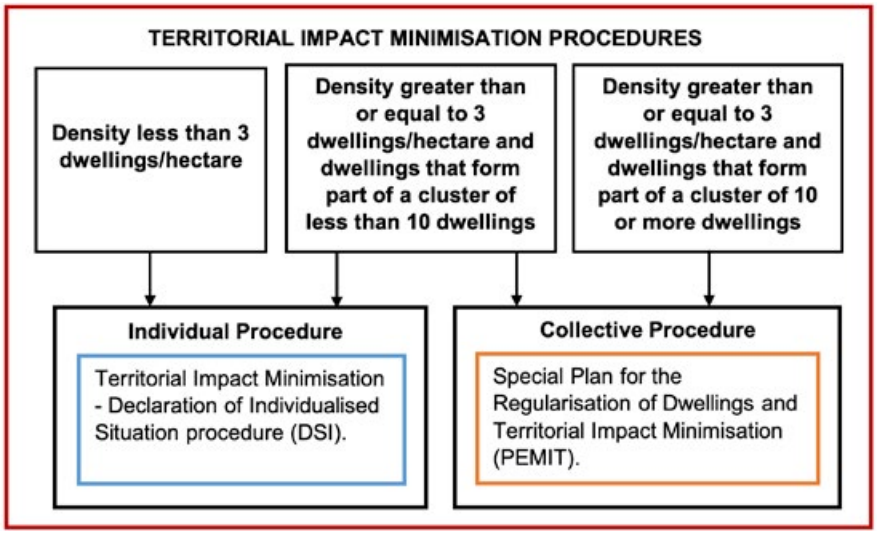
5.

TERRITORIAL IMPACT MINIMISATION PROCEDURES

5. TERRITORIAL IMPACT MINIMISATION PROCEDURES

5.1. TYPES OF PROCEDURES

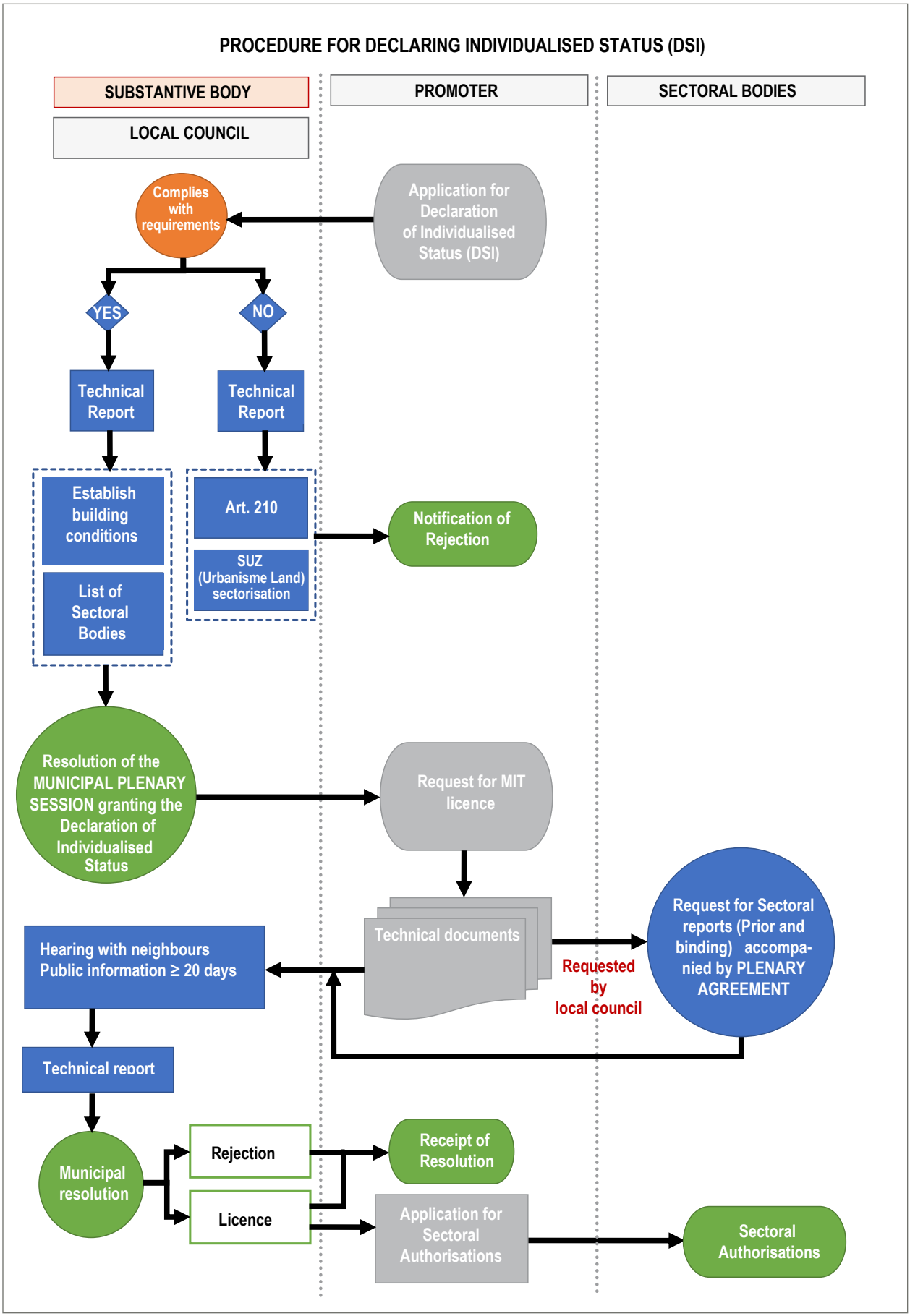
If the dwelling or cluster of dwellings to be regularised meets the three criteria above, the following territorial impact minimisation procedures shall be available for processing, depending on the density of the existing dwellings in the area:



Please use the definitions given in the Glossary of terms in these Guidelines to determine the clustering of dwellings and density.

5.2. PROCEDURE FOR DECLARING INDIVIDUALISED STATUS (DSI)

The following chart illustrates the procedure for declaring an individualised situation for detached dwellings. This involves the promoters of the initiative, the Local Council as the substantive body and the sectoral bodies, which, depending on the circumstances, will participate in the issuing of reports and in the appropriate authorisations.


PROCEDURE FOR DECLARING INDIVIDUALISED STATUS (DSI)
SUBSTANTIVE BODY
LOCAL COUNCIL
PROMOTER
SECTORAL BODIES
Application for Declaration of Individualised Status (DSI)
Complies with requirements
YES
NO
Technical Report
Technical Report
Establish building conditions
List of Sectoral Bodies
Art. 210
SUZ (Urbanisme Land) sectorisation
Notification of Rejection
Resolution of the MUNICIPAL PLENARY SESSION granting the Declaration of Individualised Status
Request for MIT licence
Technical documents
Request for Sectoral reports (Prior and binding) accompanied by PLENARY AGREEMENT
Requested by local council
Hearing with neighbours Public information ≥ 20 days
Technical report
Municipal resolution
Rejection
Licence
Receipt of Resolution
Application for Sectoral Authorisations
Sectoral Authorisations

5.2.1. Processing and documenting of actions to minimise the territorial impact generated by isolated buildings on Green Belt land

The procedure to be followed, and the documentation to be prepared, is as follows below:

- The promoter (private individual) requests a Territorial Impact Minimisation - Declaration of Individualised Situation (DSI) from the Local council.

List of documents to request the DSI:
Informative and supporting documents:
» Application Form
» Map of location and land classification
» Documentation that proves, in accordance with the previous chapters:
  - That the plot maintains its rural characteristics
  - The building was completed before 20 August 2014
  - It does not form part of a cluster of dwellings (density < 3 dwellings/ hectare)
» Ownership of the dwelling

- The Local Council, as the substantive body, shall verify compliance with the criteria that must be observed in order to initiate the Territorial Impact Minimisation - Declaration of Individualised Situation procedure.

If the dwelling is compliant: A technical report shall be issued containing the following:

Content of the Municipal Technical Report:

» Establish building conditions, and the scope of the following technical documents:
  - Landscape Integration Study (EIP)
  - Analysis of environmental-territorial impact and corrective measures
  - Basic project
» List of potentially affected sectoral bodies.

If the dwelling is not compliant:

A technical-legal report will be issued substantiating non-compliance with LOTUP art. 210, or the existence of Subdivision, whereby the instrument for minimising territorial impact does not apply. In this case, the applicant will be notified that their request for a declaration of individualised status has been denied.

- Should the required criteria be met, the Local Council will issue a resolution of the Municipal Plenary granting the Declaration of Individualised Situation (DSI), transferring the Plenary Agreement to the applicant, which will include the municipal technical report.
- The applicant will apply to the Local Council for a territorial impact minimisation licence. To this end, he or she shall prepare the technical documents required in the municipal technical report, which will be sent by the City Council to the corresponding sectoral bodies, namely:

» If the permit is for dwellings for which no measures for the restoration of urban planning legality are possible: Advise the body that protects the land, if we are on protected SNU,as per the general regime of LOTUP art. 201 (LOTUP art. 211 bis.3).

» If the permit is for dwellings for which measures for the restoration of urban planning legality are possible: Advise the body that protects the land, if we are on protected SNU, and advise those agencies whose powers are affected (mines, water[5] , hazards, infrastructure or if any activities have been implemented and are underway), as per LOTUP article 211 bis.4.

- The Local Council will hold a hearing with the adjoining property owners and will open a public information period lasting at least 20 days.
- A technical-legal report shall be drawn up prior to the municipal resolution denying or granting the permit.
- If the Local Council grants the permit, the applicant shall also request such sectoral authorisations as may be required, where appropriate, to carry out the works to minimise the territorial impact envisaged in the project.

[5] Water-related impacts occur as a result of any of the following reasons: because the area is located in a public watercourse buffer zone (100-metre margins on each side of the hydraulic 5 public domain), because it affects the flow regime of public watercourses in situations of flooding, because of the use of water, or because of the discharge of wastewater into the hydraulic public domain.

What form should the sectoral reports for TERRITORIAL IMPACT MINIMISATION take?

Bearing in mind that the aim of territorial impact minimisation is to reduce the impact on the rural environment of existing residential settlements on Green Belt land, and that this is an exceptional regulation, the sectoral reports should certainly:

- *Propose the adoption of measures to reduce the risk to people and their property from the danger of forest fires and floods.*
- *Reduce pollution from sewage and urban waste.*
- *Regulate the use of resources such as water supply and lighting.*
- *Improve road accesses and reduce their impermeability.*
- *Integrate the planned actions into the environment in which they are located.*

In this sense, it is considered that the reports, except in duly justified cases,could only be unfavourable if the proposed minimisation measures were to make the existing situation even worse.

5.3. COLLECTIVE PROCEDURES FOR THE MINIMISATION OF THE TERRITORIAL IMPACT OF IRREGULAR DWELLINGS ON SNU (PEMIT)

When there is a cluster of dwellings and the previous criteria outlined in the previous chapter are met, and when, according to the criteria of the Local council, the density is greater than or equal to 3 dwellings/hectare and these dwellings form part of a cluster of 10 or more dwellings, the situation arises whereby collective territorial impact minimisation procedures may be applied, through the development of Special Plans. These collective procedures can be classified as follows:

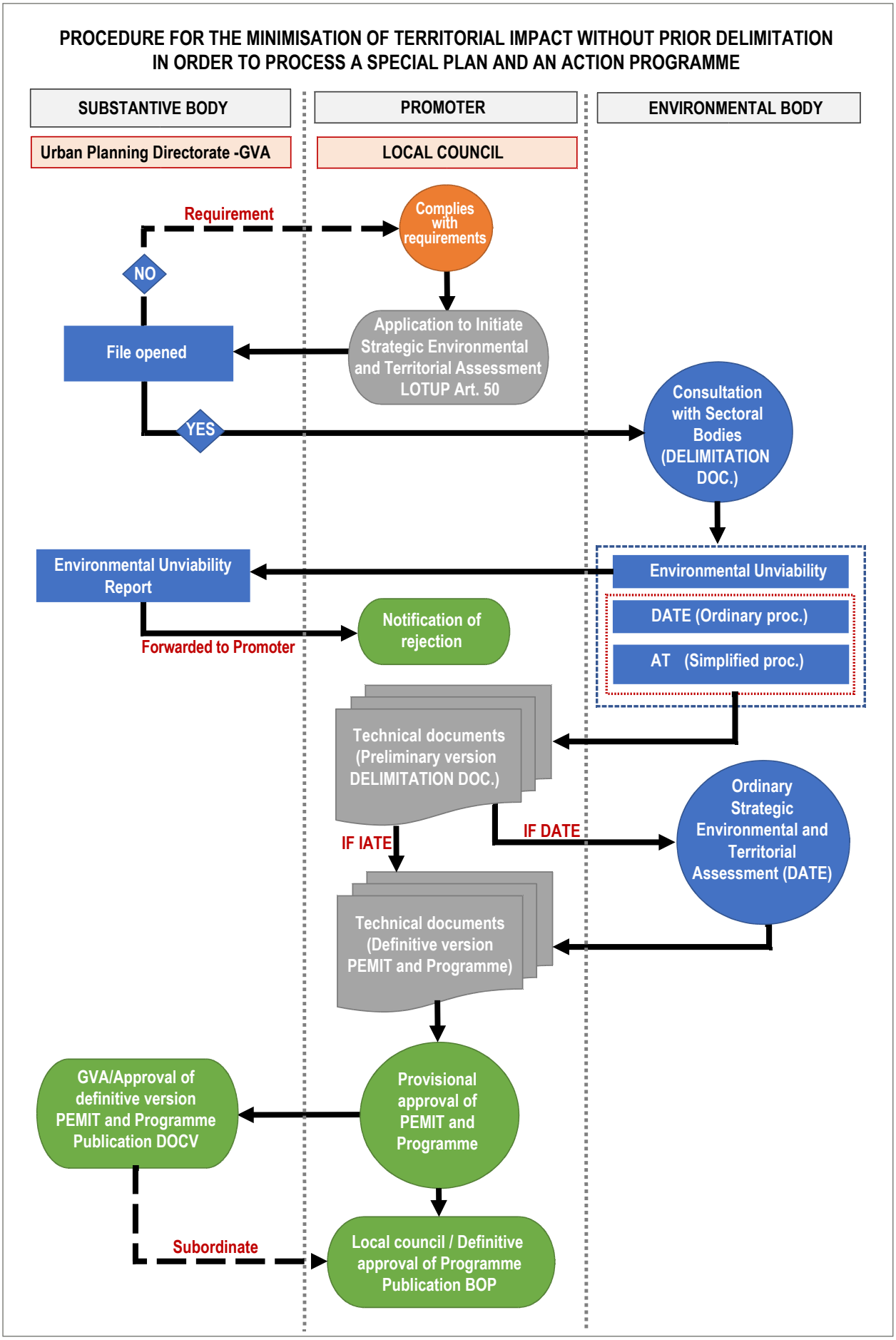
- Delimitation of areas (Delimitation): a planning instrument that includes the delimitation of all existing areas in the municipality that make up a cluster of dwellings.
- A Special Plan to minimise the territorial impact (PEMIT) with structural planning (without prior delimitation of the area).

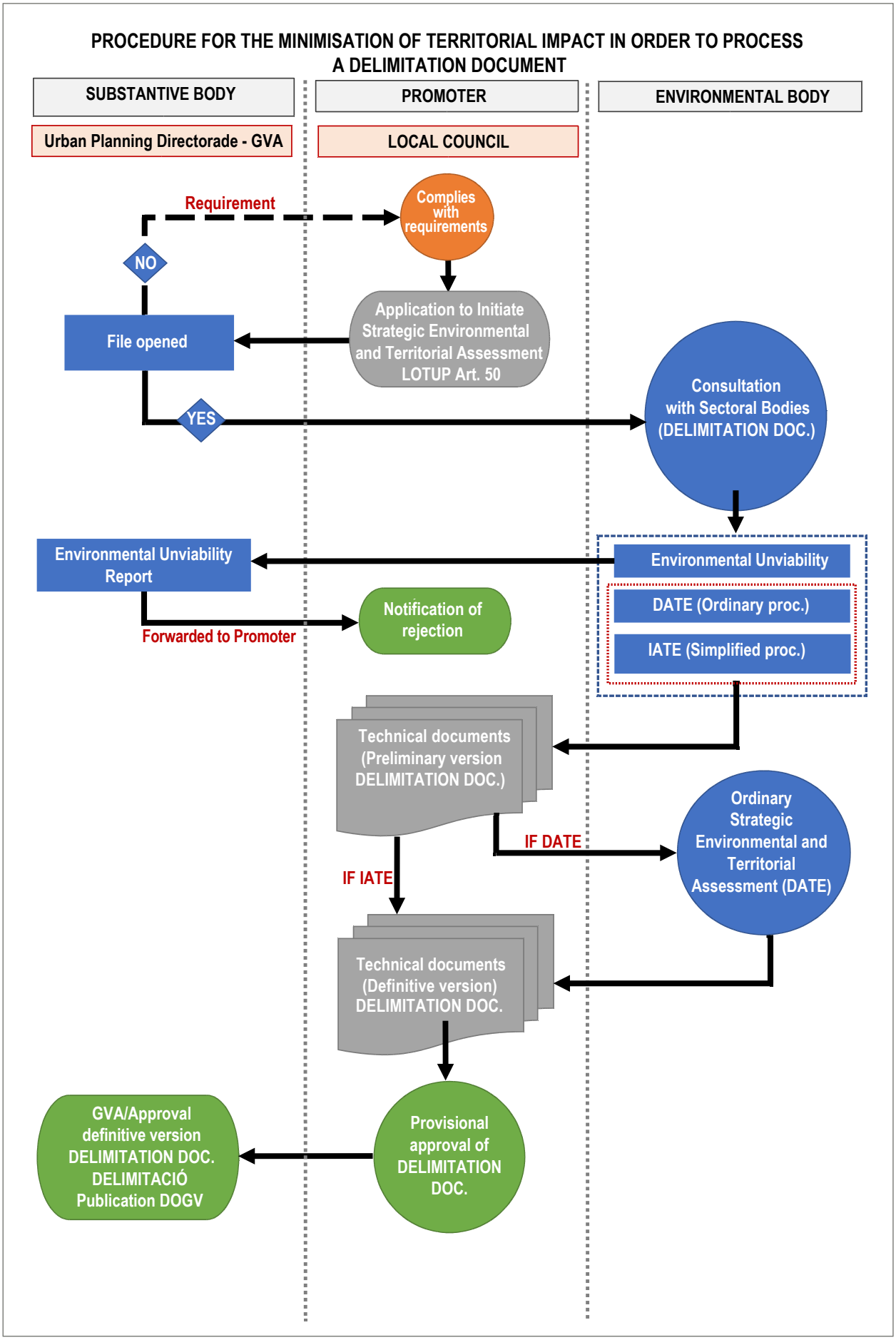
Although both procedures have their own particular field of application as far as the documentation to be prepared and its scope are concerned, from an administrative processing point of view they have certain similarities.

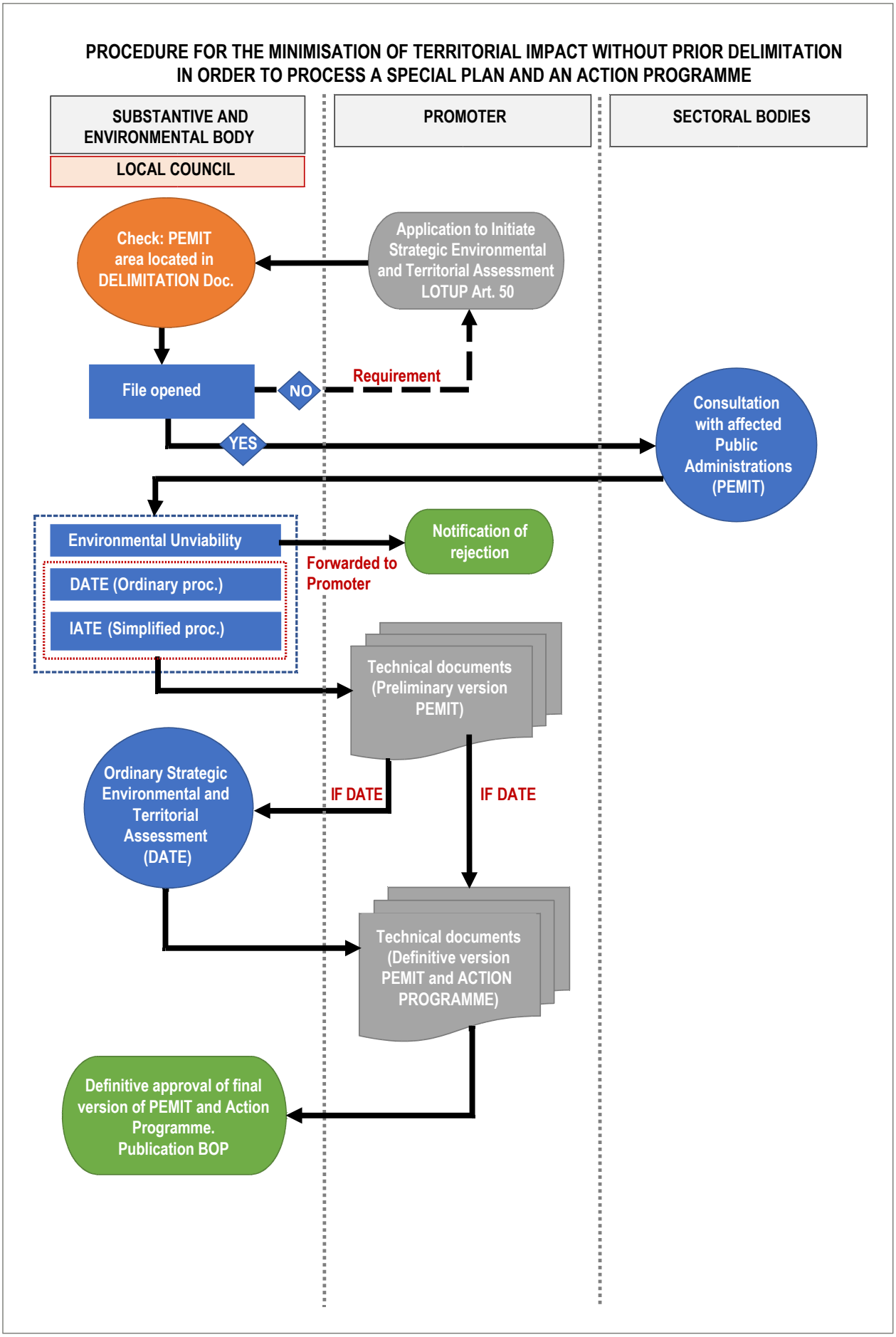
The following procedures are shown in the charts below:

1. Processing of a Special Plan to minimise the territorial impact (PEMIT) of irregular dwellings on SNU without prior delimitation of the minimisation area - the substantive body that must approve the planning will therefore be the regional government office with responsibility for Urban Planning.
2. **A)** Processing of a Delimitation Document for the minimisation of the territorial impact of irregular dwellings on Green Belt land (SNU), which will establish the structural planning of all the minimisation areas of the municipal district, so that they can be developed by means of Special Plans. This Delimitation Document will be approved by the Regional Ministry with responsibility for Urban Planning, as the substantive body.

   B) Processing of a Special Plan to minimise territorial impact (PEMIT) with prior delimitation of the minimisation area, which will contain the detailed planning of one or more of the areas defined in the delimitation document, the substantive body being the Local Council. This instrument may be processed simultaneously, or after the delimitation document.


PROCEDURE FOR THE MINIMISATION OF TERRITORIAL IMPACT WITHOUT PRIOR DELIMITATION IN ORDER TO PROCESS A SPECIAL PLAN AND AN ACTION PROGRAMME
SUBSTANTIVE BODY
PROMOTER
ENVIRONMENTAL BODY
Urban Planning Directorate -GVA
LOCAL COUNCIL
Requirement
Complies with requirements
NO
Application to Initiate Strategic Environmental and Territorial Assessment LOTUP Art. 50
File opened
YES
Consultation with Sectoral Bodies (DELIMITATION DOC.)
Environmental Unviability Report
Environmental Unviability
DATE (Ordinary proc.)
AT (Simplified proc.)
Notification of rejection
Forwarded to Promoter
Technical documents (Preliminary version DELIMITATION DOC.)
IF IATE
IF DATE
Ordinary Strategic Environmental and Territorial Assessment (DATE)
Technical documents (Definitive version PEMIT and Programme)
GVA/Approval of definitive version PEMIT and Programme Publication DOCV
Provisional approval of PEMIT and Programme
Subordinate
Local council / Definitive approval of Programme Publication BOP


PROCEDURE FOR THE MINIMISATION OF TERRITORIAL IMPACT IN ORDER TO PROCESS A DELIMITATION DOCUMENT
SUBSTANTIVE BODY
PROMOTER
ENVIRONMENTAL BODY
Urban Planning Directorade - GVA
LOCAL COUNCIL
Requirement
Complies with requirements
NO
Application to Initiate Strategic Environmental and Territorial Assessment LOTUP Art. 50
File opened
YES
Consultation with Sectoral Bodies (DELIMITATION DOC.)
Environmental Unviability Report
Environmental Unviability
DATE (Ordinary proc.)
IATE (Simplified proc.)
Notification of rejection
Forwarded to Promoter
Technical documents (Preliminary version DELIMITATION DOC.)
IF DATE
Ordinary Strategic Environmental and Territorial Assessment (DATE)
IF IATE
Technical documents (Definitive version) DELIMITATION DOC.
Provisional approval of DELIMITATION DOC.
GVA/Approval definitive version DELIMITATION DOC. DELIMITACIÓ Publication DOGV


PROCEDURE FOR THE MINIMISATION OF TERRITORIAL IMPACT WITHOUT PRIOR DELIMITATION IN ORDER TO PROCESS A SPECIAL PLAN AND AN ACTION PROGRAMME
SUBSTANTIVE AND ENVIRONMENTAL BODY
LOCAL COUNCIL
PROMOTER
SECTORAL BODIES
Check: PEMIT area located in DELIMITATION Doc.
Application to Initiate Strategic Environmental and Territorial Assessment LOTUP Art. 50
File opened
NO
Requirement
YES
Consultation with affected Public Administrations (PEMIT)
Environmental Unviability
DATE (Ordinary proc.)
IATE (Simplified proc.)
Notification of rejection
Forwarded to Promoter
Technical documents (Preliminary version PEMIT)
Ordinary Strategic Environmental and Territorial Assessment (DATE)
IF DATE
IF DATE
Technical documents (Definitive version PEMIT and ACTION PROGRAMME)
Definitive approval of final version of PEMIT and Action Programme. Publication BOP

5.3.1. Processing and documenting for the minimisation of the territorial impact of dwellings on SNU by means of a Special Plan (PEMIT) with structural planning (without prior delimitation of the area)

The procedure for minimising territorial impacts **through the development of a Special Plan, without prior delimitation of the area**, will require the preparation of the documentation detailed below and will cover the following phases:

Initial phase

The Local Council, as the promoter of the Special Plan, must verify that it meets the criteria described in the previous chapter before asking the competent urban planning/GVA body (substantive body) to initiate the process. The latter shall open the file and transfer it to the regional environmental body for the strategic environmental and territorial evaluation of the Special Plan (PEMIT). Should the documentation be incomplete and any of the criteria not met, the promoter (the Local Council) will be required to remedy the situation.

Before it draws up the PEMIT, the Local Council shall hold a prior public consultation lasting 20 DAYS stating the problems that the initiative is intended to solve.

The initiation of the procedure shall include the following documentation:

Documentary list of the Special Plan in the Initial Phase:

a) Draft of the Special Plan:

- *Descriptive report::*
  - *Justification of previous criteria (rural characteristics, buildings fully completed before 20 August 2014 and density of the existing dwellings)*
  - *Brief description of the area and its physical environment*
  - *Characteristics and typology of the dwellings covered by the Plan*
  - *List of cadastral plots included in the Plan*
  - *Description of existing uses and public services (road network, water mains, electricity network, waste containers...)*
- *Objective of the Special Plan*
- *Delimitation of the area*
- *Minimum Works Report:*
  - *Description of alternatives as far as the following actions are concerned:*
    - *Access*
    - *Sanitation*
    - *Drinking water supply*
    - *Waste management*
    - *Energy supply*
  - *In FORESTED AREAS: Forest fire prevention measures*
  - *In areas affected by flood hazards: Flood mitigation measures*
  - *If there is an impact on the landscape: integration measures*
- *Information Plans:*
  - *Current state of the plot*
  - *Status of existing works carried out to date.*
  - *Location of the area with respect to nearby urban centres, nearby qualified activities, existing primary networks and nearby services*

b) Initial Strategic Document (DIE) of the Special Plan:

As set out below, its content shall be in line with the request for the initiation of the strategic environmental assessment, in accordance with Law 21/2013, of 9 December, on environmental assessment:

- *The planning objectives.*
- *The scope and content of the Special Plan and its reasonable, technically and environmentally feasible alternatives.*
- *Potential environmental impacts taking climate change into consideration.*
- *Foreseeable effects on concurrent sectoral and territorial plans.*

Preliminary phase

During a period of sixty days, the regional environmental body responsible for the evaluation of the Special Plan for the area will carry out consultations with public administrations and interested parties and issue the Scope Document (DA), the Strategic Environmental and Territorial Report (IATE) or, as the case may be, a resolution declaring the environmental unfeasibility of the action addressed to the promoter and the substantive body.

In the Scope Document or in the Strategic Environmental and Territorial Report, the result of the consultations carried out will be published, as well as such criteria and conditioning factors as may derive from the consultations and from the environmental body.

Preparation and processing phase

(Only for the ordinary environmental assessment procedure)

The promoter of the PEMIT shall prepare the following documentation for its processing (according to the magnitude of the action, priority areas of action, etc.):

List of documents for the preliminary version of the PEMIT for Strategic Environmental and Territorial Assessment (autonomous region) (45 DAYS public information)

In this phase of the procedure, the preliminary version of the PEMIT is drawn up, including the environmental and sectoral conditioning factors outlined in the Scope Document. The documentation shall consist of:

- *A descriptive report (the content of the Initial phase and, where appropriate and if necessary, an extension thereof, as well as an annex with a list of the affected property owners)*
- *Information plans (the content of the Initial phase and, where appropriate and if necessary, an extension thereof)*
- *Supporting memorandum:*
  - *Objective of the Special Plan.*
  - *Justification of the proposed delimitation of the area.*
- *Planning Plans:*
  - *Delimitation of the area*
  - *Determination of uses*
  - *Determination of impacts (forestry, flooding, natural spaces, hydraulic public domain and its easement and buffer zones)*
- *Minimum Works Report (the content of the Initial phase and, where appropriate and if necessary, an extension thereof)*
- *Landscape Integration Study (in accordance with the provisions of Article 211.2 d) and Annex II of the LOTUP, which allows the content of the study to be adapted to the type, scale and scope of the action).*
- *Economic feasibility study (must include at least the execution period and an economic sustainability report)*
- *Strategic Environmental and Territorial Study*

Verification and analysis phase

(Only for the ordinary environmental assessment procedure)

The regional environmental body will issue and forward the Strategic Environmental Declaration (DATE) of the Special Plan to the promoter.

Approval phase

The Local Council will provisionally approve the final version of the PEMIT. In addition, the Local Council will definitively approve the minimisation programme, the effectiveness thereof being subject to the Special Plan being approved by the Autonomous Government.

The promoting body will send the final version of the PEMIT for its approval to the Regional Ministry with responsibility for Urban Planning, as the substantive body, which will contain the following list of documents:

List of documents for theFinal Version of the PEMIT in the Approval Phase:

In this phase of the procedure the documentation corresponds to the final version of the PEMIT incorporating, where appropriate, the environmental

and sectoral conditioning factors indicated in the DATE or in the IATE. The documentation shall consist of:

- *Descriptive Report (the content of the Initial phase and, where appropriate and if necessary, an extension thereof)*
- *Information plans (the content of the Initial phase or the preliminary version and, where appropriate and if necessary, an extension thereof)*
- *Supporting memorandum:*
  - *Objective of the Special Plan.*
  - *Justification of the proposed delimitation of the area.*
- *Planning Plans:*
  - *Delimitation of the area*
  - *Determination of uses*
  - *Determination of impacts (forestry, flooding, natural spaces, hydraulic public domain and its easement and buffer zones)*
- *Minimum Works Report (the content of the Initial phase or the preliminary version and, where appropriate and if necessary, an extension thereof)*
- *Landscape Integration Study (in accordance with the provisions of Article 211.2 d) and Annex II of the LOTUP, which allows the content of the study to be adapted to the type, scale and scope of the action).*
- *Economic feasibility study (must include at least the execution period and an economic sustainability report)*
- *Plan for monitoring the environmental impact of the PEMIT on the environment.*

The **minimisation programme** will consist of the following documentation:

List of documents for the Minimisation Programme:

The documentation shall consist of:

- *Ordinary public works project: it shall contain those technical solutions set out in the minimum works report that are strictly essential. These shall at least include a wastewater purification system or a watertight tank, in justified cases, a solid waste collection system and safe road access to the buildings. If possible, it is advisable that drinking water and electricity supply systems be installed or that any such existing systems be regularised. As far as possible, the electricity should come from clean energies.*
- *Annex of the works to be carried out on private elements of private plots that are essential for the safety of people, such as fire prevention measures, or elements that require proper integration into the landscape, such as the installation of electrical power systems. These works will be economically valued and paid for by the beneficiaries.*
- *Study of the implementation costs of the projected minimisation works. The minimisation works project will include the budget for these works, which will be paid for by the property owners included in the Special Plan whose dwellings are to be regularised. The payment ratio will be 80% associated with the m2 of total floor space (m2t) of each dwelling and 20% associated with the surface area of the related plot of land.*
- *Urban planning management agreement regulating:*
  - *The relations between the property owners and the acting administration*
  - *The minimisation execution procedure, containing the following determinations:*
    - *How the costs arising from the minimisation works, which will be borne by the owners, are to be regulated.*
    - *How to regularise the transfer to the administration of land that acquires the condition of public use, if any, as well as the deadlines for such transfer.*
    - *If activities are carried out that are incompatible with use as a dwelling at a distance less than that provided for in specific regulations, a report will be required from the Regional Ministries with responsibility for the activity in question and for territorial planning.*

- *Management (direct or indirect) for the execution of the minimisation works. The property owners may take the initiative or, failing that, the local council may appoint a company to carry out the work.*
- *The works may be executed in phases, with a time limit of five years, extendable up to ten if duly justified.*
- *The property owners will be obliged to participate in the execution of the programme (voluntarily or compulsorily) and will have to pay the corresponding costs in cash.*

The final approval of the Special Plan will be published in the Official Journal of the Valencian Community (DOCV) by the Regional Ministry with responsibility for urban planning.

The promoting body (Local Council) will publish the agreement on the final approval of the Minimisation Programme in the Official Provincial Gazette (BOP).

5.3.2. Processing and documenting for the minimisation of the territorial impact of dwellings on SNU by means of an area delimitation planning instrument (Delimitation)

In this case, the simultaneous processing of two instruments will take place (although it is also possible to process instrument 2.A at the outset and instrument 2.B at a later date):

- 2.A) The processing of the Delimitation, in order to establish structural planning consisting of the delimitation of the minimisation area or areas (subject to regional approval).
- 2.B) The processing of one or several PEMITs, in order to establish the detailed planning of each of the delimited areas (subject to municipal approval).

This refers to the extraordinary procedure for the regularisation of dwellings on SNU and the minimisation of their territorial impact by means of a Special Plan with prior delimitation of the area of action.

In order to expedite the processing of the PEMIT, those municipalities that have a cluster or several clusters of irregular dwellings may draw up a Delimitation document for the purpose of establishing the structural planning of the area or areas where the territorial impact of dwellings irregularly implanted on Green Belt land (SNU) is to be minimised.

In this case, the processing and final approval of the corresponding PEMIT, with the detailed planning of each area, will be the responsibility of the municipal administration, while the delimitation document will be the responsibility of the regional administration.

The delimitation document will have the minimum necessary content, which is set out in the following sections, to establish the limits of the scope of the PEMITs together with the Initial Strategic Document (DIE) containing a description of the environmental improvements proposed to minimise the territorial impact of the dwellings, which must be submitted for assessment to the regional environmental body.

The PEMIT will not involve the transformation of Green Belt land or an increase of built-up land, other than for the essential extension of the main access road to the Special Plan area or to reduce the risk of fire (perimeter buffer roads and access for emergency vehicles).

Once the Delimitation document containing the structural planning of the delimited area(s) has been environmentally approved and issued, the PEMIT with the detailed planning will be submitted for environmental assessment together with the ordinary public works project of the corresponding minimisation programme (given the transformation of land due to the extension of grids, expansion of roads, execution of a fire buffer perimeter etc.).

2.A) The processing of the **MIT procedure by means of Delimitation**, in order to establish structural planning consisting of the delimitation of the minimisation area or areas (subject to regional approval) shall cover the following **PHASES:**

Initial phase

The Local Council, as the promoter of the delimitation document for the MIT of irregular dwellings, must verify that it meets the criteria described in the previous chapter before asking the competent Regional Ministry responsible for Urban Planning (substantive body) to initiate the process. The latter shall open the file and transfer it to the regional environmental body for the strategic environmental and territorial evaluation. Should the documentation be incomplete and any of the criteria not met, the promoter (the Local Council) will be required to remedy the situation.

The initiation of the procedure shall include the following documentation:

Documentary list of the Delimitation in the Initiation in the Initial Phase:

a) Draft of the Delimitation with the Structural Planning and Minimum Works Report:

- **Descriptive report:**
- *Justification of previous criteria (rural characteristics, buildings fully completed before 20 August 2014 and density of the existing dwellings)*
- *Brief description of the area and its physical environment*
- *Characteristics and typology of the dwellings covered by the Delimitation*
- *List of cadastral plots included in the Delimitation*
- *Description of existing uses and public services (road network, water mains, electricity network, waste containers...)*
- **Objective of the Delimitation**
- **Delimitation of the boundaries of the area or areas**
- **Minimal Works Report:**
- *Description of alternatives as far as the following actions are concerned:*
    - *Access*
    - *Sanitation*
    - *Drinking water supply*
    - *Waste management*
    - *Energy supply*
- *In FORESTED AREAS: Forest fire prevention measures*
- *In areas affected by flood hazards: Flood mitigation measures*
- *If there is an impact on the landscape: integration measures*
- **Information Plans:**
- *Current state of the plot*
- *Status of existing works carried out to date.*
- *Location of the area(s) with respect to nearby urban centres, nearby qualified activities, existing primary networks and nearby services.*

b) Initial Strategic Document (DIE) of the Delimitation:

As set out below, its content shall be in line with the request for the initiation of the strategic environmental assessment, in accordance with Law 21/2013, of 9 December, on environmental assessment:

- *The planning objectives.*
- *The scope and content of the Delimitation and its reasonable, technically and environmentally feasible alternatives.*
- *Potential environmental impacts taking climate change into consideration.*
- *Foreseeable effects on concurrent sectoral and territorial plans.*

Preliminary stage

During a period of 60 DAYS, the regional environmental body responsible for the evaluation of the Delimitation document for the area(s) will carry out consultations with public administrations and interested parties and issue the Scope Document, the Strategic Environmental and Territorial Report (IATE) or, as the case may be, a resolution declaring the environmental unfeasibility of the action addressed to the promoter and the substantive body.

In the Scope Document or in the Strategic Environmental and Territorial Report, as the case may be, the result of the consultations carried out will be stated, as well as such criteria and conditioning factors as may derive from the consultations and from the environmental body.

Preparation and processing phase (Only for the ordinary environmental assessment procedure)

The promoter shall prepare the following documentation for the processing of the Delimitation document (according to the magnitude of the action, priority areas of action, etc.):

List of documents for the Strategic Environmental and Territorial Assessment (regional): Delimitation (45 DAYS public information)

Preliminary version of the Delimitation Document with the structural planning of the delimited area(s):

In this phase of the procedure, the documentation corresponds to that drawn up in the initial phase, extending those determinations that are necessary based on the environmental and sectoral conditioning factors required in the Scope Document. The documentation shall consist of:

- *Descriptive Report (the content of the Initial phase and, where appropriate and if necessary, an extension thereof)*
- *Information plans (the content of the Initial phase and, where appropriate and if necessary, an extension thereof)*
- *Supporting memorandum:*
  - *Objective of the Delimitation.*
  - *Justification of the proposed delimitation of the area(s).*
- *Planning Plans:*
  - *Delimitation of the area or areas*
  - *Determination of uses*
  - *Determination of impacts (forestry, flooding, natural spaces, hydraulic public domain and its easement and buffer zones)*
- *Minimum Works Report (the content of the Initial phase and, where appropriate and if necessary, an extension thereof)*
- *Strategic Environmental and Territorial Study*

Verification and analysis phase (Only for the ordinary environmental assessment procedure)

If the ordinary EAE procedure has been followed, the regional environmental body shall issue the Strategic Environmental Declaration (DATE) or will check the environmental conditioning factors, if any, of the Strategic Environmental and Territorial Report (IATE) of the Delimitation Document, for its transfer to the promotor.

Approval phase

The promoting body will send the final version of the delimitation document for its approval to the Regional Ministry with responsibility for Urban Planning, as the substantive body, which will contain the following list of documents:

List of documents for theFinal Version of the Delimitation in the Approval Phase:

In this phase of the procedure the documentation corresponds to the final version of the Delimitation incorporating, where appropriate, the environmental and sectoral conditioning factors indicated in the DATE or in the IATE. The documentation shall consist of:

- *Descriptive Report (the content of the Initial phase and, where appropriate and if necessary, an extension thereof)*
- *Information plans (the content of the Initial phase or the preliminary version and, where appropriate and if necessary, an extension thereof)*
- *Supporting memorandum:*
  - *Objective of the Delimitation.*
  - *Justification of the proposed delimitation of the area(s).*
- *Planning Plans:*
  - *Delimitation of the area or areas*
  - *Determination of uses*
  - *Determination of impacts (forestry, flooding, natural spaces, hydraulic public domain and its easement and buffer zones)*

- *Minimum Works Report (the content of the Initial phase or the preliminary version and, where appropriate and if necessary, an extension thereof)*
- *Landscape Integration Study (in accordance with the provisions of Article 211.2 d) and Annex II of the LOTUP, which allows the content of the study to be adapted to the type, scale and scope of the action).*
- *Strategic Environmental Declaration (DATE) or IATE*
- *Administrative file*

The final version of the Delimitation will be definitively approved by agreement of the Regional Ministry responsible for Urban Planning and will be published in the Official Gazette of the Valencian Community (DOCV).

2.B) The processing of the **MIT procedure by means of one or several PEMITs,** in order to establish the detailed planning of each of the delimited areas (subject to municipal approval) will cover the following **PHASES:**

Initial phase

If the Local Council has the document for the Delimitation of the SNU for the MIT of irregular dwellings definitively approved by agreement of the Regional Ministry responsible for urban planning, or has initiated the procedures for the approval thereof, it may initiate the procedure for the approval of one or several PEMITs, in order to establish the detailed planning of each of the delimited areas.

Before it draws up the PEMIT, the Local Council shall hold a prior public consultation lasting 20 DAYS stating the problems that the initiative is intended to solve. The contents will be those stated more specifically in the Delimitation document that has been approved or is being processed.

Preliminary stage

During a period of 30 DAYS, the municipal environmental body responsible for the evaluation of the Special Plan for TERRITORIAL IMPACT MINIMISATION (PEMIT) will carry out consultations with public administrations and interested parties and issue the Scope Plan, the Strategic Environmental and Territorial Report (IATE) or, as the case may be, a resolution declaring the environmental unfeasibility of the action addressed to the promoter.

In the Scope Document or in the Strategic Environmental and Territorial Report, as the case may be, the result of the consultations carried out will be stated, as well as such criteria and conditioning factors as may derive from the consultations and from the environmental body.

Preparation and processing phase (Only for the ordinary environmental assessment procedure)

The promoter of the PEMIT will prepare the following documentation for its processing:

List of documents for the Strategic Environmental and Territorial Assessment (municipal): PEMIT (45 DAYS public information)

Preliminary version of the PEMIT:

The PEMIT documentation, which may cover one or more delimited areas of action, shall adapt to the determinations established in the Delimitation document and will determine the uses of the area to be subject to Minimisation.

At this stage of the procedure the documentation will consist of:

- *Descriptive report*
- *Information Plans*
- *Supporting memorandum:*
  - *Objective of the Special Plan.*
  - *Justification of the proposed delimitation of the area.*
- *Planning Plans:*
  - *Delimitation of the area*
  - *Determination of uses*
  - *Determination of impact (forestry, flooding, natural areas)*
- *Minimal Works Report*

- *Landscape Integration Study (in accordance with the provisions of Article 211.2 d) and Annex II of the LOTUP, which allows the content of the study to be adapted to the type, scale and scope of the action).*
- *Economic feasibility study (must include at least the execution period and an economic sustainability report)*
- *Strategic Environmental and Territorial Study*

Verification and analysis phase

(Only for the ordinary environmental assessment procedure)

The municipal environmental body will issue the relevant PEMIT environmental resolution with the detailed planning of the area of action.

Approval phase

The Local Council, as the promoting, substantive and environmental body, will approve the **Special Plan for TERRITORIAL IMPACT MINIMISATION and the Minimisation Programme**, made up of the following documents:

List of documents for theFinal Version of the PEMIT in the Approval Phase:

En esta fase del procedimiento la documentación se corresponde con la versión final, incorporándose en su caso, los condicionantes ambientales y sectoriales exigidos en la DATE o el IATE. La documentación se compondrá de:

- *A descriptive report (the content of the Initial phase or preliminary version and, where appropriate and if necessary, an extension thereof, as well as an annex with a list of the affected property owners)*
- *Information plans (the content of the Initial phase or the preliminary version and, where appropriate and if necessary, an extension thereof)*
- *Supporting memorandum:*
  - *Objective of the Special Plan.*
  - *Justification of the proposed delimitation of the area.*
- *Planning Plans:*
  - *Delimitation of the area*
  - *Determination of uses*
  - *Determination of impact (forestry, flooding, natural areas)*
- *Minimum Works Report (the content of the Initial phase or the preliminary version and, where appropriate and if necessary, an extension thereof)*
- *Landscape Integration Study (in accordance with the provisions of Article 211.2 d) and Annex II of the LOTUP, which allows the content of the study to be adapted to the type, scale and scope of the action).*
- *Economic feasibility study (must include at least the execution period and an economic sustainability report).*
- *Plan for monitoring the environmental impact of the PEMIT on the environment.*

List of documents for the Minimisation Programme:

The documentation shall consist of:

- *Ordinary public works project: it shall contain those technical solutions set out in the minimum works report that are strictly essential. These shall at least include a wastewater purification system or a watertight tank, in justified cases, a solid waste collection system and safe road access to the buildings. If possible, it is advisable that drinking water and electricity supply systems be installed or that any such existing systems be regularised. As far as possible, the electricity should come from clean energies.*
- *Annex of the works to be carried out on private elements of private plots that are essential for the safety of people, such as fire prevention measures, or elements that require proper integration into the landscape, such as the installation of electrical power systems. These works will be economically valued and paid for by the beneficiaries.*
- *Study of the costs of implementing services that are useful to all those affected. The minimisation works project will include the budget for these works, which will be paid for*

by the property owners included in the Special Plan whose dwellings are to be regularised. The payment ratio will be 80% associated with the m^2 occupied by each dwelling and 20% associated with the surface area of the related plot of land.

» *Urban planning management agreement regulating:*

- *The relations between the property owners and the acting administration*
- *The minimisation execution procedure, containing the following determinations:*
  - *How the costs arising from the minimisation works, which will be borne by the owners, are to be regulated.*
  - *How to regularise the transfer to the administration of land that acquires the condition of public use, if any, as well as the deadlines for such transfer.*
  - *If activities are carried out that are incompatible with use as a dwelling at a distance less than that provided for in specific regulations, a report will be required from the Regional Ministries with responsibility for the activity in question and for territorial planning.*
  - *Management (direct or indirect) for the execution of the minimisation works. The property owners may take the initiative or, failing that, the local council may appoint a company to carry out the work.*
  - *The works may be executed in phases, with a time limit of five years, extendable up to ten if duly justified.*
  - *The property owners will be obliged to participate in the execution of the programme (voluntarily or compulsorily) and will have to pay the corresponding costs in cash.*

The promoting body (Local Council) will publish the agreement on the final approval of the PEMIT and the Minimisation Programme in the Official Provincial Gazette (BOP). A copy of the PEMIT will be sent for its inscription in the Autonomous Register of Urban Planning Instruments.

5.4. ACCEPTANCE OF RISK BY THE PROPERTY

Both in situations of individualised and collective minimisation, in cases where this occurs on land vulnerable to flooding or fire, in accordance with the provisions of the last two paragraphs of section 5 of LOTUP Article 210:

"The promoter must sign an affidavit in which he or she clearly states that they know and assume the existing risk and the civil protection measures that apply to the case, and that they undertake to pass this information on to anyone who may be potentially affected, regardless of the complementary measures he or she may deem appropriate to adopt for their protection. Where appropriate, this affidavit must be included in the documentation of the building permit or legalisation file.

Where appropriate, the following shall be attached to the affidavit of first occupancy: a certificate from the Land Registry in which it is accredited that there is a registry entry indicating that the construction is located in a forest area and that forest fire prevention measures have not been carried out, or that it is located in a flood zone".

6.

RECOMMENDATIONS TO MINIMISE TERRITORIAL IMPACTS

6. RECOMMENDATIONS TO MINIMISE TERRITORIAL IMPACTS

Considering that the objective of territorial impact minimisation is to mitigate the negative effects of building on Green Belt land, preserving the conditions inherent to the basic rural situation of the territory, and to avoid emergency situations and insecurity for people and property, in general terms, these recommendations must be aimed at complying with the following basic criteria:

- Avoid the characteristics inherent to urbanised land.
- Follow the specific regulations and ordinances existing on Green Belt land.

In addition, as a general criterion, the proposed actions should avoid sealing the land surface.

6.1. RECOMMENDATIONS REGARDING SERVICES

Accesses and roads:

- In all cases, existing rural roads will be preserved and used, avoiding new roads except for those that are essential due to emergency measures. Were it to prove necessary to design a new road, its layout must be adapted to the structure of the plot.
- Safe road access to the area will be guaranteed (access is considered safe when it allows the access of emergency vehicles), by means of an access road, which in general will have the following characteristics:
  - » Clear width ≥ 3 metres
  - » Clear height ≥ 4 metres
  - » Load bearing capacity: 2,000 kp/m2 over the whole length and width of the road
  - » In curved sections, the driving lane must be delimited by the outline of a circular crown whose minimum radii must be 5.30 m and 12.50 m, with a free width for traffic of 7.20 m.
  - » Passing places: Where there is not enough clear width for vehicles to pass, the access should have passing places every 200 metres, which may be less depending on visibility. Where the access does not allow for a change of direction, the access should end in a circular cul-de-sac of 12.50 m radius. By way of example, a ground plan image of a passing place is shown (Figure 13).

Figure 13. Passing places on roads with reduced width located at points with good visibility. Bejís-Arteas de Abajo section (Castellón). Source: Google Maps.

- Within the area, the width of the existing road will be guaranteed; the minimum road width is 3 meters.
- The treatment of the roads will be light and in accordance with the environment, avoiding new waterproofing and proposing the reduction of existing waterproofing.
- Pavements and other elements of the housing development will not be contemplated, and alternative signage systems will be provided to allow shared use by pedestrians and vehicles.

- Within the area, a minimum road width of 3 metres will be guaranteed, and where appropriate, that of the existing road if it is greater than 3 metres.
- Special plans to minimise the territorial impact on the urban-forest interface must have a perimeter road with the same characteristics as the access road.

Sanitation:

Proper wastewater management will be achieved by one of the three solutions described below.

- **Collective sewage treatment plant**

As a general rule, a wastewater collection and treatment network must be installed in a WWTP, which may be the municipal WWTP or another new facility serving the area where the dwellings to be regularised are located. The treatment requirements are as follows:

» BOD5 ≤ 25 mg/L

» COD ≤ 125 mg/L

» Solids ≤ 35 mg/L

- **Individual sewage treatment plant**

Where connection to the general sewage disposal system is not feasible, any treatment system that meets the following minimum purification requirements should be used:

» BOD5 ≤ 25 mg/L or percentage reduction from input of 60%

» COD ≤ 125 mg/L or percentage reduction from input of 60%

» Solids ≤ 60 mg/L or percentage reduction from input of 60%

These systems are suitable for individualised minimisations and, exceptionally, for collective minimisations:

» Isolated dwellings: the owner of the dwelling should apply for authorisation to discharge into the Hydraulic Public Domain (DPH)

» Dwellings that are part of a collective minimisation application, in which a technical and economic analysis substantiates that it is the most appropriate option, guaranteeing the same level of protection of the hydraulic public domain as a collective treatment plant. Therefore, in this case, the purification requirements of point (1) apply. In this case, the application should be sent to and subsequently authorised by the Local Council. By way of example of such an application, this situation may occur in rocky areas or areas with a significant slope.

- **Watertight tank**

It is also possible to propose the installation of watertight wastewater accumulation tanks with periodic emptying by the municipal service using a tanker lorry (Figure 14). This solution is recommended for individualised minimisations involving seasonal occupancy. In this case, no authorisation is required from the river basin organisation, and it is regulated by municipal ordinances.

The installation of watertight tanks is not allowed in collective minimisations; they can only be used for individualised and duly substantiated minimisations, complying with the minimum purification requirements listed above.

It shall not be possible to reuse water when the chosen solution is accumulation in watertight tanks. When choosing a purification treatment system, regardless of whether the system is individual or collective, the reuse of water should be encouraged. In this case, authorisation for discharge and complementary authorisation for reuse must be granted by the river basin organisation.

In any case, the durability of the system must be guaranteed by means of a maintenance contract with a specialised company.

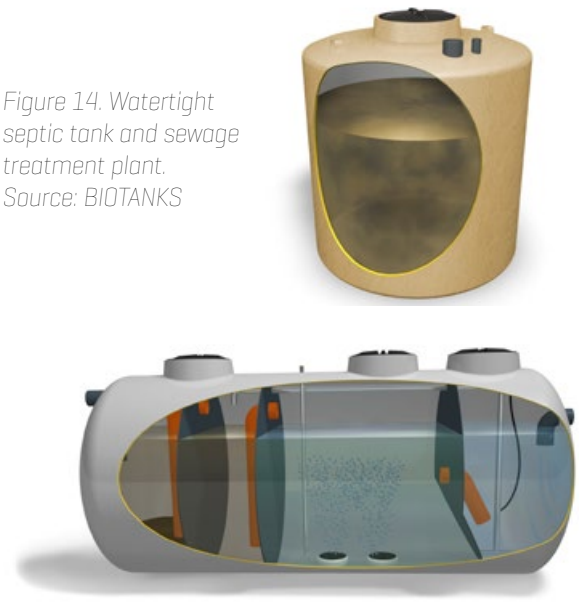


Figure 14. Watertight septic tank and sewage treatment plant. Source: BIOTANKS

Drinking water supply:

Drinking water should preferably be taken from the mains water supply.

If connection to the mains is not viable or is more than 200 metres away, an alternative system will be chosen, such as an authorised well or any other means (irrigation community or an authorised tank). In any case, the corresponding administrative concession for water use must be requested and the corresponding concession obtained from the river basin organisation for the actual use, i.e. for human consumption.

Waste collection system (RSU):

Separation of the different fractions at source with a municipal "door to door" collection system is the preferred option. This will mean that an easily accessible space will have to be set aside on the plots of land where the different waste fractions can be stored at source.

When the municipal waste management system does not allow this, sufficient space and containers will be made available for the population served, and the frequency of collection should be as low as possible.

The land needed to accommodate the containers that receive the waste generated in the minimisation area must form part of the Plan's delimitation (Figure 15).

Figure 15. Screens covering waste containers.
Source: www.martinmena.es.

The type of containers made available will be at least those used for the collection of solid urban waste. Other fractions, such as cardboard, plastic and glass, will depend on the number of dwellings served.

In addition, self-management of organic waste, through systems such as composting, is recommended.

Power supply:

As a general criterion, the use of renewable energies and autonomous supply systems (collective or individual (Figure 16) should be encouraged.

Figure 16. Photovoltaic Solar Installation in an Isolated Dwelling.
Source: Solar Montroi Instalaciones Solares.

If this is not possible, the electricity supply should be drawn from the mains by means of a contract with the utility company.

Lighting:

Exterior lighting shall be the minimum required to ensure the safety of persons. It should be projected downwards in such a way as to minimise light pollution (Figure 17).

The following are also recommended:

- Use of lamps that minimise light pollution: Warm LEDs.
- Use of motion sensors.
- Only light up the essential: pavements people walk on.
- Turn off or reduce lighting during off-peak hours.

Figure 17. Solar streetlights.
Source: Photo by Sandra Parra on Unsplash.

6.2. RECOMMENDATIONS REGARDING THE BUILDING AND PLOT

Exterior finishes

As a general criterion, the materials and finishes of all exterior elements (facades and roofs) must be coherent with the surroundings. And they must be substantiated in the landscape study.

The following are recommended:

- Do not leave concrete slabs or brickwork exposed without plastering or painting.
- Adapt and improve the exterior walls of the dwelling, giving priority to masonry and traditional mud walls; mortar rendering with the tones produced by the natural aggregates used; painted rendering with tones similar to those of the mineral landscape; or whitewashing if this is a tradition in the area.

Installations

All installations or installation containers outside the buildings must be integrated into the surroundings. They should be located in the most suitable place on the plot to make them as inconspicuous as possible, and covered and painted in appropriate colours or camouflaged by vegetation.

Air conditioning and heating

Giving priority to environmentally friendly systems, the location of air conditioning and heating equipment should be integrated into the surroundings, without causing any visual impact. To this end, it is recommended that the use of painted recesses in appropriate colours or decorative plant screens be used.

Telecommunications and aerials

If there are no connection points in the immediate vicinity, individual aerials will be installed in such a way that they do not cause a visual impact on the surrounding landscape.

Vegetation

In general, in rainfed or Tuscan cultivation areas, the use of autochthonous vegetation adapted to the climate and which does not have high irrigation requirements is recommended.

- In any case, whatever vegetation is used within the plots must be arranged and designed taking into account the surrounding vegetation, so that it is integrated both in terms of colours, textures, volume and height.
- Plantations or gardens with characteristics alien to the environment in which they are located should be avoided; their integration into the natural environment should be sought.
- The use of chemical fertilisers and phytosanitary products is not recommended.
- Plant species catalogued as invasive should be avoided.
- In environments where there is a risk of forest fires, it is recommended that the choice of vegetation be based on the guide *"Low Flammability Gardening" drawn up by the Directorate General for Forest Fire Prevention*[6].

In areas where there is a risk of forest fires, the use of highly combustible plant species should be avoided; they should be replaced by resistant and less combustible species. Species should be chosen on the basis of such criteria as exposure, soil requirements, water, etc. and in forest environments, the flammability criterion is recommended. To this end, the low flammability gardening guide mentioned above is recommended.

In any case, the minimum requirements set down in article 32 of Decree 58/2013, of 3 May, of the Council, which approves the Territorial Forestry Action Plan of the Valencian Community (PATFOR) must be complied with.

Fences

In general, the use of plant barriers with trees of a size and density appropriate to the environment is recommended. Opaque construction fences that have an impact and create a visual barrier should be avoided.

The selection of colours and materials should be made in such a way that they do not stand out from their surroundings. Fencing involving the use of recycled material such as bedsprings is prohibited.

The exterior enclosures of the plot should be removed, adapted or replaced, as the case may be. If these are brick and mortar, the same criteria in terms of the materials that should be used that was mentioned in the section on exterior finishes should be followed, albeit favouring, in this case, their visual permeability, as well as the passage of water and local fauna.

In areas characterised by the use of dry stone, the use of this type of fencing is recommended.

In flood zones, fences should be permeable to the flow of water from a height of 30 cm and around their entire perimeter.

In environments with a high risk of forest fires, the above measures should be supplemented or, where appropriate, replaced by the following:

- The use of vegetation screens is not recommended.
- The enclosures should be of brick and mortar and have a minimum height of 1 meter to curb radiation towards the interior of a plot, in the event of fire.

Landscape preservation on the plot

The nature of the surrounding landscape must be maintained in at least 2/3 or 70% of the plot, ensuring compliance with Article 201 of the LOTUP, unless a sectoral regulation recommends otherwise (for example, to adopt self-protection measures against fire).

[6] http://www.agroambient.gva.es/es/web/prevencion-de-incendios/informacion-y-comunicacion

http://www.agroambient.gva.es/es/web/prevencion-de-incendios/informacion-y-comunicacion/-/asset_publisher/aIKccirRZ0IF/content/materiales-divulgativos?redirect=http%3A%2F%2Fwww.agroambient.gva.es%2Fes%2Fweb%2Fprevencion-de-incendios%2Finformacion-y-comunicacion%3Fp_p_id%3D101_INSTANCE_aIKccirRZ0IF%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-2%26p_p_col_count%3D1

6.3. FLOOD MITIGATION MEASURES

In order to minimise the territorial impact of a dwelling or a cluster of dwellings affected by a flood area, LOTUP art. 210 requires that measures be taken to reduce vulnerability and provide self-protection for existing buildings. This is very important, as the legislation itself points out, since the same criteria cannot be considered for existing dwellings as for new dwellings or urban developments.

Vulnerability reduction and self-protection measures for existing buildings should be based on or make specific reference to the following documents:

- Article 7 para. Three "Duty of caution and self-protection", of Law 17/2015, of 9 July, of the National Civil Protection System, which expressly states that:

» 1. Citizens must take the necessary measures to avoid generating risks or exposing themselves to such risks. Once an emergency has arisen, they must act in accordance with the instructions given by the competent public service officials.

» 2. The owners of public or private centres, establishments and premises that generate a risk of emergency shall be obliged to adopt the self-protection measures provided for in this law, in the terms set out therein and in the implementing regulations thereof.

» 3. The competent Administrations in matters of civil protection shall encourage the creation of self-protection organisations among companies and entities that generate risk in order to provide adequate information and advice.

- Territorial Action Plan on Flood Risk Prevention in the Valencian Community (PATRICOVA).

» Annex I. Conditions for the adaptation of buildings and urban development, according to the different levels of flood risk defined in the PATRICOVA, establishes a series of recommendations that should be considered depending on the condition of the dwelling or the cluster of dwellings. In any case, the administration will ensure that the actions foreseen in the minimisation works project include measures such as or similar to those set out in the PATRICOVA The project should be accompanied by a declaration of liability in which the promoter is aware of and solely responsible for any flooding event suffered by the dwelling.

» Notwithstanding the above, the refurbishment of dwellings affected by hazard level 1, classified according to article 17 of the PATRICOVA as Green Belt land under special protection, similar to the hydraulic public domain, should be avoided.

- Considerations included in Royal Decree 638/2016, of 9 December, amending the regulation of the Hydraulic Public Domain and in its Technical Guide drawn up to support the application of the RDPH with respect to restrictions on land uses in flood zones of fluvial origin (Ministry of Agriculture, Fisheries, Food and Environment. September 2017) (Figure 18)

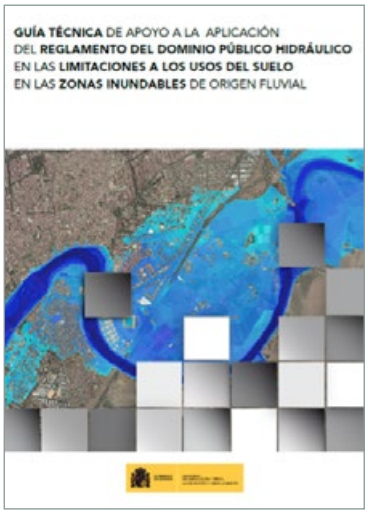


Figure 18. Technical Guide to Support the Application of the RDPH with respect to Land Use Restrictions in Flood Zones of Fluvial Origin. Source: Ministry of Agriculture, Fisheries, Food and Environment.

- Guide on how to apply the Territorial Action Plan on Flood Risk Prevention in the Valencian Community (Regional Ministry for Territorial Policy, Public Works and Mobility), to the Guide for the Reduction of the Vulnerability of Buildings to Flooding (Insurance Compensation Consortium) (Figure 19).

Figure 19. Guidance on how to Reduce the Vulnerability of Buildings to Flooding. Source: Insurance Compensation Consortium.

- Recommendations for the Construction and Rehabilitation of Buildings in Flood Zones (Ministry for Ecological Transition. October 2019) (Figure 20)

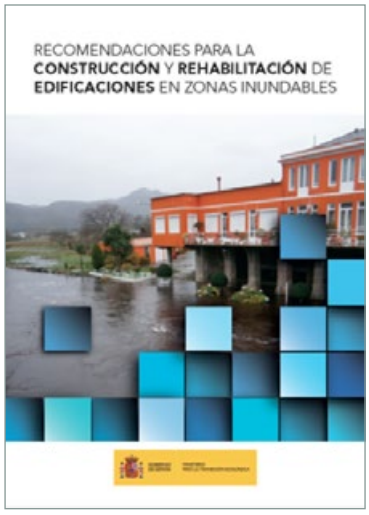


Figure 20. Recommendations for the Construction and Rehabilitation of Buildings in Flood Zones. Source: Ministry for Ecological Transition.

- Guide for Assessing the Resilience of Urban Clusters to Flood Risk: Networks, Urban systems and other Infrastructures (Ministry for Ecological Transition. October 2019) (Figure 21)

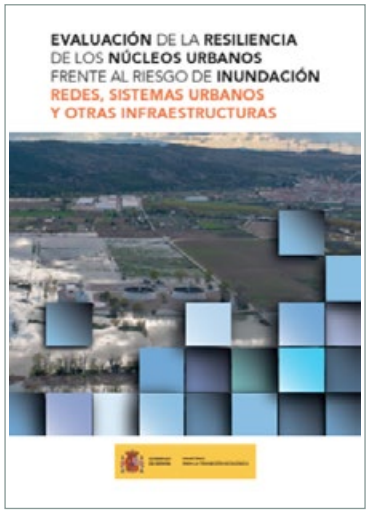


Figure 21. Guide for Assessing the Resilience of Urban Clusters to Flood Risk: Networks, Urban systems and other Infrastructures. Source: Ministry for Ecological Transition.

6.4. FIRE PREVENTION (IN FORESTED AREAS)

According to article 3 of the Territorial Forestry Action Plan of the Valencian Community (PATFOR), the Forest-Urban interface is that area in which dwellings and facilities are found or mixed with forest vegetation, either in scattered buildings or on the edge of compact clusters.

The PATFOR establishes the following safety conditions that must be adhered to at this forest-urban interface (article 32):

2. *Isolated dwellings located in or adjacent to forest environments shall have at least a thirty meter defensible buffer zone against the risk of forest fires(Figure 22). This distance shall be extended depending on the slope of the terrain, reaching a minimum of fifty metres when the slope is greater than thirty percent. These widths may be reduced when infrastructures are added that provide the same protection against wildfire as the buffer zone, such as walls.*

Figure 22. Defensible buffer zone against the risk of forest fires at the forest-urban interface.

Source: Methodological Guide for Prevention, Defence and Self-Protection Actions at the Forest-Urban Interface. Regional Ministry of Governance and Justice. Autonomous Government of Valencia.

3. *Responsibility for the implementation and maintenance of the defensible buffer or discontinuity zone lies with the owner(s) of the dwellings or urban land.*

In addition to the PATFOR regulations, DECREE 7/2004, of 23 January, of the Council of the Generalitat, which approves the set of general safety rules and regulations for the prevention of forest fires which must be observed during the execution of work carried out on forest land or in its immediate vicinity, must also be complied with.

If there is a Demarcation Forest Fire Prevention Plan, a Local Fire Prevention Plan or the area of action is included in a Natural Park with a Fire Prevention Plan, the fire prevention and protection measures must adopt the specific technical and design criteria included therein.

In the case of minimisation files included at the Forest-Urban Interface in municipalities that have not yet drawn up local fire prevention plans or where such plans are no longer in force, the local entity shall be required to draw up such plans.

At the Forest-Urban Interface, the objective of the measures will be to resolve the following issues:

- Promote the discontinuity of combustible material between the forest mass and dwellings
- Facilitate rapid and safe access to forest land for prevention and fire-fighting teams
- Ensure the availability of water resources for ground and aerial fire-fighting equipment
- Reduce the risk inside the plots, paying special attention to vegetation, chimneys, barbecues, paella pits and cleaning.

The measures set out in the *Methodological Guide for Prevention, Defence and Self-Protection Actions at the Forest-Urban Interface* shall be taken into consideration, as well as those contained in the *Engineering Manual* (Figure 23). *Forest Fire Prevention Infrastructures,* both from the Department of Governance and Justice of the Generalitat Valenciana.

Figure 23. Methodological Guide for Prevention, Defence and Self-Protection Actions at the Forest-Urban Interface and Engineering Manual. Forest fire Prevention Infrastructures.

Source: Regional Ministry of Governance and Justice. Autonomous Government of Valencia.

The criteria detailed below are recommended to be completed by the documents that make up the "General Recommendations for the Prevention of Forest Fires" and are available as information materials on the following website of the Ministry of Agriculture, Rural Development, Climate Emergency and Ecological Transition:

http://www.agroambient.gva.es/es/web/prevencion-de-incendios/informacion-y-comunicacion

These basic criteria shall be supplemented by the following specific criteria:

- **Defensible buffer zone**

To promote discontinuity between the forest mass and the dwellings, the following should be adhered to:

» Buffer zone ≥ 30 metres when the slope is ≤ 30%

» Buffer zone ≥ 50 metres when the slope is > 30%

The defensible buffer zone shall include a 5-meter perimeter road in the case of a Special Plan for Territorial Impact Minimisation.

The buffer zone that separates a built-up area from the forest, as well as the 5-meter wide perimeter road, must be kept free of low and bushy vegetation at all times, and if necessary, the tree stratum should be kept well cleared and pruned to 2/3 of the total height of each trunk.

Accesses and roads

» The access roads and their ditches should be kept free of vegetation and must also have a 10-metre wide defensive buffer zone on each side of the road, kept free of low and bushy vegetation at all times. Trees along this buffer zone should be pruned to 2/3 of their total height.

» Given that the Valencian Community is considered a High Risk Area (ZAR) for forest fires, in accordance with the Resolution of 29 July 2005, of the Regional Ministry of Territory and Housing, the minimum requirements laid down in Royal Decree 893/2013, of 15 November, which approves the Basic Guidelines for civil protection emergency planning for forest fires, are applicable. In this sense, and in accordance with the provisions of Annex II of Royal Decree 893/2013 (basic state regulation on the matter), more restrictive minimum measures must be adhered to n forestry areas than in general areas. Namely:

- Height of the safety clearance gauge ≥ 5 metres
- Clear width ≥ 5 metres
- Areas for vehicles to change direction will be made available for each kilometre of road. These must be 200 square metres in size and at least 8 metres long.

Hydrant network

If connection to the water supply network is possible, the installation of the following hydrants shall be considered:

» One hydrant for every 10,000 m^2 built or fraction thereof.

» Approved perimeter hydrants.

Hydrants must be located in easily accessible places (especially for fire engines), away from places where vehicles circulate and park, properly signposted and distributed in such a way that the distance between them measured by public spaces is no greater than 200 m.

The installation of automatic water jets along the perimeter is recommended.

If, for substantiated reasons, hydrants cannot be connected to a general water supply network, an open tank with its corresponding water reservoir shall be installed to provide the minimum necessary flow and pressure.

Installations

Electrical panels, gas tanks or any other flammable material on the outside of the dwelling must be set on a concrete floor kept free of vegetation (1 meter wide all around).

Chimneys, barbecues and paella pits

» All smoke outlets must have a spark arrester mesh screen made of non-flammable material (with a mesh opening of 0.5 to 1 cm on each side). Chimneys must also have a spark arrester cap.

» Trees shall be pruned to ensure that no branches come within 10 feet of the smoke outlets.

» Good chimney maintenance is also recommended.

» Paella pits or barbecues must have a roof and three side walls from floor to ceiling. The side walls should measure the length of the fire area plus 1 metre in width.

» Paella pits or barbecues that are not part of the main building must be placed on a base that should cover both the fire area and at least 1 metre in front of it.

» In the case of paella pits and barbecues, it is advisable to have a water supply nearby or, failing that, water should be kept to hand (bucket, tank).

» When the pre-emergency level is 3, it is forbidden to make any kind of fire, and all authorisations are suspended.

- **Cleaning and maintenance**

» Avoid the accumulation of dry vegetation or other debris in gardens or plots of land that could help a fire to spread, carrying out the corresponding cleaning tasks.

» Keep the access roads to the dwellings free of grass or weeds, including the ditches.

» Do not burn leaves or other debris without permission and always avoid hot, windy and/or very dry days.

» Keep roofs clear of combustible materials (leaves, branches, etc.) and prevent branches from hanging over buildings or coming within 3 metres of a chimney. Ideally, there should be a 10 m wide buffer zone around each building from which all flammable vegetation is removed.

» Ditches, defensible buffer zones and all perimeter plots must be kept free of vegetation.

» Undeveloped plots within the scope of the special plan must be kept free of dry vegetation and trees must be pruned to prevent the spread of fire.

- **Waste collection system (RSU):**

In FORESTED AREAS, the general measures regarding the waste collection system proposed in section 6.1 shall be supplemented or, where appropriate, replaced by the following measures:

» Containers located within 100 meters of forest land should be made of non-combustible material, including the lid.

» These containers should be located within the housing cluster in such a way that they are easy to collect and do not pose a fire risk to the mountain. They should therefore be placed as far away from the mountain as possible and, if they are placed on roads adjacent to forest land, they should be located on the side of the road that is furthest away from the forest land.

» They should be placed on bare ground, devoid of any type of vegetation. For this reason, we recommend either a surface that has been levelled down to the mineral soil level, a concrete or asphalt road surface, or an area of selected granular material for roads and accesses.

» Small walls, screens or other structures should be erected to prevent the container from being moved from its location by anyone other than waste collection personnel.

7.

FINANCING OF MINIMISATION WORKS

7. FINANCING OF MINIMISATION WORKS

One of the main concerns of municipalities is to decide who is responsible for financing minimisation works.

These are obviously always borne by the offending property. Nevertheless, although this solution is the most obvious in the case of individualised minimisation, it is not so clear in the case of collective minimisation, as it requires complex financing procedures managed by the administration.

The processing by means of special contributions or minimisation quotas requires certain provisions by the acting administration that tend to make management difficult (professional fees for the drafting of planning documents, management, provision for possible defaults by owners who are unable or unwilling to pay, etc.).

The administration does however have coercive means at its disposal - an executive enforcement procedure - to enforce payment by those priority offenders who refuse to pay for the minimisation work required by the Special Plan.

8.

FAQ

8. RECURRING FAQ

8.1. WHAT IS MINIMISATION?

8.1.1. What does minimisation of environmental and territorial impacts mean?

Minimisation is an administrative procedure that is regulated in the current LOTUP articles 210 to 212 which seeks, as its name suggests, to "minimise" (mitigate / avoid / decrease) the impacts on the territory and the environment produced or that have been produced by dwellings illegally erected on SNU. It does not involve reclassification of land or any legal transformation due to planning.

Once a minimisation procedure has been completed, the dwellings covered by it will obtain a legal regime derived from obtaining, in the final instance, a "works legalisation permit" (LOTUP art. 212.2) or a "territorial impact minimisation licence" (LOTUP 211 bis.2). In this regard, it should be emphasised that the dwellings will be subject to a legal regularisation procedure. Where there is no legal regime at the outset, there will be one at the end of the procedure. The aim of the procedure is to minimise the impacts referred to in the first instance.

8.1.2. Which buildings can benefit from a minimisation procedure?

Only dwellings, i.e. buildings for residential use, fully completed before 20/8/14. Buildings intended for other uses (farmhouses, agricultural or livestock buildings, buildings that provide physical support to industrial or tertiary activities, etc.) cannot be minimised, nor can activities carried out irregularly on SNU be regularised. Nor may dwellings completed after 20/8/14 be included in this procedure.

8.1.3. On what type of land can minimisation be applied?

Minimisation can be carried out on common SNU and protected SNU, excluding any possible public domain (hydraulic, livestock, etc.). It does not apply to urban land or land for urban development, where the procedure provided for in LOTUP article 180 may be applied. In accordance with the provisions of art. 210.4 LOTUP, whenever we are dealing with SNU that is protected or limited by sectoral affections (water[7], coasts, mines, infrastructures, etc.), a binding report is required from the sectoral body with competence in the matter. If what we are processing is an individualised permit, LOTUP art. 211 bis.4 requires this report for the same case, but only when we are dealing with dwellings for which measures to re-establish urban planning legality are possible. In the case of dwellings for which no such restoration measures are possible, the processing of the permit is subject to the general regime of LOTUP art. 201 (LOTUP art. 211 bis.3). In this case, a report will be required from the sectoral body that protects the land, if we are dealing with protected SNU.

8.1.4. What does it mean that the dwelling must have been fully completed by 20/8/14?

This legal requirement means that the building was ready for use (residential) on that date. The issue is factual, not legal, and must be determined by the municipal technical services, in each case. If from the successive orthophotos it is observed that modifications have been made to the footprint of the building, it will be considered that the dwelling is not fully completed until such time as it is observed that there are no modifications (if between the 2010 orthophoto and the 2011 orthophoto there are no modifications in the floor plan, it will be considered fully completed in 2010). With regard to the lack of necessary construction elements in the building (and which do not involve modifications to the floor plan of the property), such as doors or windows, it will be up to the municipal technical services to determine in each case whether in their opinion, in accordance with criteria derived from the Technical Building Code and other applicable regulations, a dwelling can be considered completed or not.

[7] Water-related impacts occur as a result of any of the following reasons: because the area is located in a public watercourse buffer zone (100-metre margins on each side of the hydraulic public domain), because it affects the flow regime of public watercourses in situations of flooding, because of the use of water, or because of the discharge of wastewater into the hydraulic public domain.

8.1.5. Can buildings adjacent or ancillary to a dwelling be subject to minimisation, or only the dwelling itself, strictly speaking?

Given that the law has laid down a very clear time criterion (all dwellings fully completed before 20/8/14 are included in the procedure; those completed after 20/8/14 cannot therefore be included in a minimisation procedure), it is understood that all constructions that are ancillary/complementary to the dwelling (it being understood that such a derivative character exists when the use is "connected" to the residential use - for example a swimming pool) and that are fully completed before 20/8/14, can be subject to a minimisation procedure.

On the other hand, buildings that have nothing to do with residential use (e.g. agricultural warehouses or greenhouses) or were completed after 20/8/14 (even if they are "connected" to residential use), will not be included in the regularisation procedure. The latter buildings will have to be subject to an urban planning disciplinary procedure, as, due to their date of completion, they may in any case be subject to the restoration of urban planning legality.

8.1.6. Can dwellings affected by an administrative demolition order be subject to minimisation? What about those affected by a court ruling?

As explained, the minimisation procedure has a perfectly defined object: dwellings on SNU completed before 20/8/14... "regardless of the legal-administrative situation in which they find themselves".

What does it mean that any dwelling prior to 20/8/14 can enter into a minimisation procedure, regardless of the legal-administrative situation it finds itself in? This means that any such dwellings (in an irregular situation) may be subject to a minimisation procedure, no matter whether this irregular situation involves:

a) An unlicensed dwelling for which the time limits for the Administration to take urban planning disciplinary action have elapsed.

b) An unlicensed dwelling for which the time limits for the Administration to take urban planning disciplinary action have not passed.

c) An unlicensed dwelling which has been the subject of a demolition order, following the processing of an urban planning disciplinary procedure.
In the original wording of the provision in the 2014 LOTUP, only dwellings covered by section a) were included in this procedure.

In the original wording of the provision in the 2014 LOTUP, only dwellings covered by section a) were included in this procedure.
On the other hand, if a court ruling has been issued on the property, in relation to this issue, LOTUP art. 210.3 establishes that "...and except for the content of court rulings that have been issued thereon, which must be complied with in accordance with that which is established in the enforcement resolutions issued by the courts ", which means that in the event of an interlocutory application for enforcement, whichever jurisdictional body has issued the ruling must decide how its ruling should be complied with (and therefore, whether or not minimisation is possible, in any given case).

8.2. WHY IS IT NECESSARY TO MINIMISE ENVIRONMENTAL IMPACT?

8.2.1. What are the environmental benefits of minimising impacts?

It is clear that the primary advantage is the application of corrective measures to avoid the traditional environmental impact caused by the lack of a wastewater treatment system. The implementation of spaces for the regular collection of solid waste, as well as a road system that allows safe road access to the buildings and the proper connection of the housing cluster to the road network, are other unquestionable improvements in relation to the pre-existing situation. Similarly, it promotes the installation of safety measures for situations of risk due to flooding or forest fires.

8.2.2. What are the legal advantages of an impact minimisation procedure?

The initial situation in which dwellings that may be subject to urban planning disciplinary proceedings find themselves, is the lack of proprietary title to such dwellings. That is to say, the impossibility of a Declaration of New Building being issued or of the dwelling being registered in the Land Registry.

The lack of a declaration of new building means that it is impossible to sell the construction with all due guarantees, as only the plot on which the building is erected can actually be sold. It also implies that it is not possible to mortgage the building and, consequently, no third party will be able to obtain a mortgage loan or secured financing to purchase it. Or, even worse, it means that the heirs of the offender cannot inherit a building that has not been regularised.

Therefore, regularising the building is undeniably beneficial for the owner, as the existence of proprietary title means that the property is revalued for all intents and purposes, and property rights can be exercised over it that previously could not be exercised (sale of the house, mortgage, inheritance, etc.).

8.2.3. What are the economic advantages of a minimisation procedure?

Given the undoubted legal and environmental advantages of impact minimisation procedures, there are clear economic advantages for society: the need for the services of technical professionals to direct and plan the regularisation; services related to the construction and installation of the minimisation measures (mini treatment plants); evacuation and dumping systems, if applicable; safety measures in flood areas or areas with fire hazards. Business opportunities will undoubtedly arise to finance the minimisation work and administrations may even consider lines of financing or subsidies for the regularisation work.

8.3. WHICH PROCEDURE IS APPLICABLE IN EACH CASE?

8.3.1. What is the difference between the two minimisation procedures regulated in the LOTUP?

The 2019 reform introduced the regulation of two procedures, when the original 2014 wording only established one. The current regulation (with the nuances explained below) differentiates between two procedures based on a dwelling density criterion.

Where a cluster of 3 or more dwellings/hectare is delimited, a Special Plan will be processed; where there is an isolated dwelling that cannot be included in any of the Special Plan areas, an individualised minimisation licence will be processed.

The first case involves the processing of a Special Plan, following the procedure established in LOTUP art. 210 et seq.

The second case involves the processing of a municipal permit (with all the specifications regulated in LOTUP art. 211 bis).

Later on, we will explain the flexibility that the law intends to grant to local councils when it comes to processing one or the other procedure, albeit always complying with the density requirements established in the law. In any case, and regardless of the fact that one procedure has the nature of a planning instrument and the other that of a municipal permit, both pursue the same goal: to minimise the harmful impacts on the environment and territory produced by illegal dwellings on SNU. The only difference between the two procedures is the dwelling density criterion, but the goal is the same.

8.3.2. Which of the two minimisation procedures regulated in the law is preferential? In the case of dwellings that are to be processed through a Special Plan procedure, how should such areas be delimited?

LOTUP Art. 210.2 establishes a legal definition of when what we are dealing with is a cluster of dwellings: *"For the purposes of territorial impact minimisation, a cluster of dwellings exists on Green Belt land whenever there is a density equal to or greater than three dwellings per hectare, without prejudice to the fact that groups of a lower density may be considered as such when appropriate due to proximity, infrastructure and territorial conditions"*.

Although in previous regulations of the minimisation procedure (4th Transitional Provision of Law 10/2004) a certain geometric shape was established to delimit the areas to be minimised (in the case in question, the rule referred to a circle with a radius of 100 metres in which there were more than 10 dwellings), in the current regulation established in the LOTUP, nothing is indicated in relation to how this geometric shape should be delimited to tell us if there are 3 or more dwellings/hectare, the density requirement that determines the obligation to process a Special Plan. In this sense, if there is no such density, an individualised minimisation procedure is advisable, as indicated above.

The fact that there is no legal definition of the geometric shape (this can be a circumference, a square, a rectangle, a rhombus, a rhomboid, etc.) or of the surface of the area for calculating density (an area of Green Belt land, a polygon on the survey map or any area that the local council decides to use for its operations) gives the municipal corporation enormous freedom when it comes to delimiting these areas that are to be processed by means of a Special Plan.

The legal definition is intended to distinguish what we might refer to as clusters/areas/disseminated zones (more or less dense groups of dwellings in close proximity to one another) from dwellings that are totally isolated from the rest. This differentiation has established two different procedures to be processed, depending on the case in question.

What criterion should the local council follow when it comes to delimiting these areas? Whichever one allows for better subsequent management of the minimisation works to be carried out and that facilitates such management, avoiding unnecessary administrative procedures. Let's not forget that the mechanism is designed to minimise (mitigate/diminish/avoid) the environmental and territorial impacts caused by dwellings on SNU.

How is this achieved? By carrying out a series of works and coming up with technical solutions (related to dumping, waste collection, road widening, etc.) that result in the minimisation of these impacts. All the procedural action carried out by the local council must be designed to make the minimisation work to be carried out as viable as possible - viable from a technical point of view, but also economically. All minimisation works must be paid for by the owners, so let's not lose sight of the fact that if the cost of the works is excessive, the purpose of the mechanism would be defeated.

Thus, if the analysis of the specific case justifies that it is better to process 3 individual permits to achieve the desired objective of minimisation, the 3 permits indicated should be processed. This need must be duly substantiated in the municipal file. The fact that the local council has the discretion to determine this indeterminate geometric shape (when it comes to defining a cluster of dwellings) is key when deciding on one procedure or another in these borderline cases, where the strict application of the law may suggest that a Special Plan should be processed, but the actual minimisation works to be carried out suggest that it is more appropriate to process individualised procedures.

In any case, as has been said, always bearing in mind that the goal is to minimise (the public interest that must be defended in this action is this reduction of adverse environmental effects), it is the local council that must justify its decision to process an individualised procedure (for a specific case) or a collective procedure through a Special Plan.

Similarly, where there is no density requirement to process a Special Plan, a Special Plan for 2 dwellings could be processed, for example, in accordance with the provisions of the final paragraph of LOTUP art. 210.2: these *"proximity, infrastructure and territorial conditions"* referred to in the precept must be accredited in order to justify the processing of a Special Plan in this case, but above all, it must be justified that the "minimisation" works to be carried out are more viable (from a technical, economic point of view, etc.) if a Special Plan is processed, than if an individualised permit is processed.

8.3.3. Should a local council delimit its "dwelling cluster" areas, so that people can know to which areas of the municipal territory a Special Plan is going to be applied and to which areas an individual licensing procedure is going to be applied?

Yes. An orthodox municipal action would advise the delimitation of the areas of dwellings (clusters) that are to be processed through a Special Plan procedure, given that there is a density equal to or greater than 3 dwellings/hectare. All of this with the flexibility in the choice of the procedure to be followed by the local council referred to in the previous question. That said, if the local council carries out this delimitation of areas in advance, the owners of the dwellings will know where they stand, from a legal certainty point of view. In this sense, any owner of a dwelling that is outside these Special Plan areas may legitimately request an individualised minimisation licence procedure, as regulated in LOTUP art. 211 bis.

8.4. WHAT WORKS ARE CONSIDERED NECESSARY?

8.4.1. Minimisation procedures require work to be carried out. What is the minimum amount of work required in such procedures?

Although the current regulation of minimisation in the LOTUP may lead one to think that the degree of urbanisation to be carried out through this mechanism is practically the same as in a common or garden urban transformation that results in urban land, we should dismiss this idea.

A minimisation procedure starts from a factual situation on SNU and is designed to lead to another factual situation when it has been completed, but the land will still be classified as SNU/ Green Belt.

Following this reasoning, it would be a contradiction in its own terms if such minimisation were to imply the de facto urbanisation of the SNU (let's not forget that SNU is land whose planning is outside the urban development process). We must make a restrictive interpretation of the legal regulation, to ensure we do not lose sight of the goal of the mechanism: to carry out the essential works needed to mitigate the undesirable effects that certain dwellings are causing on the territory and the environment. In this sense, LOTUP art. 211.3 a) establishes a list of those works that are understood as essential in order to achieve the goal intended by the mechanism: *"In particular, it must include, as mandatory, a system for the purification of all types of waste, which can be grouped by dwellings, spaces set aside for the regular collection of solid waste, a road system that allows safe road access to the buildings and the proper connection of the housing cluster to the road network. Also, if it is possible from the economic, technical and environmental point of view, the provision of a system for the supply of drinking water and electricity".*

8.4.2. Who bears the costs derived from the implementation of the minimisation works to be carried out in the procedure? And the maintenance of these infrastructures, for example, the maintenance of the drinking water mains from an urban cluster to a dwelling 500m away? Who would be responsible for this, the property owner or the local council?

The costs of specific minimisation works are borne by the owners. This is laid down in LOTUP art. 211.3 c), d) and e). We must not lose sight of the fact that the owners are offenders who have voluntarily placed themselves in a situation of illegality. The costs of carrying out the works in question must be borne entirely by them.

It is up to the local council to decide who should pay for the maintenance of these infrastructures.

LOTUP art. 211.2 indicates in this sense: *"The Special Plan must include at least the following technical documents:*

e) Economic viability study of the investment, including other established regularisation costs and the period of execution of the works and an economic sustainability report".

This last economic sustainability report is the one that will determine the maintenance costs of the infrastructures to be implemented in each case; the report itself will determine the amount of these costs and who has to bear them.

8.4.3. Can minimisation procedures be processed and approved in accordance with the provisions of the 14th Transitional Provision of the LOTUP, in relation to the Initial of the Valencian Agency for the Protection of the Territory?

The 14th Transitional Provision of the LOTUP states: *"Once this transitional provision comes into force, as regulated in Articles 210 and following of this law, no procedure for minimising environmental impacts on Green Belt land may be approved until the Valencian Agency for the Protection of the Territory begins to operate effectively.* This means that the Regional Ministry cannot definitively approve a minimisation SP, nor can a local council grant an individual minimisation licence until the Agency is up and running. But a local council can however request the initiation of the processing of a minimisation Special Plan by requesting a Strategic Environmental Assessment (SEA) of that SP; and local council can grant an Individualised Situation Statement (DSI) if so requested by an individual. What the 14th Transitional Provision prohibits is the completion of a minimisation procedure before the Agency is set up, but this does not prevent such procedures from being initiated. If the end of the procedure is reached, the approval of a Special Plan may be refused and/or the granting of an individual permit may be refused, even if the Agency is not operational. Procedures cannot be approved, as stated above, but they can be rejected, even if the Agency is not up and running.

8.5. IMPACT MINIMISATION AND URBAN PLANNING DISCIPLINE

8.5.1. In the case of urban planning discipline procedures that affect dwellings included in minimisation files, what effect does all this have on such procedures?

When a Municipal Plenary Session (or a Local Government Board by delegation) instigates a DSI (LOTUP 211 bis.1) (in the case of an individualised permit procedure), or applies for a Strategic Environmental Assessment (EAE) of a minimisation Special Plan (LOTUP art. 210.3), the processing of urban discipline proceedings involving dwellings included in such minimisation procedures is put on hold, as is the execution of any restoration orders issued on those dwellings, where appropriate.

In this sense, coercive fines will not be imposed, nor will the subsidiary execution of the restoration order be carried out by the urban planning administration responsible for the inspection. If the minimisation procedures are successfully completed and the dwellings in question are regularised, the urban planning disciplinary proceedings will be closed for good; if not, the disciplinary measures against the dwellings in question will be reactivated.

8.6. THE PROCEDURE

8.6.1. Does a Declaration of Individualised Status (DSI) constitute the completion of the procedure?

No. Even though a local council plenary session (or Local Government Board) adopts a DSI, it is a procedural act, not one that constitutes the completion of the procedure. It is merely a "qualified acceptance for processing" of the individualised minimisation procedure. At this stage, the city council decides that we are dealing with a factual situation in order to apply an individualised minimisation procedure, and not a Special Plan procedure. Accordingly, the local corporation notes: 1. That we are dealing with a dwelling (not any other building with another use). 2. That the dwelling was fully completed by 20/8/14. 3. That the dwelling cannot be included in any Special Plan area (3 or more dwellings/ hectare). These are 3 regulated and therefore objective circumstances.

8.6.2. In an individualised licensing procedure, what are the building conditions that must be set out in the Declaration of Individualised Status (DSI)?

In an individualised minimisation procedure, once the municipal Plenary session has granted the DSI, *"the interested party must ask the local council for a territorial impact and occupation minimisation licence, to which must be attached a landscape integration study, an analysis of the environmental impacts and risks and corrective measures proposed to avoid them, a basic project describing the current situation of the building and the works required to comply with the obligations set out in articles 180 bis and concordant articles of this law"* (art. 211 bis.2).

Therefore, together with his or her application for a permit, the applicant must provide the documentation indicated in the aforementioned precept. In the same article, as the local council points out, paragraph 1 establishes that the DSI must include the building conditions to which the subsequent permit must conform. And these are what, exactly? Evidently, they cannot be the building conditions that we would demand of an isolated and family dwelling, such as those regulated in LOTUP art. 197.1 b) (if such a dwelling was erected as a new construction), given that we are dealing with a pre-existing building that we intend to regularise. Art. 211.bis.1 itself states that the ordinary requirements listed in LOTUP art. 197.1 b) cannot be demanded (if all these requirements could be fulfilled, we would grant an ordinary licence, not an impact minimisation licence).

So what are the building conditions that a local council can demand from anyone applying for a DSI? Those that the local council decides in each case. Here it is a question of taking decisions on a case-by-case basis. We are engaged in a procedure that involves a detailed analysis of the existing situation in each dwelling. Therefore, if a local council considers that certain building conditions should be required for this regularisation, it is entitled to impose them. For example, it may require the applicant to demolish a fence that is contrary to planning regulations; or to demolish small constructions that have an impact on the landscape (in a site of local significance, for example). Or to adopt active landscape integration measures. These would be illustrative examples of what building conditions may be imposed in each case.

8.7. TIME LIMITS AND ADMINISTRATIVE SILENCE

8.7.1. What is the time limit for dwellings in this situation to apply for a DSI?

There is no set time limit for the owner of one of these dwellings to apply for a DSI.

8.7.2. If a local council does not respond to a private individual's request for an DSI, what does this administrative silence mean?

If what we have is an application for a DSI filed by a private individual with a local council, does failure on the part of the latter to reply imply the application of a system of positive silence? May we understand that the DSI has been granted by positive silence? The answer is no, since the DSI is nothing more than an "acceptance for processing", as explained above.

We would be inclined to apply the regime of negative silence, for the following reasons: 1. LOTUP art. 200.5 establishes: "In any case, the expiry of the legally established period for granting a municipal permit in these cases will have a negative effect, and the authorisation will be considered to have been refused". This article regulates the actions promoted by individuals on SNU, and how the Administrations intervene in order to authorise them. Thus, the aforementioned article establishes a regime of negative silence for applications for permits from private individuals that are not resolved by the local councils within the established timeframe. Therefore, and although the granting of a DSI is an act of acceptance for processing (which also establishes which building conditions should be implemented), given that the next step will necessarily be the processing of a municipal licence on SNU, considering that the regime that applies to such processing is that of negative silence, it is appropriate to apply the same regime to a DSI.

8.7.3. If we have a dwelling on SNU whose situation is "assimilated to unauthorised" (i.e., the statute of limitations for the restoration of order has elapsed, and the dwelling is therefore unassailable), but it has an occupancy permit granted by the local council, does it make sense to process a minimisation file?

The first thing to note in this case is that the regime of "assimilated to unregulated" is established in LOTUP art. 23, which indicates:

"The mere fact that the fifteen-year period referred to in the previous article has gone by shall not entail the legalisation of the works and constructions carried out without complying with the urban planning legality and, consequently, as long as the violation of the urban planning regulations persists, no refurbishment, extension or consolidation work to that which has been illegally built may be carried out. Nevertheless, in order to reduce the negative impact of these constructions and buildings, the administration may order that any necessary works be carried out so as not to disturb the safety, health, appearance or landscape of the surroundings".

In other words, just because the time limit for the exercise of the powers of restoration of urban planning legality has elapsed does not make a building legal. Therefore, if the building is not legal (and it is not legal if it does not have a building permit), it cannot be granted an occupancy permit, in accordance with the provisions of art. 32.1 of Law 3/2004, of the Generalitat, Planning and Promotion of Building Quality (LOFCE), since any occupancy permit must necessarily be preceded by planning permission (the former certifies that the work has been carried out in accordance with the specifications of the latter). In this sense, the granting of first or second occupancy permits to "prescribed" dwellings merely because

the restoration period has expired, renders the objective of minimisation "devoid" of content: to mitigate the environmental impacts caused by dwellings erected in the territory in an irregular way, through the granting of a "legalisation works permit" (LOTUP art. 212.2); a permit that replaces the ordinary works permit, which was not obtained at the time.

In this sense, the objective of the minimisation is related to "dwellings erected outside the formalised processes of urban planning and construction". In line with what has been explained above, a dwelling that has an occupancy permit, but does not have a building permit, falls under the case established in LOTUP article 210, given that it has been erected outside the formalised building processes, as it lacks the mandatory building permit. In this sense, it will be subject to either an individual or a collective environmental impact minimisation procedure.

However, if this dwelling already has the appropriate urban services to minimise its negative impact on the territory, the environment and the landscape, the purpose that the law pursues via the minimisation procedure is fulfilled. Nevertheless, this dwelling will not be able to join the real estate legal market with all the guarantees required by legal certainty, given that its owner will not be able to produce the document that proves its legality, which is none other than the building permit or the minimisation licence regulated in LOTUP articles 211 bis and 212.

9.

LOTUP TRANSITIONAL PROVISION 15

9. LOTUP TRANSITIONAL PROVISION 15

Transitional Provision 15 of Law 5/2014, of the Generalitat, on Spatial Planning, Urban Planning and Landscape (LOTUP), as amended by Law 1/2019 and Law 9/2019, has established an extraordinary procedure for the regularisation of pre-existing industrial activities, located on Green Belt land (SNU), on Urban Land (SU), and on Urbanisable Land (SUR).

In this sense, the measure makes it possible to obtain a Declaration of Community Interest (DIC) of "regularisation" (DICr) (for industrial activities erected on SNU), with the sole purpose of obtaining the environmental authorisation regulated in Law 6/2014, of the Generalitat, on the Prevention, Quality and Environmental Control of Activities in the Valencian Community, which such facilities currently lack.

Thereafter, by virtue of the powers conferred by article 5 of Decree 8/2016, of 5 February, of the Council, which approves the Regulations of the territorial and urban planning bodies of the Generalitat, a concise response is given to certain questions of this 15th Transitional Provision whose clarification by the Directorate General of Town Planning is deemed appropriate:

1. What is the purpose of the DICr?

The purpose of the DICr is to ensure that activities included within its scope of application obtain the necessary environmental authorisation, in accordance with Law 6/2014.

2. What factual circumstances are covered by the DICr?

1. Industrial and productive activity on Green Belt land.
2. Existing, in operation prior to 20/08/2014.
3. Does not comply with laws 5 and 6/2014.
4. *The non-applicability of any measures designed to protect and re-establish urban legality with respect to the buildings.*

3. What is the scope of the term "existing and operating activity"?

Only activities that were already in operation when Laws 5 and 6/2014 of the Generalitat came into force (20/8/2014) and that remain active (and no other) on that date and at the time the regularisation procedure is initiated may benefit from the regularisation provided for in Transitional Provision 15, as accepting a change of activity after 20/08/2014 would entail a breach of the pre-existence requirement as there is no activity identity.

The following cannot therefore be included in the scope of application of this provision:

- Those activities that have implied a change of use of the building after 20 August 2014. For example, if I used to run an agri-food plant and I have turned it into a sheet metal factory. In other words, the activity for which the regularisation is requested must be the same activity that was being carried out on 20 August 2014.
- Those activities that began after 20 August 2014, even if they take place in a building that was completed before 20/08/2014. Therefore, this provision does not apply to activities carried out in buildings completed prior to 20 August 2014 but which began after this date.

4. What requirements for ordinary DICs can be waived for DICr?

According to section 2 of Transitional Provision 15, when granting a DICr, compliance with the following may be waived:

- The minimum surface area of the plot on which the activity takes place and the maximum occupation of the plot.
- The type of activity carried out is one of those provided for in sections 1, 2 and 3 of letter e) of Article 197[8].

» Proof of the need to establish the activity on Green Belt land, as required by Article 203.

The reason for this exemption is precisely because the intention is to regularise the situation of pre-existing activities, so that they can obtain the environmental authorisation they lack.

5. Does the inadmissibility of adopting measures to protect legality refer to the construction in which the activity is carried out or also to the activity itself?

The regularisation of activities through the mechanism of Transitional Provision 15 requires that the Administration's efforts to demand the restoration of the urban planning legality of the construction should have expired.

This is obviously not the case with an activity that has been carried on for a long period of time. The file must clearly demonstrate that such efforts have ceased.

In the case of buildings for which the Administration's efforts to restore urban planning legality have not expired, these will not fall within the scope of application of this precept and will be subject to a procedure for the restoration of urban planning legality.

6. 6. Does the regularisation of the activity require that the latter should comply with urban planning regulations or is it feasible in cases of activities carried out contrary to urban planning provisions?

If an extraordinary legalisation procedure has been arbitrated, it is precisely because it does not comply with planning regulations (such as non-compliance with distance to boundaries, minimum plot size, or similar), since, if they were complied with, regularisation would not be necessary.

In this sense, paragraph 1 b) of Transitional Provision 15 states that *"Special regularisation will be possible provided that the following circumstances and conditions are met: b) Refurbishment works and work to improve and expand the activity may be admitted, provided that the new work or activity does not accentuate the non-compliance with the current planning regulations"*.

From which it can be deduced that Transitional Provision 15 permits the granting of this type of extraordinary DIC to works and activities that incur in a "non-compliance" with the planning regulations.

We cannot therefore deny the use of the procedure regulated in Transitional Provision 15 on the grounds that one of the parameters established in the planning regulations is not complied with, as if that were the case, the Provision's very existence would make no sense. The procedure must be processed, even if the activity does not comply with any given parameter (for example, the plan requires a minimum plot of 20,000 m² and the activity is located on a plot of 15,000 m²). What the procedure should not entail is an accentuation of pre-existing planning non-compliances, in the sense set out in section 8.1).

[8] Wording as given by Law 9/2019, of 23 December, of the Generalitat, on Fiscal, Administrative and Financial Management and Organisational Measures of the Generalitat.

7. What refurbishment, improvement and extension works are allowed? (Transitional Provision 15.1.b)

Based on the regulation established in paragraph one, letter b) of Transitional Provision 15, it is clear that two types of work can be authorised:

- *"Refurbishment, improvement and extension of activity work that does not accentuate non-compliance with current planning regulations".* In this sense:

  a) The building may be extended, provided that the extension is within the limits set out in the municipal planning regulations.

  (For example, if a plot occupancy of 15% is allowed and the building occupies 10% of the plot, it can be extended to 15% of the plot. If the building occupies 15% or more it cannot be extended. The same applies to its height or its distance from boundaries. For example, if the distance to the boundaries is 4m when the urban planning regulations establish 5m: authorisation may be given if the extension is carried out on another side of the building in accordance with planning regulations, albeit maintaining the 4m of distance to the boundaries, as long as the extension does not accentuate the non-compliance with the planning regulations. But if the distance to the boundaries were to decrease from 4 to 3 m., authorisation would not be given).

  b) The use may be extended as long as the planning regulations permit it.

  (For example, if I have one production line in a warehouse and I add another two, without affecting the building, this would not prevent the regularisation of the activity from going ahead, as long as the use is permitted by the planning regulations. If the use is not allowed by the planning regulations, the extension would not be possible, but regularisation would be admissible).

- *"Extensions needed to meet the requirements of environmental regulations shall be permitted provided that they do not exceed 20% of the occupied area or of the buildable area already constructed and in use. These limits may not be exceeded by successively obtaining other Declarations of Community Interest"*

  The second type of work that can be authorised only makes sense if it adds something to the type of work indicated in the previous section, and that something is that, although it accentuates non-compliance with municipal planning regulations, it is possible to make extensions to buildings provided that two conditions are met:

  a) That the reason for the extension is to comply with conditions derived from environmental regulations. It would make no sense to require someone to obtain an environmental permit if the environmental conditions cannot be fulfilled because of these regulations. For example, the construction of an industrial sewage treatment plant.

  Given that the work meets requirements derived from environmental regulations, these works will be specified in the environmental intervention procedure, taking into account that environmental conditions that require extension work must be linked to the production processes already in place, given that extension work cannot be proposed to increase production on the pretext that this will have less environmental impact.

  b) The extension must not exceed 20% of the occupied surface area or the built and in-use buildable area.

- The works required for adequate connection to the road system, as well as sufficient water supply, sanitation and purification. If the plot lacks basic urban services, they must be installed, and the corresponding sectoral reports will be included in the administrative regularisation procedure.

8. What limits to regularisation does Transitional Provision 15.3 establish?

The ratio of the rule (Transitional Provision 15.3) is to limit the possibility of industrial activities being regularised when there is a regulatory clash or when territorial or sectoral decisions contradict one another. The text contains a general proclamation regarding limitations on regularisation:

3. These declarations of community interest may not be granted when the consolidation of the activity on Green Belt land is incompatible with the territorial development of the municipality, in accordance with the principles of this law and Valencian territorial strategy....

It then goes on to list a series of specific cases in which this is so: *...because they affect environmental or landscape values, because they are incompatible with territorial conditions, because of their proximity to residential areas or possible future residential uses, or because they hinder the implementation of infrastructures.*
In this way, the aim of the regulation is to consolidate the general proclamation for the related cases; however, some of them are indeterminate legal concepts that require clarification in order to be clearly understood and so they can be applied with greater rigour.

- **Impact on environmental and landscape values**

This will have to be resolved by referring to the corresponding studies that will accompany the DIC project. The content of these documents and the environmental and landscape reports issued in this regard will determine the feasibility of the regularisation -total or partial- as well as the requirements imposed by the constraints resulting from the Landscape Integration Study.

- **Incompatibility with territorial constraints**

Where there is a sectoral constraint that limits the application of Transitional Provision 15, the former will prevail over the regularisation permitted by Transitional Provision 15. Although it has been repealed, Article 63.2 of Law 16/2005, of the Generalitat, Urban Planning in Valencia ("Limits to Planning Powers"), explained it very well when it stated: "2. Planning powers shall be subject to the rest of the decisions derived from the Law on Spatial Planning and Landscape Protection and those derived from applicable sectoral legislation".

Consequently, regularisation cannot prevail over sectoral constraints (roads, coasts, etc. ....) and will not be possible where the sectoral constraints prevents it in its entirety; without prejudice to the application of the principle of proportionality, where it is possible to combine it with the sectoral condition, it may be possible to proceed partially.

- **Hindering the implementation of infrastructures**

Even though the regulatory text does not specify what type of infrastructures restrict regularisation, the interpretation must be quite broad since it is not acceptable that activities that originate in an unlawful act should prevent or condition the installation of infrastructures of all types linked to the public interest.

Therefore, the preservation of this public interest must prevail over the right to regularise granted by Transitional Provision 15. On the other hand, infrastructures should be understood as those foreseen by the planning itself that are intended to provide quality of life for citizens (from green infrastructure, to water treatment plants, water tanks or similar).

- **Proximity to residential areas or possible future residential uses**

These must be industries whose characteristics and impact are incompatible with residential use, to which the legislator clearly gives preference. No distinction is made as to whether or not the existing residential use has to be in accordance with planning regulations; all it takes is for there to be a residential use that could be incompatible with industry for the development process not to be activated.

As for the admissible distance is concerned, since the law does not establish any such distance, it will have to be considered on a case-by-case basis. Therefore, for each individual case, the specific circumstances of the case must be taken into account. Logically, when an industrial activity is being regulated in accordance with the environmental legislation on the control of activities, the distance must be considered in terms of the impact that said activity may have on the existing residential area in terms of nuisance, danger, etc.

On the other hand, the allusion made by Transitional Provision 15.3 to "possible future residential uses" cannot be accepted unless a sufficient amount of detailed information about such uses is made available, which in no case should be less than that established in LOTUP Article 50, given that the procedure is initiated by a draft plan and the initial strategic document of a planning initiative being the submitted by the promoting body to the environmental body.

9. What is the deadline for applying for a DICr?

The deadline to apply for DICr processing is 31 December 2021.

» This deadline is for applying for the DICr.

» The application must be accompanied by the documentation required in article 203 of the LOTUP.

10. What is the deadline for applying for the corresponding environmental authorisation?

In accordance with Law 6/2014, from the day the DICr is obtained (i.e. from the date of notification of the resolution) the promoter has three years to obtain the corresponding environmental authorisation. This deadline is for applying for the environmental authorisation.

11. What happens if the activity is not regularised?

If the environmental authorisation is not obtained within three years after obtaining the DICr, for reasons attributable to the promoter of the activity, the DICr will expire, with the effects provided for in article 207.4 of the LOTUP, i.e. the activity will be closed down and any constructions and installations dismantled.

If the activity has not been fully legalised by the time the deadlines indicated in the previous paragraphs have expired, it must cease to be carried out, regardless of whether or not the promoter of the activity has initiated the regularisation procedure, since the consequence of non-regularisation applies to all existing and irregular activities, not only to those that have initiated the legalisation procedure.

This means that Law 1/2019, with regard to irregular activities, is an end-point law that grants a deadline for regularisation and a warning that, once the deadline has expired without such regulation having been achieved, the aforementioned closure will take place.

12. Does the regularisation of the activity entail the legalisation of the building in which it is carried out?

No. Transitional provision fifteen is aimed at activities that take place in buildings for which the administration's action to restore urban planning legality has prescribed, so we are talking about buildings without a building permit.

13. What legal regime applies to the DICr?

The legal regime of the DICr will be that established in Transitional Provision 15, which will be applied in preference to the ordinary regime. However, in all matters not provided for in Transitional Provision 15, the ordinary regime of the DICs, articles 197 and 200 et seq. of the LOTUP will apply. Therefore, this Transitional Provision establishes that a landscape integration study will be required in accordance with articles 203.3 and 4, and buildings or uses that are incompatible with the cultural heritage reports or environmental documents, which are required in accordance with sectoral regulations, may not be authorised.

14. How can industries and activities located in land development units on urban land or in sectors of urbanisable land be regularised? (Transitional Provision 15.5)

Transitional Provision 15.5 establishes two mechanisms in this regard:

1. By implementing the envisaged planning, being able to carry out, if necessary, modifications to the detailed planning in order to subdivide the land development unit or units initially envisaged.

   This point is not covered by an exceptional regime, the ordinary planning procedure is applied. The envisaged planning has to

be implemented, without prejudice to the fact that it may be changed by means of a plan modification, but without any special regime being established with respect to the implementation of the planning, nor with respect to any possible necessary modification.

2. By classifying the land as Green Belt land so that the legal regime of the DICr can then be applied.

    a) Such declassification requires the processing of a planning amendment that is structural in nature because it affects the classification of land. Given its purpose, this modification is simple, but the balance of infrastructures, equipment and facilities assigned to this land and which are linked to other planning areas must be maintained.

    b) The declassification of land shall in any case be an administrative decision taken in the general interest. Therefore, its purpose cannot be solely and exclusively the regularisation of the industry.

    (c) **The declassification shall be approved within three years of the publication of this provision, i.e. by 07/02/2022.**

GENERALITAT VALENCIANA

Conselleria de Política Territorial, Obres Públiques i Mobilitat

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